



Order F25-13

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 security of any property or system), and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. The adjudicator found that SFU was authorized or required to withhold most of the information in dispute under ss. 13(1) or 22(1) and ordered SFU to disclose the information to which ss. 13(1) and 22(1) did not apply. 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. The applicant did not dispute the application of s. 15(1)(l) so it was not necessary for the adjudicator to make a decision about the information withheld under that section.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 4(2), 13(1), 13(2)(a), 13(2)(n), 13(3), 22(1), 22(2), 22(2)(a), 22(2)(c), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), 22(3)(g), 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 seven-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 any property of system), 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. During mediation by the OIPC, SFU reconsidered its severing decision and released additional information to the applicant. It also withdrew its reliance on s. 15(1)(a) of FIPPA. Mediation did not resolve the remaining issues in dispute, and they proceeded to inquiry.

[3] During the inquiry, the applicant said that he does not dispute the application of s. 15(1)(l) to the information withheld under that section. Accordingly, I find that s. 15(1)(l) is no longer in dispute and it is not necessary for me to make a decision about the information withheld under that section.

[4] This order is issued concurrently with Order F25-12. Both orders deal with similar requests made by the applicant for access to records held by SFU.

PRELIMINARY MATTER

[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.¹ 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.²

[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.

ISSUE

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

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

¹ For example, see Order F16-34, 2016 BCIPC 38 at para 9 and Order F11-28, 2011 BCIPC 34 at para 11.

² Notice of written inquiry, July 5, 2024.

[9] Under s. 57(1) of FIPPA, SFU has the burden of proving that it is authorized under s. 13(1) 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).³ However, SFU has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).⁴

DISCUSSION

Background

[10] 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.

[11] The records show that SFU hired an external investigator (External Investigator) to investigate the bullying and harassment complaint (Investigation). During the Investigation, the External Investigator interviewed the complainant, the applicant, and several witnesses about the allegations made against the applicant. The External Investigator provided her findings about the Investigation to SFU in a 70-page written report (Investigation Report).

Records and information at issue

[12] The responsive records total 457 pages and consist of:

- Emails between SFU employees, some of which include attachments (Emails); and
- A copy of the Investigation Report, dated May 2022.

[13] SFU is withholding a small amount of information in the Emails under ss. 13(1) and 22(1) and most of the information in the Investigation Report under s. 22(1).

Section 13(1) – advice or recommendations

[14] 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

³ 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.

⁴ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

that would occur if a public body's deliberative process was exposed to excessive scrutiny.⁵

[15] "Recommendations" include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.⁶ "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.⁷

[16] 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.⁸

[17] 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

[18] 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.

[19] The applicant says that any factual information withheld under s. 13(1) should be disclosed. He also says that the information that was withheld from page 246 of the records appears to be his own words, so that information should not be withheld.

Analysis and findings

[20] I have reviewed the information withheld under s. 13(1) and I am satisfied that disclosing most of it would reveal advice or recommendations. This information is:

- Editorial advice to SFU employees contained in drafts of letters and a meeting script;⁹

⁵ *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.

⁶ *John Doe*, *ibid* at paras 23-24.

⁷ *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

⁸ Order F16-11, 2016 BCIPC 13 (CanLII) at para 21.

⁹ For instance, records at p 277.

- Recommendations from an SFU human resources employee to other SFU employees about communications with the applicant;¹⁰ and
- Information that would allow a reader to accurately infer some of the above recommendations.¹¹

[21] Contrary to what the applicant says, the withheld information on page 246 of the records is not his own words. Rather, the withheld information on that page is a recommendation from an SFU human resources employee to the applicant's supervisor about what to include in a letter to the applicant. Although a partial quote from the applicant is disclosed on that page, I am satisfied that the withheld information would reveal a recommendation developed for SFU.

[22] However, SFU relied on s. 13(1) to withhold a few words in an editorial comment on page 277 of the records and I do not see how those words would reveal advice or recommendations. SFU does not adequately explain. I conclude s. 13(1) does not apply to that information.

Sections 13(2) and (3)

[23] 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).

[24] The applicant says that ss. 13(2)(a) and (n) apply to the information withheld under s. 13(1).

13(2)(a) – factual material

[25] 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 not necessary to the advice or deliberative process. "Factual material" does not include factual information that is assembled from other sources and is an integral part of the advice or recommendations.¹²

[26] The information withheld under s. 13(1) is clearly not factual material. I find s. 13(2)(a) does not apply.

¹⁰ For instance, records at pp 132 and 147.

¹¹ For instance, records at p 154.

¹² *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 paras 93-94.

Section 13(2)(n) – decision that affects the rights of the applicant

[27] Section 13(2)(n) provides that a public body must not refuse to disclose a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[28] Previous OIPC orders have established that to be captured by s. 13(2)(n), information must contain a decision or reasons for a decision.¹³ It is not clear to me, and the applicant does not explain, what “decision” is at issue here. Regardless, none of the information I found would reveal advice or recommendations constitutes a decision or reasons within the meaning of s. 13(2)(n). I find s. 13(2)(n) does not apply.

Section 13(3)

[29] 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)

[30] 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)

[31] 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 proper and relevant factors when making this determination.¹⁴ 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.¹⁵

[32] 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.”¹⁶ 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.¹⁷

¹³ Order F24-77, 2024 BCIPC 87 at para 64.

¹⁴ Order 02-50, 2002 CanLII 42486 (BC IPC) at para 144.

¹⁵ Order F19-48, 2019 BCIPC 54 at para 29.

¹⁶ *John Doe*, *supra* note 5 at para 52.

¹⁷ Order F25-02, 2025 BCIPC 2 at para 66.

[33] 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.”¹⁸

[34] 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.

[35] 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

[36] 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.

[37] SFU applied s. 22(1) to a small amount of information in the Emails and most of the information in the Investigation Report, including:

- The information the complainant and the witnesses provided during their interviews with the External Investigator;
- Most of the information the applicant provided during his interview with the External Investigator; and
- The External Investigator’s analysis of the evidence, conclusions, and recommendations to SFU.

Personal information

[38] 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.

¹⁸ SFU’s initial submission at para 27.

[39] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.¹⁹ 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.²⁰

[40] 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.²¹

[41] I find that some of the information withheld under s. 22(1) is not personal information because it is contact information. Specifically, I find that the following information is contact information that SFU is not authorized or required to withhold under s. 22(1):

- Employee names, job titles, work addresses and work phone numbers that appear in some of the Emails where the employees were carrying out their normal job duties and the information was clearly included to enable them to be contacted at work.²²
- The name, company name, work phone number, and work email address of the External Investigator who completed the Investigation Report.²³ This information appears at the bottom of the Investigation Report and is clearly included to enable the External Investigator to be contacted at her place of business.

[42] There is also a small amount of withheld information that I find is not personal information because it is too vague to be about an identifiable individual.²⁴ SFU is not authorized or required to withhold this information under s. 22(1).

[43] Additionally, I find that some of the information in dispute is only about the applicant. This information appears in the Investigation Report and consists of direct quotes from the applicant about himself.²⁵ It does not reveal information about any other individuals. SFU is not authorized or required to withhold this information under s. 22(1).

[44] However, I am satisfied that the remaining information withheld under s. 22(1) is the personal information of several individuals.

¹⁹ Schedule 1 of FIPPA.

²⁰ Order F19-42, 2019 BCIPC 47 at para 15.

²¹ Schedule 1 of FIPPA.

²² Records at pp 101-103.

²³ Records at p 417.

²⁴ For instance, records at pp 274, 372, and 388.

²⁵ For instance, records at pp 375, 376, and 379.

[45] This information is clearly about individuals 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 were provided by individuals about the applicant's workplace behaviour. I note that SFU withheld the names of those individuals; however, I find that the applicant could identify the individuals 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.

[46] There are several instances where SFU withheld employee names, job titles, work addresses, and work phone numbers from some of the Emails. I found above that some of this information is contact information because it appears in communications where the employees were carrying out their normal job duties and the information was clearly included to enable them to be contacted at work. However, there are a few instances where disclosing this information would reveal the identity of an individual who made a complaint about something the applicant did at work. In that context, the information is personal information and not contact information.²⁶

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

[47] Having found that most 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.

[48] SFU says that none of the s. 22(4) circumstances apply in this case. It specifically submits that s. 22(4)(e) does not apply. The applicant does not make submissions about s. 22(4).

[49] 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.

[50] 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.²⁷ However, whether s. 22(4)(e) applies depends on the context in which the information appears. For instance, previous OIPC orders have said that s. 22(4)(e) applies to objective, factual statements about what employees did or said in the normal course of

²⁶ 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.

²⁷ Order F19-27, 2019 BCIPC 29 at para 51.

discharging their job duties, but not to qualitative assessments or evaluations of those actions.²⁸

[51] In this case, most of the information in dispute would reveal SFU employees' complaints about the applicant's workplace behaviour or their opinions or observations about, or involvement in, workplace conflicts with the applicant in the context of the Investigation. Some of the information is the External Investigator's comments, opinions, and findings about the workplace behaviour of the applicant, the complainant, and the witnesses who were interviewed in the course of the Investigation. I find this information is not about those employees' positions, functions, or remuneration, nor does it relate to their job duties in the normal course of work-related activities. I find that s. 22(4)(e) does not apply.²⁹

[52] However, I find that some of the withheld information in the Emails is about SFU employees acting in the normal course of carrying out their job duties. Specifically, I find that the withheld information in an email chain between SFU employees about arranging a meeting with the applicant relates to those employees' normal job duties.³⁰ I conclude s. 22(4)(e) applies to that information and SFU is not authorized or required to withhold it under s. 22(1).

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

[53] 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.

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

[55] The applicant does not specifically address any of these provisions in his submission.

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

[56] 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.

²⁸ Order 01-53, 2001 CanLII 21607 (BC IPC) at para 40.

²⁹ 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.

³⁰ Records at pp 101-103.

[57] SFU says that where the information in dispute is about an individual's workplace accommodations related to their 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). SFU does not point me to any specific pages in the records that contain this kind of information.

[58] I have reviewed the records in dispute, and I do not see any information about a medical, psychiatric or psychological condition or symptomology. Without more explanation from SFU, I am unable to conclude that s. 22(3)(a) applies.

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

[59] SFU submits that s. 22(3)(d) applies to some of the withheld information.³¹

[60] 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.

[61] Previous OIPC orders have found that the term "employment history" includes descriptive information about an individual's workplace behaviour or actions in the context of a workplace complaint investigation or disciplinary matter.³² Previous orders have also found that 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).³³ Section 22(3)(d) has also been found to apply to information about employee work leaves³⁴ and accommodations.³⁵

[62] Consistent with previous OIPC orders, I find that s. 22(3)(d) applies to the following information in the Emails:

- Information related to a workplace conflict between the applicant and another employee that was part of the Investigation;
- Information that reveals an employee's complaint about something the applicant did at work and their correspondence with a union representative about the matter;
- Information about an employee's work leave; and
- Information about an employee's workplace accommodations.

³¹ SFU's initial submission at para 63.

³² Order 01-53, 2001 CanLII 21607 at para 32.

³³ For example, see Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 38; Order F21-34, 2021 BCIPC 42 at para 42; and Order F23-56, 2023 BCIPC 65 at para 77.

³⁴ For instance, Order F22-15, 2022 BCIPC 17 at para 66.

³⁵ For instance, Order F23-13, 2023 BCIPC 15 at para 92.

[63] I also find that s. 22(3)(d) applies to the following information in the Investigation Report:

- Information that reveals the complainant’s allegations and evidence against the applicant; and
- Information that reveals the applicant’s allegations about the workplace behaviour of other employees.³⁶

[64] However, I find that s. 22(3)(d) does not apply to the information provided by witnesses that appears in the Investigation Report. This information only reveals what these individuals observed, said or did regarding workplace interactions with the applicant. These individuals were not complainants or subjects of the Investigation. I find this information is not about their employment history under s. 22(3)(d).³⁷

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

[65] 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 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.³⁸

[66] SFU says that s. 22(3)(g) applies to “complaints and opinions about the performance and behaviour of employees” as well as “evaluative comments.”³⁹

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

[68] Most of the remaining information in dispute relates to observations and opinions about 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 to most of the withheld information.

³⁶ For a similar finding, see Order 01-53, 2001 CanLII 21607 at para 37.

³⁷ For a similar finding, see Order F20-13, 2020 BCIPC 15 at para 55; Order F19-41, 2019 BCIPC 46 at para 62; Order F21-43, 2021 BCIPC 42 at para 43; and Order 01-53, 2001 CanLII 21607 at para 41.

³⁸ For instance, Order F24-31, 2024 BCIPC 38 at para 97.

³⁹ SFU’s initial submission at paras 66-67.

[69] However, I find that s. 22(3)(g) applies to some information in the Investigation Report that consists of the External Investigator's evaluation of the complainant's credibility. In my view, this information qualifies as a personnel evaluation under s. 22(3)(g). This is consistent with previous OIPC orders, which have also found that s. 22(3)(g) applies to an investigator's evaluative comments about employees in the context of a formal workplace investigation.⁴⁰

Relevant circumstances – s. 22(2)

[70] The last step in the s. 22(1) analysis is to determine whether disclosure of the disputed information would be an unreasonable invasion of 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.

[71] The parties raise ss. 22(2)(a), (c), and (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)

[72] 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.⁴¹ If it applies, s. 22(2)(a) weighs in favour of disclosure.

[73] The applicant says that there is a public interest in ensuring investigations are conducted properly. He says that disclosing the information is desirable for ensuring accountability in public sector employment matters.

[74] It appears to me that the applicant already knows, in a general sense, how the Investigation was conducted. He knows that SFU received a bullying and harassment complaint about him and that it retained the External Investigator to conduct the Investigation. He also knows that the External Investigator interviewed him, the complainant, and several witnesses during the course of the Investigation. Finally, the applicant knows that the External Investigator provided her findings to SFU in the Investigation Report. I am not persuaded by what the applicant says that the actual personal information in dispute would shed any further light on whether or not the Investigation was conducted properly. I find this factor does not weigh in favour of disclosure.⁴²

⁴⁰ For instance, Order F23-74, 2023 BCIPC 89 at para 62.

⁴¹ Order F24-45, 2024 BCIPC 53 at para 56.

⁴² For a similar finding, see Order F21-28, 2021 BCIPC 36 at para 101.

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

[75] Section 22(2)(c) says that a relevant circumstance to consider is whether the personal information is relevant to a fair determination of the applicant's rights. Previous OIPC orders have said that all four parts of the following test must be met in order for s. 22(2)(c) to apply:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.⁴³

[76] The applicant says that, as the subject of the Investigation, "access to the report is relevant to determining [his] rights." He provides no further explanation. I note that the applicant also says that he "was ultimately cleared" of the allegations that were the basis of the Investigation.⁴⁴ I do not see, and the applicant has not adequately explained, how any part of the above test has been met. I find s. 22(2)(c) is not a factor that weighs in favour of disclosure.

Supplied in confidence – s. 22(2)(f)

[77] 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.⁴⁵

[78] SFU says that s. 22(2)(f) applies to information about individuals' complaints or concerns.⁴⁶

[79] The applicant says that it may be justifiable to redact the names and identifying details of witnesses or complainants, but it is not justifiable to withhold all of the personal information in the Investigation Report.

⁴³ Order F23-13, 2023 BCIPC 15 at para 120.

⁴⁴ Applicant's response submission at p 2, point 2.

⁴⁵ Order F22-62, 2022 BCIPC 70 at para 47.

⁴⁶ SFU's initial submission at para 74.

[80] I am satisfied that s. 22(2)(f) applies to the information that reveals individuals' complaints and concerns about the applicant's workplace behaviour that appears in the Emails and Investigation Report. I am also satisfied that s. 22(2)(f) applies to the information that reveals statements about the applicant's workplace behaviour that were provided by witnesses during the Investigation and recorded in the Investigation Report. While SFU did not say whether it generally treats this kind of information as confidential or whether these individuals were given any assurances of confidentiality, previous OIPC orders have typically found that this kind of information is supplied in confidence.⁴⁷ Given the nature of the personal information and the circumstances under which it was supplied, consistent with previous OIPC decisions, I am satisfied that these individuals expected their personal information, including their identities, to be treated confidentially.

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

[81] 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.

[82] During his interview with the External Investigator, the applicant made negative comments and allegations about certain SFU employees, including allegations that they engaged in bullying and harassing behaviour in the workplace. SFU withheld those comments and allegations from the Investigation Report.⁴⁸

[83] I find that the applicant's comments and allegations may damage the reputations of these employees.⁴⁹ I also find that this damage to reputation would be unfair. I cannot say more without revealing the information in dispute. I conclude s. 22(2)(h) applies to this information.

Sensitivity

[84] 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

⁴⁷ For instance, see Order F20-13, 2020 BCIPC 15 at para 70 and Order F24-83, 2024 BCIPC 95 at para 48.

⁴⁸ For instance, records at pp 375-376 and 378-379.

⁴⁹ For a similar finding, see Order F20-37, 2020 BCIPC 43 at para 132 and the cases cited therein.

factor weighs against disclosure.⁵⁰ However, where information is innocuous and not sensitive in nature, then this factor may weigh in favour of disclosure.⁵¹

[85] SFU says that the information in dispute is sensitive because “it relates to employment disputes, medical symptomology and accommodations, employee evaluations, and third-party confidential communications, concerns, and opinions.”⁵²

[86] Some of the withheld information in the Investigation Report is about the complainant’s and the witnesses’ feelings regarding their interactions with the applicant. I find this kind of information is sensitive.⁵³ This factor weighs in favour of withholding that information.

[87] Additionally, I find that the complainant’s allegations against the applicant that appear in the Investigation Report are sensitive in nature because they are about instances of bullying and harassment.⁵⁴ 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 that this factor weighs in favour of withholding the information that reveals those allegations.⁵⁵

[88] However, some of the information in the Investigation Report is not sensitive in nature. Specifically, some of the information provided by the applicant during his interview with the External Investigator vaguely describes certain events and places and names certain witnesses without revealing the complainant’s allegations or any specific details about workplace conflicts with other individuals. This factor weighs in favour of disclosing that information.

[89] Additionally, I find that the External Investigator’s comments and findings about the applicant and his workplace behaviour and her recommendations to SFU related to the applicant are not sensitive in nature. This information does not reveal anything personal or intimate about the External Investigator; rather, it is information she provided in her professional capacity. There is also some information in the Investigation Report about the applicant’s representative that is

⁵⁰ Order F21-64, 2021 BCIPC 75 at para 107.

⁵¹ See for example Order F16-06, 2016 BCIPC 7 at para 38 and Order F17-13, BCIPC 14 at para 62.

⁵² SFU’s initial submission at para 78.

⁵³ For a similar finding, see Order F23-56, 2023 BCIPC 65 at para 90.

⁵⁴ For a similar finding, see Order F23-101, 2023 BCIPC 117 at para 202.

⁵⁵ This includes the information provided by the applicant in his interview with the External Investigator that reveals the allegations the complainant made against him.

not sensitive in nature.⁵⁶ I find this factor weighs in favour of disclosing that information.⁵⁷

[90] Finally, there is some information in the Emails that is clearly not sensitive in nature. Specifically, information about something the applicant's supervisor considered when scheduling a meeting with the applicant.⁵⁸ This factor weighs in favour of disclosing that information.

Applicant's personal information

[91] 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.⁵⁹

[92] 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

[93] Previous OIPC decisions have considered the applicant's knowledge of the disputed information as a relevant circumstance under s. 22(2).⁶⁰ 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.⁶¹ This principle is based on the fact that there are no restrictions in FIPPA prohibiting an applicant from disclosing the information publicly.

[94] In this case, the applicant says that his own statements that appear in the Investigation Report should be released to him.

[95] Some of the information in the Investigation Report consist of questions the External Investigator put to the applicant about the allegations against him during his interview and direct quotes of his responses. The applicant obviously knows this information. He also appears to know the identity of the complainant.

⁵⁶ Records at p 411.

⁵⁷ To be clear, this factor does not weigh in favour of disclosing the External Investigator's comments, findings, or recommendations that reveal the complainant's identity or allegations against the applicant or the witnesses' statements to the External Investigator.

⁵⁸ Records at p 240.

⁵⁹ Order F24-48, 2024 BCIPC 56 at para 146.

⁶⁰ Order F21-34, 2021 BCIPC 42 at para 73.

⁶¹ 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.

[96] However, I am not satisfied that the applicant has knowledge of any of the other withheld information in the Investigation Report. For instance, although he clearly knows the substance of the bullying and harassment allegations against him, it does not appear to me that he knows the complete details of the allegations as provided by the complainant and recorded in the Investigation Report. I note that the Investigation Report includes direct quotes from the complainant explaining their allegations against the applicant and describing how the applicant's behaviour made the complainant feel and how it affected their work. There is no indication that the applicant has knowledge of that information. There is also no indication that the applicant knows the identities of the witnesses who were interviewed in the Investigation or what they said during their interviews with the External Investigator.

[97] I note that SFU says in its inquiry submission that the applicant is already aware of "the findings of an investigation to which [he] was a party."⁶² It says that he has access to the information contained in the concluding investigation reports, as per SFU's investigative policy which states that SFU "will provide the Investigation Report to both the Complainant and the Respondent (redacted as required for FIPPA compliance)." Therefore, my understanding is that the applicant was provided with a redacted copy of the Investigation Report at the conclusion of the Investigation pursuant SFU's investigation policy. However, neither the applicant nor SFU have provided me with that copy of the Investigation Report or explained what information was disclosed to the applicant in that copy. Accordingly, I am unable to determine what other information, if any, the applicant already knows.

[98] Finally, the applicant appears to have knowledge of some of the information in the Emails that is related to a workplace conflict between himself and another employee that was part of the Investigation. However, there is no indication that the applicant has knowledge of any of the other personal information in the Emails.

[99] With respect to the information that the applicant already knows, I find that this factor weighs minimally in favour of disclosure of that information.⁶³ 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

[100] Previous OIPC orders have sometimes found that where information has already been disclosed in the records at issue, this factor weighs in favour of

⁶² SFU's reply submission at para 45.

⁶³ 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.

disclosure.⁶⁴ For instance, in Order F21-08,⁶⁵ 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.

[101] In this case, SFU disclosed a small amount of information about certain conflicts between the applicant and another employee that were part of the Investigation in some parts of the Investigation Report but withheld the same information elsewhere. Although the information has already been disclosed, the presumption against disclosure under s. 22(3)(d) applies to this information. Accordingly, in this case, I find that this factor does not weigh in favour of disclosure.⁶⁶

Summary and conclusion on s. 22(1)

[102] I found above that some of the information in dispute is not personal information because it is contact information or because it is not about any identifiable individuals. Section 22(1) does not apply to that information and SFU is not authorized or required to withhold it.

[103] I also found that s. 22(1) does not apply to some information because it is only the personal information of the applicant, so disclosing it to him would not be an unreasonable invasion of anyone else's personal privacy.

[104] I found that s. 22(4)(e) applies to some of the personal information in the Emails because it is about certain employees' normal job duties. SFU is not authorized or required under s. 22(1) to withhold that information.

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

[106] First, I find that s. 22(1) applies to the information I found relates to individuals' employment histories that appears in the Emails and Investigation Report. Disclosure of this information is presumed to be an unreasonable invasion of personal privacy 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 certain individuals under s. 22(2)(h). However, the applicant knows some of this information and some of it is

⁶⁴ For instance, Order F19-38, 2019 BCIPC 43 at para 159.

⁶⁵ 2021 BCIPC 12 at paras 194-196.

⁶⁶ For a similar finding, see Order F23-83, 2023 BCIPC 99 at para 85.

simultaneously his own personal information. After weighing all of 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 histories.⁶⁷

[107] I also find that s. 22(1) applies to the information that consists of the External Investigator's evaluation about the credibility of the complainant that appears in the Investigation Report. Disclosure of this information is presumed to be an unreasonable invasion of personal privacy under s. 22(3)(g) and there are no factors that rebut that presumption. SFU must refuse to disclose that information.

[108] Additionally, I find that s. 22(1) applies to the information in the Investigation Report that was supplied in confidence by the witnesses. Section 22(2)(f) applies to this information and some of it is sensitive. Although it is simultaneously the applicant's personal information 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 and is sensitive in nature. SFU must refuse to disclose this information.

[109] However, I find that s. 22(1) does not apply to the information in the Investigation Report that I found above is not sensitive in nature and that is either already known by the applicant or is about him. There are no s. 22(3) presumptions that apply to this information and no s. 22(2) factors that weigh against disclosure. SFU is not authorized or required to withhold this information.

[110] Finally, I find that s. 22(1) does not apply to a small amount of information in the Emails that is not sensitive in nature and to which no s. 22(3) presumptions apply and no s. 22(2) factors weigh against disclosure.⁶⁸ SFU is not authorized or required to withhold that information.

Severance – s. 4(2)

[111] 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 an applicant has the right of access to the remainder of the record.

[112] 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.

⁶⁷ For a similar finding, see Order F21-34, 2021 BCIPC 42 at para 86; Order F23-56, 2023 BCIPC 65 at paras 95, 103-104; Order F22-10, 2022 BCIPC 10 at para 158; Order F23-29, 2023 BCIPC 33 at para 80; and Order F23-106, 2023 BCIPC 122 at paras 84-85.

⁶⁸ Records at p 240.

[113] I acknowledge that SFU withheld, in some cases, entire pages of records or paragraphs of text 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.⁶⁹

CONCLUSION

[114] 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 page 277 in the copy 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 find 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 pages 101-103, 240, 274, 369-391, 410-414, 416, and 417 in the copy 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.

⁶⁹ For a similar finding, see Order F23-92, 2023 BCIPC 108 at para 79 and the cases cited therein.

[115] 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

OIPC File No.: F23-91844