



Order F25-22

UNIVERSITY OF BRITISH COLUMBIA

D. Hans Hwang
Adjudicator

March 25, 2025

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested access from the University of British Columbia (UBC) to information about herself. UBC provided records to the applicant but withheld some information from those records under several FIPPA exceptions. The adjudicator found that UBC must refuse access to most, but not all, of the information it withheld under s. 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. The adjudicator ordered UBC to give the applicant access to the information it was not required to refuse to disclose.

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

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) made a request to the University of British Columbia (UBC) for access to information about herself.¹

[2] UBC provided the applicant with records but withheld some information from those records under ss. 3(3)(h) (a question or answer to be used on test), 13(1) (advice or recommendations) and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.²

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review UBC's decision to withhold information. Mediation by the OIPC did

¹ The applicant previously made a request in 2016 for access to information about herself under FIPPA (2016 Request), and that request proceeded to inquiry (Order F17-46). In a request that led to this inquiry, the applicant requests all record that were not released to her in the 2016 Request.

² From this point forward, all sectional references refer to FIPPA unless otherwise specified.

not resolve the matter and the applicant requested that it proceed to this inquiry. Both parties provided written inquiry submissions.

[4] In its submissions, UBC says that it reconsidered its decision to withhold information under s. 3(3)(h) and provided that information to the applicant. UBC also says that it no longer relies on s. 13(1) to withhold any of the information in dispute.³ Therefore, I find that ss. 3(3)(h) and 13(1) are not at issue and I will not consider those sections any further.

Preliminary Matter – Issues outside the scope of this inquiry

[5] In the applicant's submission, she discusses her complaint about UBC faculty members disparaging her academic standing and making false accusations against her. She also discusses a law suit she pursued against UBC related to the same issues that led to her complaint.⁴

[6] In this inquiry, my task is to dispose of the issues listed in the OIPC investigator's fact report and the notice of written inquiry.⁵ Those issues are limited to whether certain FIPPA exceptions to disclosure apply to the information in dispute. I do not have authority under FIPPA to address the parties' disputes or complaints outside the scope of FIPPA. Therefore, although I have read all of the parties' submissions, I will only comment on those matters insofar as they relate to the FIPPA issues before me.

ISSUE AND BURDEN OF PROOF

[7] In this inquiry, I must decide whether UBC is required to refuse to disclose the information in dispute under s. 22(1).

[8] Under s. 57(2), the burden is on the applicant to prove that disclosure of any third-party personal information in dispute would not be an unreasonable invasion of third party personal privacy. However, UBC has the initial burden of proving the information at issue qualifies as third party personal information.⁶

BACKGROUND

[9] UBC is a public post-secondary educational institution located in British Columbia, with multiple faculties, including the UBC School of Music (School of Music).

³ UBC's initial submission at paras I.G. to I.J.

⁴ Applicant's response submission at paras 15-20.

⁵ The report and notice have been provided to the parties at the start of this inquiry.

⁶ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

[10] The applicant is a former graduate student of the School of Music. During the doctoral program, her academic supervisor took a one-year sabbatical and in the next year, the applicant took a leave of absence for approximately 14 months.

[11] When the applicant returned, the School of Music assigned a new academic supervisor to her. However, the applicant requested a different faculty member be appointed as her supervisor. The School of Music did not approve the applicant's request. At the same time, the School of Music said that they needed to re-evaluate the applicant's academic performance to determine whether it remained at an acceptable level for the doctoral program.

RECORDS AND INFORMATION AT ISSUE

[12] The responsive records consist of 2475 pages with the information in dispute appearing on approximately 769 of those pages. The records package consists of applications, reports, references, emails, letters, school registration forms and transcripts.

UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY, s. 22

[13] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. Numerous orders have considered the analytical approach to s. 22, and I will apply those same principles here.⁷

Personal Information

[14] The first step in the s. 22 analysis is to determine whether the information in dispute is "personal information" within the meaning of FIPPA.

[15] FIPPA defines personal information as "recorded information about an identifiable individual other than contact information." Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."⁸ Whether information is "contact information" depends upon the context in which it appears.⁹

[16] UBC says that the information in dispute is the personal information of third parties who are UBC students and faculty members.¹⁰

[17] The applicant does not address whether the information in dispute is personal information. However, she says that UBC does not explain why students'

⁷ For example, see Order F15-03, 2015 BCIPC 3 at para 58.

⁸ Schedule 1, Definition.

⁹ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

¹⁰ UBC's initial submission at para II.

personal information is kept in the applicant's file and that UBC can sever any third-party personal information from the applicant's information.¹¹

[18] From my review of the records, I see that UBC withheld some blank space in several emails under s. 22(1).¹² This blank space does not reveal any information, let alone the identity of any identifiable individual, so it is not personal information.

[19] I find the balance of the information at issue is about identifiable individuals who are students, staff and faculty members of the School of Music. Additionally, some of the information is about individuals who applied for the School of Music graduate program (candidates).

[20] Most of the information is about individuals who are identified by name. Some of the information in dispute consists of the faculty' comments and opinions about the applicant and students.¹³ Past orders have said that comments and opinions a third party provides about an applicant are the personal information of both individuals.¹⁴ Some of the information does not directly identify an individual by name, but given the context in which the information appears I find that the applicant or other members of the public would be able to identify the individuals. Therefore, this information is about identifiable individuals.¹⁵

[21] UBC also withheld information about faculty members' work schedules, availability and whereabouts. The faculty members associated with this information are identifiable from it, so it is their personal information.¹⁶

[22] There are several instances where UBC withheld several faculty members' personal email addresses in the sender and recipient fields and in the body of an email. A personal email address is not normally "information to enable an individual at a place of business to be contacted." However, an email address may qualify as "contact information" under FIPPA if the person is using it to conduct business or to allow someone to contact them for business purposes.¹⁷

[23] I can see from the context in which this information appears that faculty members were using the email addresses for business purposes. It is clear that they were using the email addresses to communicate about graduate students and the candidates in order to conduct business related to the School of Music. As a

¹¹ Applicant's response submission at para 44.

¹² Purple lines and squares applied in the body of emails in pages 925, 941, 957, 966, 975, 1000, 1144, 1146, 1148 and 1150 of the Records.

¹³ For example, information in pages 262-263, 338-341, 1455 and 1462 of the Records.

¹⁴ Order F22-62, 2022 BCIPC 70 (CanLII), para 54.

¹⁵ For example, information in pages 515-523 of the Records consists of email addresses of students. These email addresses are composed of a combination of letters from the students' first name, last name and initial, and certain numbers in some cases so their identification can be accurately inferred.

¹⁶ Information in pages 199, 257, 413, 414 and 2424 of the Records.

¹⁷ Order F21-35, 2021 BCIPC 43 (CanLII) at para 164.

result, I am satisfied that faculty members' email addresses qualify as contact information so they are not personal information. Accordingly, UBC is not authorized to withhold their email addresses under s. 22(1).¹⁸

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

[24] The second step is to consider s. 22(4), which sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If information falls into one of the enumerated circumstances, s. 22(1) does not apply and the public body cannot withhold the information on that basis.

[25] The applicant says that s. 22(4)(i) applies to personal information of the School of Music students.¹⁹ UBC says that s. 22(4)(i) does not apply to this information because the information relates to the educational history of the students.²⁰

Disclosure of information about a degree, s. 22(4)(i)(ii)

[26] Based on my review of the disputed records, I find s. 22(4)(i)(ii) is sufficiently relevant to warrant consideration for some of the information at issue. This section reads:

- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
- (i) the disclosure, in respect of
 - (i) a licence, a permit or any other similar discretionary benefit, or
 - (ii) a degree, a diploma or a certificate,reveals any of the following with respect to the applicable item in subparagraph (i) or (ii):
 - (iii) the name of the third party to whom the item applies;
 - (iv) what the item grants or confers on the third party or authorizes the third party to do;
 - (v) the status of the item;
 - (vi) the date the item was conferred or granted;
 - (vii) the period of time the item is valid;
 - (viii) the date the item expires

¹⁸ Information in pages 199, 205, 292, 404, 410, 411, 412 and 413 of the Records.

¹⁹ Applicant's response submission at paras 44-45.

²⁰ UBC's reply submission at para 7.

[27] In order for s. 22(4)(i)(ii) to apply, the information must meet the following two criteria: (1) it must be about a degree, diploma or certificate, and (2) reveal the type of information listed in s. 22(4)(iii)-(viii).²¹

[28] I find s. 22(4)(i)(ii) does not apply to any of the personal information. While it is true that some of the personal information is about graduate students at the School of Music, it is about their academic performance and educational history, not their degrees.²² For instance, it reveals the students' academic performance and progress, including marks earned in their solo recitals, what they need to improve, their eligibility for lessons and their lesson schedules with a certain faculty member. Section 22(4)(i)(ii) does not apply to that type of personal information because it is not about students' degrees.

[29] I have considered whether any of the subsections in s. 22(4) apply and find none of them apply.

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

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

Educational history, s. 22(3)(d)

[31] UBC says that s. 22(3)(d) applies to the information about students at the School of Music.²³ The applicant says she is seeking disclosure of information about herself and wants to clarify whether the withheld information is about herself or a third party.²⁴

[32] Section 22(3)(d) provides that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the third party's employment, occupational or educational history. Past orders have found that s. 22(3)(d) applies to all of a student's personal information that reveals details about their academic activities and experiences as well as their interactions with personnel of an academic institution.²⁵

²¹ Order F23-13, 2023 BCIPC 15 (CanLII) at para 73.

²² For example, information in pages 262, 263, 370, 371, 386, 400, 423-439, 493-496, 511-531, 796-821, 869-916, 1009-1131, 1196-1323, 1366-1451, 1600-1699, 1736-1796, 1805-1826, 1853-1895, 1907-2037, 2114-2127, 2163-2177 of the Records.

²³ UBC's initial submission at paras 11 and 13.

²⁴ Applicant's response submission at para 22.

²⁵ For example, Order F20-06, 2020 BCIPC 7 (CanLII), 2020 BCIPC 07 at para 36 and Order F23-60, 2023 BCIPC 70 (CanLII) at para 23.

[33] I find that s. 22(3)(d) applies to all of the student's personal information. The information I am considering is about the time the students were enrolled at the School of Music, reveals details about their academic activities and experiences, and describes their interactions with the faculty and staff. I find this section also applies to the candidates' personal information. Based on my review of the records, I can characterize this information as follows:

- candidates' profiles, admission test results, performance and decisions made in the application process;²⁶
- students' academic performance and progress, grades and academic supervisor;²⁷
- students' addresses, phone numbers, email addresses, subject major and academic division;²⁸
- students' eligibility for lessons and lesson schedules;²⁹

[34] It is evident on the face of the records that the above information is about the educational history of the students and the candidates. I find that s. 22(3)(d) applies to this information, so disclosure is presumed to be an unreasonable invasion of their privacy.

Personal evaluation, s. 22(3)(h)

[35] Section 22(3)(h) says that disclosure is presumed to be an unreasonable invasion of third party personal privacy where the applicant could reasonably be expected to know the identity of a third party who provided a personal recommendation or evaluation, character reference or a personnel evaluation in confidence. The purpose of s. 22(3)(h) is to protect the identity of a third party who has provided evaluative or similar material, in confidence, about an individual.

[36] Past orders have interpreted "personal recommendations or evaluations, character references or personnel evaluations" as referring to formal performance reviews, to job or academic references, or to comments and views of investigators about an individual's workplace performance and behaviour in the context of a complaint investigation.³⁰

²⁶ For example, pages 47-49, 57-58, 84-86, 112, 126, 127, 133, 194, 198-201, 212-220, 244-249, 295-303, 336-337, 361-362 of the Records.

²⁷ For example, pages 262-263, 423-339, 869-916, 1009-1118, 1196-1323, 1357-1451, 1524-1527, 1791-2037 of the Records.

²⁸ For example, pages 511, 1188-1193, 1593-1700, 1736-1745, 2208, 2211-2213, 2439-2442 of the Records.

²⁹ For example, pages 1144-1148, 1711-1724, 1748-1790, 2149-2154, 2155-2177 of the records.

³⁰ Order 01-53, 2001 CanLII 21607 (BC IPC) at paras 44-45; Order F05-30, 2005 CanLII 32547 (BC IPC), at paras 41-42; and Order F23-36, 2023 BCIPC 43 (CanLII) at paras 61-63.

[37] UBC says s. 22(3)(h) applies to the applicant's personal information because the information contains the faculty's evaluative statements and recommendations about the applicant in relation to her academic performance. It also says that given that the identity of faculty members who provided evaluation is known to the applicant, the content of the evaluation supplied in confidence should be withheld under s. 22(3)(h)(ii).³¹ The applicant says s. 22(3)(h) does not apply to non-evaluative comments such as unsolicited comments, criticism, gossip and health-assessment.³²

[38] I find that referees' comments about the applicant for her admission to the School of Music contains recommendations and evaluations supplied in confidence.³³ The referees provided this information in their reports about the applicant in the UBC's "Report on Applicant for Admission to Graduate Studies" form (reports) and their recommendation letters attached to the reports (letters). Based on the referees' comments and the content of the reports and the letters, I find this information constitutes personal recommendations and evaluations within the meaning of s. 22(3)(h). In addition, the reports are clearly marked "confidential", and I find the recommendations and evaluations contained in the reports and letters were provided to UBC in confidence on that basis.

[39] I find, however, that s. 22(3)(h) does not apply to the information withheld from four "Jury Evaluation" forms.³⁴ These forms contain the comments provided by faculty members who, as jurors,³⁵ evaluated the applicant's musical performance.³⁶ The way the comments are written indicates the jurors intended the applicant to see their comments. They use terms such as "you", "your", "you'll have to", all of which demonstrate they are comments addressed directly to the applicant. Therefore, I am not persuaded that these Jury Evaluation forms contain information the jurors supplied in confidence in the sense of being for UBC's eyes only and not meant for the applicant to also see.

[40] There is also information withheld from email strings between faculty members which discuss opinions on the applicant's academic progress which I find does not fall under s. 22(3)(h).³⁷ The email chains are between the faculty members discussing academic performance and progress of the applicant and another student. The large part of the email chains, including the names of the faculty members, have already been disclosed to the applicant. I am not satisfied that faculty members who provided this information believed that they were supplying a

³¹ UBC's initial submission at paras 15-17.

³² Applicant's response submission at paras 47-50.

³³ For example, pages 7, 8, 10, 11, 12, 13, 21, 22, 29, 30, 33 and 34 of the Records.

³⁴ For added clarity, jurors refer to a panel of faculty who observe and evaluate graduate students' musical performance.

³⁵ In *Henczel v. Heggs*, 1994 CanLII 3233 (BC SC), the court has noted a "juried" performance exam is required for a student of the School of Music to demonstrate that they meet the performance requirements.

³⁶ Pages 338-341 of the Records.

³⁷ Pages 262, 263, 1455 and 1462 of the Records.

personal recommendation or evaluation, character reference or personnel evaluation *in confidence*. I find none of this information is the type of information s. 22(3)(h)(ii) is designed to protect.³⁸

Relevant circumstances, s. 22(2)

[41] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step that the applicant may rebut the presumptions created under ss. 22(3)(d) and 22(3)(h).

[42] The applicant says ss. 22(2)(a) (public scrutiny) and (c) (fair determination of the applicant's rights) apply to the information, which she says favours disclosure.³⁹ On the other hand, UBC says ss. 22(2)(e) (financial or other harm to a third party), (f) (supplied in confidence) and (h) (unfair damage to reputation) weigh against disclosure.⁴⁰

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

[43] Section 22(2)(a) recognizes that where disclosure would foster accountability of a public body, this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.⁴¹

[44] The applicant says that if the withheld information is relevant to faculty members' personal feelings or comments about the applicant and the rights of students to receive their education, then s. 22(2)(a) is a factor that favours disclosure.⁴² UBC says that s. 22(2)(a) does not apply and even if this section applies, it does not outweigh the necessity of protecting the privacy of third parties.⁴³

[45] Past OIPC orders have found that one of the purposes of s. 22(2)(a) is to make public bodies more accountable.⁴⁴ Therefore, for s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting a public body's activities to public scrutiny, as opposed to subjecting an individual third party's activities to public or private scrutiny.⁴⁵

[46] The applicant appears to be primarily concerned with subjecting the activities of the specific third parties who evaluated and commented about her to scrutiny.

³⁸ Although s. 22(3)(h) does not apply to personal information of another student, I find s. 22(3)(d) applies to the information located in page 263 of the Records.

³⁹ Applicant's response submission at para 53.

⁴⁰ UBC's initial submission at paras 17-18.

⁴¹ Order F05-18, 2005 CanLII 24734 (BC IPC) at para 49.

⁴² Applicant's response submission at paras 53, 54 and 58.

⁴³ UBC's reply submission at para 9.

⁴⁴ Order F18-47, 2018 BCIPC 50 (CanLII) at para 32.

⁴⁵ Order F16-14, 2016 BCIPC 16 (CanLII) at para 40.

I find the third parties' personal information here is very specific to them. I am not persuaded that disclosing faculty members' comments and evaluation of the applicant, students and candidates and their personal information would be desirable for the purpose of subjecting UBC's activities to public scrutiny. In my view, that information is solely about the faculty, students and candidates and it has no broader significance.

[47] As a result, I conclude s. 22(2)(a) is not a circumstance that favours disclosing the personal information.

Fair determination of an applicant's rights, s. 22(2)(c)

[48] Section 22(2)(c) applies to personal information that is relevant to a fair determination of an applicant's rights. Previous OIPC orders have established the test for s. 22(2)(c) to apply:

1. The right in question must be a legal right drawn from the common law or statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either underway or 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 ensure a fair hearing.⁴⁶

[49] I will apply the same analytical framework in this matter.

[50] The applicant says that to the extent the withheld information contains derogatory or critical comments about her made outside of a formal evaluative environment, such statements may form the basis of a judicial review she plans to file.⁴⁷ UBC submits that s. 22(2)(c) does not outweigh the necessity of protecting the privacy of the third parties.⁴⁸

[51] The rights engaged here consist of the applicant's legal right to pursue the court's review of UBC's determination on her academic status. The applicant

⁴⁶ Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 at para 24.

⁴⁷ Applicant's response submission at para 53. The applicant also submits, at paras 9-12, that she commenced an action in the Supreme Court of British Columbia for damages against UBC. In 2023, the Court dismissed the court action on the basis that it does not have jurisdiction over matters about UBC's determination on academic matters and the Court said that "Once [the Applicant] exhausted the appropriate internal procedures, she then has recourse to this Court by way of a judicial review of UBC's decision, not as a civil claim."

⁴⁸ UBC's reply submission at para 9.

submits she is “building a case for judicial review.”⁴⁹ In terms of “a contemplated proceeding”, previous OIPC orders have found an applicant only needs to establish that they are contemplating, in other words intently considering or have in mind as a possibility or plan, to commence a proceeding. The context of the situation must be considered in determining whether the applicant is actually contemplating the commencement of a proceeding.⁵⁰ Having considered these circumstances, I find these facts satisfy the first two steps of the s. 22(2)(c) test.

[52] To satisfy step three of the test, the applicant must establish that there is a “demonstrable nexus” or connection between the withheld information and the legal right in question.⁵¹ I find the applicant’s intended judicial review of UBC’s decision respecting her academic status is related to the comments made about the applicant. While UBC has disclosed most of the information from the comments under s. 22(1), I find the withheld information has significance for a fair determination of the applicant’s rights, satisfying the third requirement under s. 22(2)(c).

[53] Finally, the applicant must establish that the personal information is necessary in order to prepare for the proceeding or to ensure a fair hearing.⁵² To meet this burden, the applicant must show that the records containing the written complaints are necessary for a fair determination of his rights at the hearing of his existing grievances or the possible future fair representation complaint. This analysis asks whether the disputed personal information is necessary to prepare for a hearing; it does not ask whether an OIPC order for disclosure is necessary to obtain a copy of the disputed records.⁵³

[54] The applicant asserts that the withheld information may form the basis of a judicial review about wrongful treatment and inter-faculty disputes interfering with the rights of students.⁵⁴ As set out, to engage s. 22(2)(c), the personal information must be necessary to “ensure” a fair hearing or to prepare for the proceedings, not merely helpful to form the basis of claim. I do not see how the specific personal information at issue here, which describes the faculty’s comments, would be useful to the applicant in advancing her position in the judicial review. Further, the third-party personal information withheld under s. 22(1) does not explain or reveal why UBC took the actions that it did. I am not satisfied that any of the severed personal information would be necessary, let alone useful, to prepare for the applicant’s judicial review or to ensure that they proceed fairly.

⁴⁹ Applicant’s response submission at para 14.

⁵⁰ Order F16-36, 2016 BCIPC 40 (CanLII) at para 50 and Order F24-17, 2024 BCIPC 23 (CanLII) at para 152.

⁵¹ See for example Order F16-36, 2016 BCIPC 40 (CanLII) at paras 52 and 62.

⁵² Order F16-36, 2016 BCIPC 40 (CanLII) at para 62.

⁵³ For similar reasoning, see Order F23-13, 2023 BCIPC 15 (CanLII), at paras 151-154; and Order F16-36, 2016 BCIPC 40 (CanLII), at para 59.

⁵⁴ Applicant’s response submission at paras 53, 54, 57 and 58.

[55] Taking these circumstances into account, I conclude that none of the disputed personal information satisfies the fourth step of the s. 22(2)(c) analysis. Therefore, I find s. 22(2)(c) is not a factor that weighs in favour of disclosing the personal information at issue.

Unfair exposure to harm, s. 22(2)(e)

[56] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm. Previous OIPC orders have established that "other harm" includes "serious mental distress or anguish or harassment."⁵⁵ Such harm must exceed "embarrassment, upset or a negative reaction to someone's behaviour."⁵⁶

[57] UBC says disclosing personal information of UBC faculty and student may cause unfair harm to them.⁵⁷ The applicant's submission does not address s. 22(2)(e).

[58] After reviewing the disputed records, I find that the students and candidates may be embarrassed or upset by disclosure of their personal information because the information reveals their mark, academic performance, and what they need to improve. However, what UBC says does not persuade me that the students' and candidates' embarrassment would rise to the required level of serious mental distress past orders have found is necessary for s. 22(2)(e) to apply. Also, UBC does not explain at all as to how disclosure of the personal information will unfairly expose them to financial or other harm.

[59] Therefore, I find s. 22(2)(e) does not weigh in favour of withholding the information in dispute.

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

[60] Section 22(2)(f) requires a public body to consider whether the personal information was supplied in confidence. For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information and the third party had an objectively reasonable expectation of confidentiality at the time of supply.⁵⁸

[61] UBC submits that s. 22(2)(f) applies to third party's personal information.⁵⁹ The applicant's submission does not address s. 22(2)(f).

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

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

⁵⁷ UBC's initial submission at para 17.

⁵⁸ Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras 23-26 regarding s. 21(1)(b).

⁵⁹ UBC's response submission at para 12.

[62] For the reasons that follow, I find that most of the personal information in dispute was supplied in confidence.

[63] First, I am persuaded that the third party candidates who applied for admission to the School of Music supplied their personal information in confidence. In my view, such candidates typically expect that the personal information they supply in the course of a school application process would be kept confidential. Also, given that the referees' comments would reveal personal information the candidates provided in the application process, I find that s. 22(2)(f) applies to the comments as well.

[64] I am also satisfied that the personal information supplied by faculty members in the emails and notes during the evaluation of students was supplied in confidence. In my view, the content of the records and the nature of the comments discussed during the evaluation support a finding that the third parties supplied the personal information with the expectation that it would be treated confidentially. Therefore, I find s. 22(2)(f) applies to this information.

[65] However, not all of the information in dispute was supplied in confidence. For example, some of the information in emails between faculty members is innocuous information about them, and nothing in the emails suggests that this information was intended to be confidential when it was provided.⁶⁰ Therefore, I find that s. 22(2)(f) does not apply to that personal information about the faculty members, because it was not supplied in confidence.

Damage to reputation, 22(2)(h)

[66] Section 22(2)(h) says that unfairly exposing any party referred to in the record to reputational harm is a relevant circumstance. Two requirements must be met to engage s. 22(2)(h). First, the information must damage an individual's reputation. Second, that damage must be unfair.⁶¹

[67] UBC submits that s. 22(2)(f) applies to students' personal information.⁶² The applicant does not address s. 22(2)(h).

[68] I find that the evaluators' opinions and comments about students and candidates would unfairly damage the reputation of the individuals those opinions and comments are about. That is because the personal opinions are the evaluators' comments and suggestions about how the students and candidates fell short and how they could improve. I find that the damage would be "unfair" because the

⁶⁰ Information about faculty members' work schedule, availability and whereabouts in pages 199, 257, 413, 414 and 2424 of the Records.

⁶¹ Order F23-106, 2023 BCIPC 122 at para 65.

⁶² UBC's response submission at para 12.

students and candidates have not had an opportunity to respond to the opinions and comments, or if they have, it is not reflected in these records.⁶³

[69] As a result, I find that disclosing this personal information of the students and candidates could unfairly damage their reputations. This factor weighs against disclosing that information.

Sensitivity of the information

[70] Previous orders have found that sensitivity is a relevant factor to consider when deciding whether disclosure of personal information is an unreasonable invasion of third party personal privacy. Where the information is particularly sensitive, this will weigh against disclosure, and where the information is not particularly sensitive, this will favour disclosure.⁶⁴

[71] The information about faculty members' work schedule, availability and whereabouts relates to work availability, leave and travel that occurred between nine to fifteen years ago.⁶⁵ Past orders have said that this is the type of information most people share openly with others when explaining where they are going or where they have been, and it is part of the niceties of greetings and workplace etiquette. I find that is the type of information here and it is innocuous and devoid of any detail, sensitivity or apparent significance.⁶⁶ I find this factor favours disclosing that information.⁶⁷

Applicant's personal information

[72] Where the withheld information is an applicant's own personal information, this will weigh in favour of disclosure.⁶⁸ However, where the applicant's personal information is interwoven with the personal information of third parties, this factor carries less weight.⁶⁹

[73] In this matter, none of the applicant's personal information is only about her. The information is intermingled with information about faculty members' opinions respecting her academic performance. In my view, the applicant's personal information is so closely intermingled with faculty members' personal information that it cannot be reasonably severed and disclosed to her.

⁶³ Order F23-106, 2023 BCIPC 122 at para 70 and Order F24-49, 2024 BCIPC 57 at para 128.

⁶⁴ Order F16-52, 2016 BCIPC 58 (CanLII) at paras 87-91.

⁶⁵ Information in pages 199, 257, 413, 413 and 2424 of the Records.

⁶⁶ Order F17-13, 2017 BCIPC 14 at para 23.

⁶⁷ For similar reasoning, Order F19-27, 2019 BCIPC 29 (CanLII) at para 71.

⁶⁸ Order F10-10, 2010 BCIPC 17 (CanLII) at para 37; and Order F20-13, 2020 BCIPC 15 (CanLII) at para 73.

⁶⁹ Order F14-47, 2014 BCIPC 51 at para 36.

[74] Therefore, in the instances where the applicant's personal information is interwoven with third-party personal information,⁷⁰ I find that this factor weighs against disclosing it.

Applicant's existing knowledge

[75] Past orders have found that an applicant's existing knowledge of the withheld information is a relevant circumstance in the s. 22(1) analysis. An access applicant's accurate knowledge of the withheld information may weigh in favour of disclosing it.⁷¹

[76] The applicant says that some of the withheld information was referenced in the court's published decision in her lawsuit against UBC.⁷² UBC denies that the disputed information was already referenced in the court decision.⁷³

[77] Based on my review of the records and the court decision, I find the applicant may have limited knowledge of disputed information (e.g., name of faculty members and students). However, I do not find that personal information in dispute in this inquiry is already known or was previously disclosed to the applicant. Therefore, I find that this factor is not relevant.

Summary and conclusion on s. 22(1)

[78] Most of the information in dispute under s. 22(1) is third party personal information. Only the faculty members' email addresses qualify as contact information so are not personal information.

[79] None of the circumstances set out in s. 22(4) apply to the personal information in dispute, but s. 22(3)(d) applies to the personal information of students and candidates and s. 22(3)(h) applies to the personal information of referees.

[80] I determined that ss. 22(2)(a), 22(2)(c) and 22(2)(e) are not circumstances that favours disclosure. On the other hand, I found that ss. 22(2)(f) and 22(2)(h) are circumstances that weigh against disclosure because the personal information at issue has been supplied in confidence and disclosure would expose the students and candidates to reputational harm.

[81] I found that almost all personal information at issue is sensitive, which weighs against disclosure. The fact that the applicant's personal information is interwoven with some of the third-party personal information weighs against

⁷⁰ For example, pages 262-263, 1455 and 1462 of the Records.

⁷¹ Order F17-02, 2017 BCIPC 2 (CanLII) at paras 28-30; Order F15-14, 2015 BCIPC 14 (CanLII) at paras 72-74; and Order F05-13, 2005 CanLII 11964 (BC IPC), at para 28.

⁷² Applicant's response submission at para 39.

⁷³ UBC's reply submission at para 6.

disclosing this information. I also found the personal information in dispute was not already known or disclosed to the applicant.

[82] After weighing all of the above, I find that disclosing most of the personal information at issue would be an unreasonable invasion of third parties' personal privacy. The only exception to this finding is the faculty's jury evaluation comments⁷⁴ and the innocuous information about faculty members.⁷⁵

Summary of the applicant's personal information, s. 22(5)

[83] Section 22(5) of FIPPA requires a public body to give an applicant a summary of information that was supplied in confidence by a third party, unless doing so would reveal the identity of the third party. This section reads:

22(5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless

(a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, or

(b) with respect to subsection (3) (h), either paragraph (a) of this subsection applies or the applicant could reasonably be expected to know the identity of the third party who supplied the personal recommendation or evaluation, character reference or personnel evaluation.

[84] The applicant says UBC has failed to explain why it did not provide the summary.⁷⁶ UBC submits that it is not required under s. 22(5) to provide a summary because it could cause an unreasonable invasion of third-party personal privacy.⁷⁷

[85] In this case, the relevant third parties who supplied the confidential information about the applicant are the School of Music's faculty members. I find the applicant already knows the identity of those individuals because it is disclosed in the records UBC released. Therefore, I conclude it is not possible for the Ministry to provide the applicant with a summary of the relevant information in accordance with s. 22(5)(a).

⁷⁴ Pages 338-341 of the Records.

⁷⁵ Pages 199, 257, 413, 414 and 2424 of the Records.

⁷⁶ Applicant's response submission at para 61.

⁷⁷ UBC's response submission at para 11.

CONCLUSION

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

1. Subject to item 2 below, I require UBC to refuse to disclose the information withheld under s. 22(1) of FIPPA.
2. In a copy of pages 199, 205, 257, 292, 338-341, 404, 410-414 and 2424 that will be provided to UBC with this order, I have highlighted in green the information in dispute that UBC is not required to refuse to disclose under s. 22(1). UBC must give the applicant access to this highlighted information.
3. UBC must provide the OIPC registrar of inquires with a copy of its cover letter and the records it provides to the applicant in compliance with item 2 above.

[87] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **May 8, 2025**.

March 25, 2025

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

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