



Order F25-33

BC Financial Services Authority

Alexander R. Lonergan
Adjudicator

May 9, 2025

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Summary: An applicant requested that BC Financial Services Authority (BCFSA) provide access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to material that a real estate licensee provided to BCFSA as part of an investigation. BCFSA refused to disclose the requested records under ss. 15(1) (harm to law enforcement) and 22 (unreasonable invasion of personal privacy) of FIPPA. The adjudicator found that disclosing most of the disputed information would be an unreasonable invasion of third parties' personal privacy under s. 22(1). Given that s. 22(1) applied, the adjudicator declined to consider whether s. 15 also applied. The adjudicator ordered BCFSA to provide the applicant access to the balance of the information in dispute.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 22(1), 22(2), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(b), 22(3)(d), 22(5).

INTRODUCTION

[1] An individual (the applicant) complained about a real estate licensee (the licensee) to BC Financial Services Authority (BCFSA). BCFSA investigated the applicant's complaint. Some time later, BCFSA completed its investigation and closed its complaint file. The applicant requested that BCFSA provide her access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to all records that refer to the applicant in the complaint file, as well as a copy of the licensee's response to her complaint.

[2] BCFSA provided access to responsive records but withheld some records and information under ss. 13 (advice or recommendations), 14 (solicitor-client privilege), 15 (harm to law enforcement), 17 (harm to financial or economic interests of the public body), and 22(1) (unreasonable invasion of third-party

personal privacy) of FIPPA. BCFSa also declined to provide some records under s. 3(5)(a) (records available for purchase).

[3] The applicant subsequently applied to the Office of the Information and Privacy Commissioner (OIPC) for a review of BCFSa's decision. Mediation by the OIPC did not resolve the issues and the matter proceeded to inquiry.

Preliminary Matters

Matters Outside the Scope of FIPPA

[4] In their submissions for this inquiry, BCFSa, the applicant, and the licensee provide a comprehensive history of their interactions. It is clear to me that there is a history of conflict between the applicant and the licensee, who provide different descriptions of the same events.

[5] My jurisdiction as the Commissioner's delegate is limited to the FIPPA issues in dispute. I do not have the jurisdiction to decide the issues that led to the applicant's complaint about the licensee or to review the fairness of BCFSa's investigative process. Therefore, while I have considered the parties' entire submissions, I will only comment on the parts that are relevant to the FIPPA issues before me.

Unmarked Records

[6] The Notice of Inquiry says that the disputed records include ten specific pages which I see are not marked with any FIPPA exception to disclosure.¹ These pages describe written procedures for complaints received by a real estate professionals' association.

[7] BCFSa's submissions refer to these pages as responsive to the applicant's request but do not state that they are withheld under a specific provision of FIPPA.² These pages do not contain any personal information and they do not reveal anything about the licensee's submissions to BCFSa. It is not apparent to me that any FIPPA exceptions to disclosure apply to the information on these pages, therefore, I find that BCFSa is not authorized or required to withhold them.

¹ Amended Notice of Inquiry, 23 October 2025, Records Package F22-91279, Part 2, at 329-338.

² BCFSa's October 10, 2024 submission at para 5, footnote #4.

DISCUSSION

*Background*³

[8] The applicant and the licensee each own half of a residential duplex property (the property). Over several years, the applicant and licensee disagreed about many aspects of managing the property. Eventually, the applicant complained about the licensee to multiple entities with oversight powers over real estate professionals, including the Real Estate Council of BC (RECBC).

[9] RECBC regulated the conduct of real estate professionals in BC until August 1, 2021, when it was dissolved and discontinued under the *Finance Statutes Amendment Act, 2021*.⁴ BCFSA, an agency within the Ministry of Finance, assumed responsibility for regulating the conduct of real estate professionals in BC. As a result, BCFSA received the applicant's original complaint to RECBC and conducted the resulting investigation.

[10] Under FIPPA, the applicant requested access to two categories of records from BCFSA. First, the applicant asked for all records that relate to her and BCFSA's file about her complaint. Second, the applicant asked for a copy of the licensee's response to her complaint.

[11] At inquiry, the applicant agreed to narrow the scope of the inquiry to the material that the licensee provided to BCFSA for its investigation.⁵ BCFSA only withheld this information under ss. 15(1) and 22(1), therefore, those are the only FIPPA exceptions to disclosure that I will consider.

[12] The disputed records are largely about the licensee, who is a third party to the applicant's request for review. Under s. 54, the Registrar of Inquiries notified the licensee of this inquiry as an appropriate person and invited her to provide written submissions about whether BCFSA must withhold the disputed personal information under s. 22(1).⁶

[13] The applicant, BCFSA, and the licensee all provided written submissions for this inquiry. The applicant and the licensee asked to provide some of their submissions *in camera*, that is, material that only I can see. The OIPC Director of Adjudication allowed the applicant and the licensee to provide some parts of their submissions *in camera*.

³ The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.

⁴ Bill 8-2021, *Finance Statutes Amendment Act*, 1st Sess, 42nd Parl, 2021, at ss. 126-127 (assented to 9 March 2021).

⁵ Applicant's email, October 15, 2024; Amended Notice of Inquiry, October 23, 2024.

⁶ Registrar's email, October 23, 2024.

Records and Information at Issue

[14] The disputed records include statements written by the licensee and copies of other documents the licensee provided to BCFSA. BCFSA is withholding all of the disputed information under s. 22(1) and some information under both ss. 22(1) and 15. In total, there are 187 pages of records in dispute.

[15] Some of the disputed records were provided to BCFSA by the licensee after they had already been severed, presumably by other public bodies. Thus, BCFSA did not have unsevered versions of those records.⁷ This inquiry is only concerned with BCFSA's decision to sever information from the records. Therefore, I will not review any of the severing decisions made by the other public bodies before BCFSA obtained a copy of the records.

Issues and Burden of Proof

[16] The issues I must decide in this matter are as follows:

1. Whether BCFSA is required to refuse to disclose the information at issue under s. 22(1) of FIPPA; and
2. Whether BCFSA is authorized to refuse to disclose the information at issue under ss. 15(1)(c) or (d) of FIPPA.

[17] Section 57(2) places the burden on the applicant to establish that disclosure of the information withheld under s. 22 would not be an unreasonable invasion of a third party's personal privacy.⁸ However, as the public body in this matter, BCFSA has the initial burden of proving that the information withheld under s. 22 is personal information.⁹

[18] Under s. 57(1), BCFSA has the burden of proving that the applicant does not have a right of access to the information withheld under s. 15(1).

Unreasonable Invasion of Third-Party Personal Privacy – s. 22

[19] Past orders have established the analytical approach to s. 22, which I will follow in this matter.¹⁰

⁷ BCFSA's October 10, 2024 submission at Footnote 4.

⁸ 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.

⁹ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras 9-11.

¹⁰ Each step of the analytical approach to s. 22 is described in greater detail in Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

Section 22(1) – personal information

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

[21] Schedule 1 of 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.”

[22] For nearly all of the disputed records, BCFSA is withholding entire pages under s. 22(1). BCFSA says that all of the information it withholds under s. 22(1) is the personal information of third parties.¹¹ The applicant does not dispute that the withheld information may be personal information but notes that much of it is likely her own personal information.¹²

[23] I am satisfied that most the information withheld under s. 22(1) is the personal information of one or more third parties. This information includes names, addresses, photographs, real estate transaction details, real estate transaction forms, descriptions of events, and other miscellaneous information, all of which is about identifiable individuals.

[24] A substantial amount of withheld information would not be considered personal information under most circumstances, such as template language in forms and letterhead images belonging to organizations. However, the licensee supplied the records containing this information to BCFSA for its investigation. Therefore, disclosing this information would reveal the licensee’s decision to provide certain records and information to BCFSA. Further, the licensee’s decision to provide certain records to BCFSA would reveal the identities of other third parties involved in underlying events.

[25] On the other hand, I find that the name, title, office phone number and email address of BCFSA’s investigator is contact information, so it is not personal information. It is clear from its context that the investigator provided this information to allow the investigator to be contacted at their place of business. Therefore, this information does not meet the definition of personal information and s. 22(1) does not apply to it.

¹¹ BCFSA’s October 10, 2024 submission at para 8; BCFSA’s June 6, 2024 submission at para 74.

¹² Applicant’s February 26, 2025 submission at para 6.

Section 22(4) - Not an Unreasonable Invasion of Privacy

[26] The second step of the analysis 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 the information falls into one of the circumstances listed in s. 22(4), then s. 22(1) does not apply and BCFSa cannot withhold it on that basis.

[27] BCFSa says that none of the s. 22(4) circumstances apply.¹³ Neither the applicant nor the licensee discuss s. 22(4) in their submissions. I have reviewed the circumstances and categories of information set out in s. 22(4) and I find that none of them apply.

Section 22(3) – Presumed Unreasonable Invasion of Privacy

[28] 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.

[29] The applicant does not discuss any of the circumstances set out in s. 22(3). BCFSa says that ss. 22(3)(b) and (d) apply.¹⁴ While the licensee does not directly reference any s. 22(3) provision, she does say that the disputed information includes third-party employment history, psychological information, and health information, which clearly engage ss. 22(3)(a) and (d).¹⁵ I will consider whether each of these provisions applies.

Medical, Psychiatric or Psychological History – s. 22(3)(a)

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

[31] A small amount of the disputed information relates to the medical history of multiple third parties because it describes their medical and psychological status at certain points in time. Disclosing this information is presumptively an unreasonable invasion of those third parties' personal privacy.

¹³ BCFSa's June 6, 2024 submission at para 76.

¹⁴ BCFSa's June 6, 2024 submission at para 77.

¹⁵ Licensee's final submission at pp. 2-3.

Investigation Into Violation of Law – s. 22(3)(b)

[32] Section 22(3)(b) states that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[33] The term "law" refers to a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature and where a penalty or sanction could be imposed for violation of that law.¹⁶

[34] BCFSA says that s. 22(3)(b) applies to information in the records that RECBC and BCFSA staff compiled as part of their investigation into the licensee's possible violation of the *Real Estate Services Act* (RESA).¹⁷ In support of this argument, BCFSA describes the investigative process that it completed under s. 37 of RESA, its conclusion that a contravention occurred, and the remedy it imposed.¹⁸

[35] Considering the context BCFSA provides, I am satisfied that BCFSA investigated a possible violation of law. Furthermore, I can see that BCFSA and RECBC compiled almost all of the disputed third-party personal information as part of that investigation. I find that s. 22(3)(b) applies to this personal information, so disclosing it is presumptively an unreasonable invasion of those third parties' personal privacy.

[36] The only exception to this finding is a small amount of personal information about a third party's availability to speak with a BCFSA investigator. This information was not compiled as part of BCFSA's investigation, so s. 22(3)(b) is not relevant to it.

Employment, Occupational or Educational history – s. 22(3)(d)

[37] Section 22(3)(d) states that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the employment, occupational, or educational history of a third party. BCFSA and the licensee argue that the records include some personal information that relates to third-party employment history.¹⁹

¹⁶ Order 01-12, 2001 CanLII 21566 at para 17; Order F21-64, 2021 BCIPC 75 (CanLII), at para 86.

¹⁷ BCFSA's June 6, 2024 submission at para 78; *Real Estate Services Act*, SBC 2004, c 42.

¹⁸ BCFSA's October 10, 2024 submission paras 3-7.

¹⁹ BCFSA's June 6, 2024 submission at para 79; Licensee's final submission at pp. 2-3.

[38] Past orders have said that descriptive information about a third party's behaviour or actions in the course of a complaint investigation or disciplinary matter is information that relates to that third party's employment history.²⁰

[39] A substantial amount of the disputed personal information is about the licensee's occupational history as a real estate professional because it is about her adherence to rules of conduct that are legally binding on such professionals. Additionally, a small amount of information is about changes to another third party's position and location of employment. This information is recorded in the context of an investigation and disciplinary matter arising from the applicant's complaint.

[40] Having considered these circumstances, I find that some of the disputed personal information relates to the employment and occupational histories of third parties. Therefore, disclosing this information is presumptively an unreasonable invasion of those third parties' personal privacy.

[41] Some of the disputed third-party personal information is about no one's occupational, employment, or educational history, so s. 22(3)(d) does not apply to it.

Section 22(2) – All Relevant Circumstances

[42] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2).

[43] BCFSa says that ss. 22(f) and (h) favour withholding the disputed information.²¹ Although the applicant does not refer to a specific provision of s. 22(2), what she says is relevant to ss. 22(2)(a) and (c).²² Finally, the licensee argues that disclosure would unfairly expose herself and others to the types of harm described at ss. 22(2)(e) and (h). I will consider each of these provisions in the analysis below.

Public Scrutiny of a Public Body, s. 22(2)(a)

[43] Section 22(2)(a) asks whether disclosing the personal information is desirable for 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

²⁰ Order F20-13, 2020 BCIPC 15 (CanLII) at para 52; Order 01-53, 2001 CanLII 21607 at paras 32-33.

²¹ BCFSa's June 6, 2024 submission at paras 80-86; BCFSa's October 23, 2024 submissions at para 14.

²² Applicant's February 26, 2025 submission at paras 12, 13, 22, and 23.

accountability of a public body as opposed to scrutinizing individual third parties.²³

[44] The applicant provides a detailed explanation of why she believes BCFSA must be held accountable. The applicant argues that she has a reasonable apprehension of bias in how BCFSA investigated her complaint. Specifically, the applicant disagrees with the conclusions BCFSA drew from the material she provided to it. She also argues that the tone and content of the investigator's communications support her apprehension of bias. The applicant says that disclosing the licensee's response to her complaint would ensure the accountability of BCFSA.²⁴

[45] BCFSA says that the applicant's argument is a criticism of BCFSA's reasons for closing the investigation. In response to the applicant's specific concerns, BCFSA notes that it provided the applicant with written reasons explaining its decision to close the investigation. Furthermore, BCFSA points to ss. 122 and 123 of RESA, which require it not to disclose material collected from witnesses during its investigations except in specific circumstances. BCFSA says that this obligation, and the assurances of confidentiality it provided during its investigation, support its position that s. 22(2)(a) is not relevant.²⁵

[46] The licensee does not directly discuss whether disclosure is desirable for subjecting BCFSA's activities to public scrutiny. However, the licensee describes many ways in which the applicant may use the disputed information to scrutinize her and other individual third parties.²⁶

[47] I do not have the jurisdiction to review the reasonableness of BCFSA's decision to close its investigation or the procedural fairness of BCFSA's investigative process. With that being said, I have considered whether the disputed information includes anything that would enhance public scrutiny of BCFSA's investigative process and the conclusions it reached.

[48] I do not see how disclosing the disputed personal information could enhance public scrutiny of BCFSA or its activities. The information does not include anything that indicates the type of bias that the applicant describes, nor does it indicate anything about BCFSA's investigative processes and conclusions that warrants public scrutiny. I find that disclosure is not desirable for subjecting the activities of BCFSA to public scrutiny.

²³ Order F16-14, 2016 BCIPC 16 (CanLII), at para 40.

²⁴ Applicant's October 8, 2024 submission at paras 8-9, 13, 15-17, and 24.

²⁵ BCFSA's October 10, 2024 submission at paras 9 and 15-21.

²⁶ Licensee's final submission at pp. 3-6.

Relevant to a fair determination of the applicant's rights, s. 22(2)(c)

[49] Section 22(2)(c) asks whether the personal information is relevant to a fair determination of an access applicant's rights. Previous orders have established the following test 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, the 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.²⁷

[50] The applicant says that the disputed records are relevant to a fair determination of her rights.²⁸ She argues that she has a right to rectify any false or misleading allegations about herself in the disputed records and says that she was unfairly denied the opportunity to do so because BCFSA did not provide her with a copy of the licensee's response to her complaint.²⁹

[51] BCFSA argues that the applicant does not have a right to view the licensee's response to the applicant's complaint. BCFSA points to ss. 122 and 123 of RESA which require BCFSA to ensure confidentiality over certain information and records collected during its investigation.³⁰

[52] Taking these circumstances into consideration, the applicant's dissatisfaction with not receiving a copy of the licensee's submission is, in substance, a complaint about the procedural fairness of BCFSA's investigative process and the conclusions drawn.

[53] The fact that a decision is administrative and affects the rights, privileges or interests of an individual is sufficient to trigger the application of the duty of fairness.³¹ Accordingly, I find that the applicant has a legal right to procedural fairness in BCFSA's handling of her complaint. At the same time, however, the

²⁷ Order F23-71, 2023 BCIPC 84 (CanLII) at para 69; Order 01-07, 2001 BCIPC 21561 (CanLII) at para 31.

²⁸ Applicant's February 26, 2025 submission at paras 12 and 13.

²⁹ Applicant's February 26, 2025 submission at paras 18-22.

³⁰ BCFSA's October 10, 2024 submission at paras 9-11;

³¹ *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 20; *Cardinal v. Director of Kent Institution*, 1985 CanLII 23 (SCC) at para 14.

applicant has not persuaded me that she has a legal right to receive a copy of the licensee's response to her complaint.

[54] Turning to the second step of the s. 22(2)(c) analysis, past OIPC orders have established that an applicant only needs to show that they are intently considering the commencement of a proceeding.³² This provision does not apply to proceedings that have already been completed.

[55] I am not persuaded that the applicant's right to procedural fairness is related to a proceeding that is under way or contemplated. The applicant states that she seeks to hold BCFSa accountable through this inquiry instead of pursuing a judicial review.³³ BCFSa's investigation is already closed, and the applicant does not identify any proceedings in which she challenges the fairness of BCFSa's investigation.

[56] I find that the second requirement of s. 22(2)(c) is not met, therefore, the disputed personal information is not relevant to a fair determination of the applicant's rights.

Damage to reputation or other harm, ss. 22(2)(e) and (h)

[57] The licensee's arguments are relevant to both ss. 22(2)(e) and (h). Therefore, I will consider these provisions at the same time.

[58] Section 22(2)(e) asks whether disclosure will unfairly expose a third party to financial or other harm. "Harm" under s. 22(2)(e) consists of "serious mental distress or anguish or harassment."³⁴ Embarrassment, upset, or negative reactions do not rise to the required level of mental harm.³⁵

[59] Similarly, s. 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage the reputation of any person referred to in the records. The analysis under s. 22(2)(h) has two requirements. First, the public body must establish that disclosing the disputed information may damage the reputation of a person referred to in the records. Second, the reputational damage must be unfair.³⁶

[60] The licensee describes a history of disagreements and contentious legal proceedings between herself and the applicant. The essence of the licensee's argument is that the applicant used the licensee's and other third parties'

³² Order F16-36, 2016 BCIPC 40 (CanLII), at para 50; Order F23-20, 2023 BCIPC 23 (CanLII), at para 46.

³³ Applicant's February 26, 2025 submission at p. 4.

³⁴ Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42.

³⁵ Order 01-15, 2001 CanLII 21569 (BC IPC), at paras 49-50; Order F20-37, 2020 BCIPC 43 (CanLII), at para 120.

³⁶ Order F21-69, 2021 BCIPC 80 (CanLII) at para 80.

personal information to harass them in the past. The licensee argues that this pattern of behaviour establishes that disclosure would expose herself and these third parties to further harassment by the applicant, leading to harm to their mental health, reputation, and finances.³⁷

[61] The applicant has litigated or complained about the licensee in multiple legal forums, with mixed success. I can see that the applicant holds strong beliefs about the licensee's actions and is prepared to use every legal mechanism available to resolve their disputes in her favour. While I accept that this behaviour was seriously litigious, I am not persuaded that this behaviour constituted harassment or proves that the applicant will harass anyone in the future.

[62] However, the licensee also provides examples of the applicant using the licensee's personal information to identify and contact other third parties. These individuals had no meaningful involvement in the underlying disputes before the applicant contacted them. I cannot describe these events in greater detail without disclosing parts of the parties' submissions that were accepted *in camera*, but I am satisfied that the applicant's actions in some of these events constituted harassment. Therefore, I find that disclosing some of the personal information at issue would unfairly expose third parties to harassment, which weighs against disclosing that information.

[63] Regarding reputational harm, the personal information I am considering is about the licensee's version of the underlying disputes. In my view, disclosure of this information is likely to create sympathy for the licensee and other third parties and is very unlikely to damage their reputations. Furthermore, some of the underlying proceedings resulted in findings that there was merit to part of the applicant's complaints. If the licensee's response to those complaints is disclosed, I am not persuaded that any resulting damage to the reputations of the licensee or third parties, however unlikely, would be unfair. For these reasons, I find that s. 22(2)(h) is not relevant.

Information supplied in confidence, s. 22(2)(f)

[64] Section 22(2)(f) asks whether the personal information was supplied in confidence. If so, this will weigh against disclosure. Section 22(2)(f) requires evidence that an individual supplied the information under an objectively reasonable expectation of confidentiality at the time they supplied the information.³⁸

³⁷ Licensee's final submission at pp. 6-8.

³⁸ Order F23-66, 2023 BCIPC 77 (CanLII) at para 69 citing Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing Order 01-36, 2001 CanLII 21590 (BCIPC) at paras 23-26.

[65] The applicant does not directly dispute that the licensee expected confidentiality over the information she supplied. However, the applicant says that certain guidance documents on BCFSAs website advised licensees that their responses may be forwarded to complainants. The applicant also disputes the reasonableness of the licensee's expectation of confidentiality because, the applicant says, withholding a licensee's response to a complaint is inconsistent with BCFSAs commitment to a transparent and fair process.³⁹

[66] BCFSAs and the licensee argue that the information that the licensee provided to BCFSAs was supplied in confidence. BCFSAs says that its investigator expressly told the licensee that their conversations and any documents the licensee shared would be treated as confidential.⁴⁰

[67] In response to the applicant's arguments, BCFSAs says that the guidance documents that the applicant refers to use the permissive term "may", so disclosure is not required. Further, BCFSAs says that the investigator never directed the licensee to those guidance documents but instead referred the licensee to the confidentiality requirements imposed on BCFSAs by ss. 122 and 123 of RESA.⁴¹ Similarly, the licensee says that she relied on assurances of confidentiality that BCFSAs's investigator made to her when she supplied the personal information at issue.⁴²

[68] It is clear from the applicant's access request and the scope of this inquiry that the licensee provided almost all of the disputed records to BCFSAs. The only exception is a small amount of correspondence the BCFSAs's investigator sent to the licensee. I find that the investigator's correspondence does not contain personal information supplied to BCFSAs in confidence, therefore, s. 22(2)(f) is not relevant to it.

[69] Having reviewed the responsive records, I see that BCFSAs's investigator provided a written assurance of confidentiality to the licensee when the licensee supplied the records containing all of the disputed personal information. This assurance, when considered in the context of an investigation by the licensee's regulator into possible wrongdoing, satisfy me that the licensee held an objectively reasonable expectation that BCFSAs would hold this information in confidence.

[70] Apart from the small amount of correspondence the BCFSAs's investigator sent to the licensee, I find that the personal information in dispute was supplied in confidence which weighs strongly against disclosure of that information.

³⁹ Applicant's October 8, 2024 submission at paras 9-13.

⁴⁰ Licensee's final submission at p. 1-2; BCFSAs's October 10, 2024 submission at para 9.

⁴¹ BCFSAs's October 10, 2024 submission at paras 9-12.

⁴² Licensee's final submission at pp. 1-2.

Applicant's Own Personal Information

[71] Among the disputed personal information there is some information that is simultaneously about both the applicant and third parties. Consistent with the approach taken by past orders, the fact that it is the applicant's personal information weighs in favour of disclosing it.⁴³

Applicant's Knowledge

[72] While this factor is not listed in s. 22(2), past orders have considered whether the applicant already knows the information in dispute, which may weigh for or against disclosure.⁴⁴ The applicant argues that she has knowledge of the disputed information, which comes from her own pre-existing knowledge and from the licensee's submissions for this inquiry.⁴⁵

[73] I can see that the applicant has extensive knowledge of her interactions with the licensee which led to her complaint and BCFSA's investigation. There is some overlap between this knowledge and the information that the licensee provided to BCFSA, which weighs somewhat in favour of disclosing it.

Professional Capacity

[74] The applicant says that the licensee was acting in a professional capacity while communicating with BCFSA and that, consistent with past OIPC orders, this should weigh in favour of disclosure.⁴⁶

[75] The licensee provided records and information to BCFSA because she was being investigated as a real estate professional. However, the licensee was not representing a client or acting on behalf of an organization when she communicated with BCFSA. Instead, the licensee communicated with BCFSA in the context of an investigation into her personal conduct. In substance, the licensee's communications with BCFSA are related to her professional status but they are not part of her provision of professional real estate services. Therefore, I find that the disputed records were not provided in a professional capacity, and this does not weigh in favour of disclosure.

⁴³ Order F14-47, 2014 BCIPC 51 (CanLII) at para 36, citing Order F10-10, 2010 BCIPC 17 (CanLII) at para 37 and Order F06-11, 2006 CanLII 25571 (BC IPC) at para 77.

⁴⁴ Order F18-48, 2018 BCIPC 51 at para 27; Order F20-22, 2020 BCIPC 26 at para 51.

⁴⁵ Applicant's February 26, 2025 submission at paras 9-11.

⁴⁶ Applicant's February 26, 2025 submission at para 5, citing Order F23-05, 2023 BCIPC 6 (CanLII) at paras 57-58.

Section 22(1) - Conclusion

[76] Almost all of the disputed information is personal information of the licensee and, in some cases, of other third parties. A small amount of the disputed information is contact information that cannot be withheld under s. 22(1).

[77] I determined that nearly all of the disputed personal information is subject to a presumption that disclosure would be an unreasonable invasion of third parties' personal privacy under s. 22(3) because it was compiled and is identifiable as part of an investigation into a possible violation of law, relates to a third party's medical condition, or relates to a third party's occupational history. The only exception to these presumptions is a small amount of scheduling information recorded while BCFSa's investigator attempted to schedule a meeting with a third party.

[78] Turning to relevant circumstances under s. 22(2), I determined that disclosure is not desirable for subjecting BCFSa's activities to public scrutiny, nor would disclosure unfairly expose a third party to reputational harm. In addition, I found that the personal information at issue is not relevant to a fair determination of the applicant's rights.

[79] Most of the personal information was supplied in confidence, which weighs against disclosure. Some of the personal information would unfairly expose third parties to harassment if disclosed, which also weighs against disclosing it. On the other hand, some of the information at issue is about the applicant or already known to her, which weighs in favour of disclosure.

[80] Taking all of the circumstances discussed above into consideration, I conclude that disclosing any of the personal information at issue would be an unreasonable invasion of third-party personal privacy. Therefore, I find that s. 22(1) applies to the information that I identified as personal information, and BCFSa must refuse to disclose it.

Section 22(5) – Summary of Applicant's Personal Information

[81] Section 22(5) requires a public body to give an applicant a summary of personal information supplied in confidence about the applicant, unless the summary would identify the third party who supplied it. The relevant parts of s. 22(5) state:

- (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

...

[82] BCFSA says that creating a summary of the applicant's personal information that was supplied in confidence would disclose the identity of the third party who provided the information. I understand this statement to be an argument that the exception under s. 22(5)(a) applies to the disputed personal information.⁴⁷ No other party made submissions about s. 22(5).

[83] Given the limited scope of this inquiry and the nature of the applicant's access request, the applicant already knows that the licensee supplied the disputed records to BCFSA. However, I can see that in many cases, the licensee simply provided BCFSA with access to her copies of records containing information supplied by other third parties. Some of this information is the applicant's personal information.

[84] In my view, providing the applicant with a summary of her personal information would reveal whether that information, in substance, was supplied by the licensee or a different third party. In light of the applicant's significant existing knowledge, I do not think that a summary can be prepared which does not identify the third-party suppliers of information. Therefore, I find that s. 22(5) does not apply.

Disclosure Harmful to Law Enforcement - s. 15(1)

[85] BCFSA withheld some information under ss. 15(1)(c) and (d). The relevant parts of s. 15(1) state as follows:

- 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

- (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

- (d) reveal the identity of a confidential source of law enforcement information,

[86] All of the information that BCFSA withheld under s. 15 was also withheld under s. 22(1). I determined that s. 22(1) applies to all of that information;

⁴⁷ BCFSA's October 10, 2024 submission at para 14.

therefore, it is not necessary for me to consider whether s. 15 also applies. For clarity, BCFSa does not rely on s. 15 to withhold the information that I determined to be contact information.

CONCLUSION

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

1. Subject to item #2 below, I require BCFSa to refuse access to all of the information in dispute under s. 22(1).
2. BCFSa is not required by s. 22(1) to withhold the information I have highlighted in green on a copy of pages 53 and 55 that will be provided to BCFSa with this order.
3. BCFSa is not required or authorized to withhold any of the information contained on pages 329 to 338 of the records, a copy of which will be provided to BCFSa with this order.
4. I require BCFSa to give the applicant access to the information that it is not required to withhold. BCFSa must concurrently provide the OIPC registrar of inquiries with a copy of its cover letter and the records it provides to the applicant in compliance with items 2 and 3 above.

[88] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **June 23, 2025**.

May 9, 2025

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

OIPC File Nos.: F22-91279, F22-91800, F22-92456