OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F05-34

VANCOUVER COASTAL HEALTH AUTHORITY

Celia Francis, Adjudicator
October 12, 2005

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Summary: Applicant requested records from files of two human rights investigators. VCHA disclosed a number of records and withheld and severed others under ss. 14 and 22 of the Act. VCHA found to have applied s. 14 correctly. VCHA found to have applied s. 22 correctly to some information and records but not to others. VCHA ordered to disclose information to which s. 22 does not apply.

Key Words: solicitor-client privilege—unreasonable invasion—workplace investigation—personal privacy—medical history—compiled as part of an investigation—possible violation of law—employment history—position, functions or remuneration of employee of a public body—public scrutiny—fair determination of rights—unfair exposure to harm—inaccurate or unreliable personal information—unfair damage to reputation—submitted in confidence.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14, 22(1), 22(2)(a), (c), (f), (g), 22(3)(a), (b), (d), 22(4)(e), 22(5).

Authorities Considered: B.C.: Order 02-01, [2002] B.C.I.P.C.D. No. 1; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order No. 330-1999, [1999] B.C.I.P.C.D. No. 43; Order F05-02, [2005] B.C.I.P.C.D. No. 2; Order 01-07, B.C.I.P.C.D. No. 7; Order 04-33, [2004] B.C.I.P.C.D. No. 34; Order 03-24, [2003] B.C.I.P.C.D. No. 24.

Cases Considered: *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198.

1.0 INTRODUCTION

[1] The applicant in this case made a request ("first request") in December 2002 to the Vancouver Coastal Health Authority ("VCHA") under the *Freedom of Information*

and Protection of Privacy Act ("Act"). He referred to a "human rights investigation", in which he was the respondent, that a named investigator ("LA", who was, at the time, an employee of the VCHA) conducted at his workplace on behalf of his employer, the Children's and Women's Health Centre of British Columbia ("CWHC"), now part of the Provincial Health Services Authority ("PHSA"). He then asked for copies of "all materials relevant to my interactions with [LA]. This would include all materials in my file from the human rights investigative process, and including all such relevant material to me from both before and after the actual investigative process."

[2] In the ensuing months, the VCHA carried out discussions with the CWHC and PHSA as to which of them had control of the requested records. Ultimately, the VCHA said that it would process the request and issued a series of responses from June 2004 to July 2004. After consulting with the PHSA and the investigators, it says, it provided several sets of records, withholding and severing some information under ss. 14 and 22 of the Act.

[3] In a separate request ("second request"), the applicant asked for the records of another named investigator ("RJ") involved in the same investigation. The VCHA responded in September 2004 by disclosing several records and withholding some information and records under section 22. The applicant requested reviews of the VCHA's decisions and also questioned the adequacy of the VCHA's search for records. The Office dealt with the complaint about the search as a separate matter from the reviews and it is not in issue in this inquiry.

[4] Because the matter did not settle in mediation, a joint written inquiry was held under Part 5 of the Act respecting the two reviews. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act. The office requested and received representations from the applicant, the VCHA, the PHSA and a number of third parties (principally the complainants in the human rights investigation).

[5] The VCHA later reconsidered its decision to withhold a number of records and disclosed them in full or in a severed form. It continued to withhold a number of other records under ss. 14 and 22. The applicant expressed interest in receiving complete copies of the disputed records and I therefore must deal with the remaining withheld and severed records in this decision.

2.0 ISSUE

[6] The issues before me in this case are:

1. Is the VCHA is authorized by s. 14 withhold information?

2. Is the VCHA is required by s. 22 to withhold information?

[7] Under s. 57(1) of the Act, the PHSA has the burden of proof regarding s. 14 while, under s. 57(2) the applicant has the burden of proof regarding third-party personal information.

3.0 DISCUSSION

[8] **3.1 Solicitor-Client Privilege—**The VCHA originally took the position that three pages (pp. 50-52, File #1, LA's file) fell under s. 14, based on its consultations with the PHSA (p. 2, initial submission). The PHSA said in its initial submission, however, that the human rights investigator (apparently LA) had created pp. 50 and 52 and that only p. 51, in its view, falls under s. 14. It provided affidavit evidence, some of it *in camera*, in support of its position on p. 51 from its external legal counsel (paras. 2-3, initial submission; Saul affidavit). The VCHA later disclosed pp. 50 and 52 (see letter of September 12, 2005) and thus only p. 51 remains in issue here. The applicant objected generally to the application of s. 14 (p. 4, initial submission).

[9] Section 14 reads as follows:

> **Legal advice**
>
> 14 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

[10] The Information and Privacy Commissioner has considered the application of s. 14 in numerous orders and the principles for its application are well established. See, for example, Order 02-01[1]. I will not repeat those principles but apply them here.

[11] I have reviewed the record in question (p. 51). I am satisfied that it is a confidential communication respecting legal advice between the PHSA and its external legal counsel. It is therefore protected by solicitor client privilege and I find that s. 14 applies to it.

[12] **3.2 Application of Section 22—**The Information and Privacy Commissioner has considered the application of s. 22 in numerous orders, for example, Order 01-53[2]. I have applied here, without repeating it, the approach taken in those orders. The relevant provisions read as follows:

> **Disclosure harmful to personal privacy**
>
> 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[1] [2002] B.C.I.P.C.D. No. 1.
[2] [2001] B.C.I.P.C.D. No. 56.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny, …

(c) the personal information is relevant to a fair determination of the applicant's rights, …

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable, …

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(b) 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,…

(d) the personal information relates to employment, occupational or educational history, …

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if …

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff, …

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

[13] **3.3 Records That Are "Not Applicant's Personal Information"—** The VCHA says that it did not disclose three pages (pp. 20, 120 and 121, File #1, LA's file) as they are fax transmission confirmation sheets and do not contain the applicant's personal information. It does not rely on a particular section of the Act for this refusal. The applicant objects to the withholding of these three pages and says the VCHA still ought to disclose them. While pp. 20 and 120 are fax transmission or "activity management reports", p. 121 is a fax cover sheet similar to others the VCHA disclosed.

[14] I do not read the applicant's request as being solely for his own personal information, as the VCHA apparently did. Although it is not clear how these pages would be of interest to the applicant, the VCHA must nevertheless make a decision under the Act on whether applicant is entitled to have access to them. I make the appropriate order below.

[15] **3.4 Position and Functions of an Employee of a Public Body—**The third parties do not believe that s. 22(4) applies to any of the withheld information (para. 3, group third parties' initial submission; p. 3, individual third party's initial submission). The other parties do not address this section.

[16] I conclude, after a careful review of the remaining withheld and severed records, that they contain no information that relates to the position, functions or remuneration of public body employees. Section 22(4)(e) therefore does not apply to any of the information in dispute.

[17] **3.5 Unreasonable Invasion of Personal Privacy—**The vast majority of the withheld information falls, according to the VCHA, under s. 22. The VCHA said that the CWHC contracted with the Human Rights Centre (originally part of the VCHA and now apparently a separate business) to investigate and advise on concerns raised by the CWHC. The VCHA said that, since it had not created the records, it based its severing of the requested records on responses it received from the PHSA and the human rights business. In its view, disclosure of the withheld information would be harmful to personal privacy (pp. 1-4, initial submission). The VCHA did not cite a specific part of s. 22(3) in its decision letters or initial submission. As noted above, the VCHA later disclosed a number of records it had withheld, citing s. 22(3)(b) as authority for withholding or severing the remaining information.

Employment history

[18] The applicant said that, under the human rights investigation, he was entitled to full information on the complaints and their details. He says, however, he received information on the complaints only in "piecemeal fashion" and never received one particular complaint letter at all. He believes that in this inquiry he is entitled to full copies of the investigation notes and to the complainants' statements as well. He points out that the complainants knew that, in making their complaints under the CWHC's human rights policy, he would have access to the complaint information (p. 1, 3-4, initial submission; pp. 1-2, reply submission).

[19] The third parties seem to be most concerned about their own personal information, although they also say they do not consent to the disclosure to the applicant of personal information they provided about him. The third parties provide copies of some of the records in dispute in which they highlighted what they consider to be their personal information. In their view, the withheld information that relates to them is their employment or occupational history and s. 22(3)(d) applies to this information.

Its disclosure to the applicant would, in their view, be an unreasonable invasion of their personal privacy (paras. 8-11, group initial submission; pp. 5-6, individual initial submission).

[20] The third parties cited the following as examples of the type of information which they believe falls under s. 22(3)(d): their workplace behaviour or actions; statements made by the investigator, the respondent and witnesses about the complainants' workplace actions and behaviour; the investigator's observations and findings about the complainants' workplace behaviour or actions; information about the complainants' and witnesses' emotional state; and their own personal reactions to, or observations on, the impact of the applicant's conduct and behaviour in the workplace.

[21] The third parties also refer to a number of orders which they believe support their views. The applicant says these orders are inapplicable, in that they deal with requests from the media – who are outside the process – or from complainants. He is the respondent in this case, he says, and in his view is therefore entitled to receive information on the complaints against him (p. 4, reply submission).

[22] The records in dispute consist mainly of the following types of records: the investigators' handwritten notes of interviews with the complainants and witnesses about the complaints; other notes related to the conduct of the complaint investigation; typed statements, letters or memoranda from the complainants; what appear to be the investigators' draft and final summaries of the complaints (some with handwritten annotations); and e-mails attached to some of the complainants' correspondence. The subject matter of the records is all connected to the complaints, that is, details of the respondent's (the applicant's) alleged workplace actions and behaviour, the witnesses' and complainants' own workplace actions and behaviour and the complainants' and witnesses' personal views, reactions, observations and feelings about the applicant's workplace behaviour and actions or about their situation.

[23] Much of the withheld information is the personal employment history information of the applicant, which does not fall under s. 22 and some of which is readily disclosable to the applicant. See, for example, pp. 97-104 and part of p. 105, File #2, LA's file, a chronology of events involving the applicant, including correspondence with the applicant or his legal counsel. (The VCHA applied no exception to these records in the table of withheld and disclosed records which accompanied its decision letter of July 20, 2004.) See also pp. 135-136 File #2, LA's file, which outline interactions with the applicant.

[24] Other withheld information is the personal information of the third-party complainants and witnesses, while still other portions are the personal information of both the applicant and the third parties, in that the information concerns workplace incidents and events jointly involving these individuals. As it relates to the third parties, this employment history information falls under s. 22(3)(d), as the Information and Privacy Commissioner has interpreted this term.

Compiled as part of an investigation

[25] One of the third parties made separate submissions which largely echo those of the other third parties (who made joint submissions) and strongly object to the disclosure of any of this individual's personal information to the applicant. This third party believes that s. 22(3)(b) also applies to the withheld information, on the grounds that workplace investigations are investigations into possible violations of law. Harassment is a human rights violation, the third party says, and violations of the human rights policy are subject to legal sanction (pp. 5-6, initial submission). The VCHA also added this exception to the withheld information and records after reconsidering its decision on s. 22 (see letter of September 12, 2005), although it provided no argument or evidence for this position.

[26] As I find above that s. 22(3)(d) applies to the third-party personal information, I do not consider it necessary to decide if s. 22(3)(b) applies to the same information. I will, however, note that the Commissioner has found that an investigation that could lead to employment discipline is not s. 22(3)(b) material. See, for example, Order No. 330-1999[3], where the Commissioner said the following, at p. 12:

> The Ministry did not point to any "law" the possible violation of which was involved here. The Ministry's own submissions in effect characterize its investigation as a disciplinary investigation conducted by the Ministry as the author's employer.
>
> In my view, the ordinary meaning of s. 22(3)(b) is against the Ministry on this point. One does not normally think of an employment-related disciplinary investigation, with no statutory disciplinary flavour, as involving a "prosecution" of a "violation of law". An employer's contractual right – under an individual employment contract or a collective agreement – to discipline an employee for misconduct is not, in my view, a "law" for the purposes of this section. Nor can I accept the Ministry's apparent invitation to extend s. 22(3)(b), by analogy, to this information. If s. 22(3)(b), given its ordinary meaning, does not apply to the disputed information, I have no authority to force it to fit. Nor does the Ministry.

Medical history

[27] The third parties also expressed concern about patient medical information which appears in some parts of the records, asking that I ensure it remains protected (para. 7, group initial submission). I take the third parties to be saying that they consider this information to fall under s. 22(3)(a). The VCHA said that it would be prepared to disclose p. 53 (File #3, LA's file) with patient information severed (p. 3, initial submission). The VCHA does not appear to have disclosed a severed copy of this page to the applicant and he asks why it did not do so. The applicant suggests in any case that the medical information is likely that of a former patient and it is therefore not a problem to disclose it to him. Alternatively, the patient information can be severed and the rest of the page disclosed to him, he says (p. 3, reply).

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[3] [1999] B.C.I.P.C.D. No. 43.

[28] Some of the pages contain personal medical history information of third parties, including patients, which falls under s. 22(3)(a). I do not, however, agree with the applicant's suggestion that he is entitled to receive patient medical information simply because he was likely these patients' physician. His former role does not mean he is automatically entitled to this information, although it may have a bearing on whether disclosure of this information would be an unreasonable invasion of third-party privacy.

Conclusion on s. 22(3)

[29] The s. 22 issues in this case bear some similarity to those I discussed in Order F05-02:[4]

> [50] **3.5 Presumed Unreasonable Invasion of Personal Privacy** – Disclosure of the personal information described in ss. 22(3)(a) to (j) is presumed to be an unreasonable invasion of third-party personal privacy. The applicant is not a third party and in this inquiry she speaks for her daughters as well as herself.
>
> [51] For personal information in the reports that falls under s. 22(3) in relation to individuals other than the applicant or her daughters, the presumption applies that disclosure would be an unreasonable invasion of the third parties' personal privacy. Personal information about the applicant or her daughters cannot fall under s. 22(3). Personal information about the applicant or her daughters *and* a third party can fall under s. 22(3) in relation to the third party, triggering the presumption that disclosure would be an unreasonable invasion of the third party's personal privacy.

[30] Some of the withheld personal information in this case is medical history information of third parties that falls under s. 22(3)(a). Most of it consists of the employment history information of a number of individuals. With regard to third parties, this information falls under s. 22(3)(d). Disclosure to the applicant of third-party personal information that falls under ss. 22(3)(a) and (d) is presumed to be an unreasonable invasion of third-party privacy, unless the relevant circumstances favour disclosure, as I discuss below.

[31] An applicant's own personal information does not fall under s. 22(3) and an applicant does not have the burden of proving why she or he should have access to her or his own personal information. Where an applicant's personal information can reasonably be severed from other information, including third-party personal information, an applicant is entitled to have access to that information.

[32] Previous orders have stated that it will only be in rare cases that the application of s. 22 means that an applicant is not entitled to have access to his or her own personal information (see, for example, para. 48, Order 01-07[5]). Much of the withheld information in this case consists of the applicant's personal information intertwined with

[4] [2005] B.C.I.P.C.D. No. 2.
[5] [2001] B.C.I.P.C.D. No. 7.

third-party personal information. The question thus arises here of whether the applicant's personal information, where it is intermingled with that of the third parties, which I found above to fall under ss. 22(3)(a) and (d), can reasonably be severed and disclosed to him without unreasonably invading third-party privacy. I discuss this below, as well.

[33] **3.5 Relevant Circumstances** – The parties made a number of arguments on whether relevant circumstances favour withholding or disclosing the third-party personal information in dispute. The third parties are of the view that no relevant circumstances favour disclosure, while the applicant argues that a number of s. 22(2) factors do favour disclosure.

Public scrutiny of public body's activities

[34] The applicant says that the courts have recognized "the abusive nature of the proceedings" (although he does not say how). In his view, therefore, the circumstance in s. 22(2)(a) is relevant here. He believes that he has a right to have his name cleared even further (p. 3 & 4, initial submission). This is all the applicant says on this point and it is not clear how he makes a connection between the possible application of s. 22(2)(a) and "clearing his name further" or the allegedly "abusive nature" of the "proceedings" (whatever he means by those terms).

[35] In responding to this argument, the third parties say they assume the applicant is referring to scrutiny of the conduct of the human rights investigation by the Human Rights Centre at the VCHA. If so, they say the applicant has provided no evidence to support this contention and that, in any case, he has received a copy of the report resulting from the human rights investigation. They also refer for support of their position (at para. 3 of their reply submission) to paras. 66-69 of Order F05-02, where I said that s. 22(2)(a) did not apply, as the information that remained withheld in two investigation reports would not assist in subjecting the School District's conduct of the investigation to public scrutiny and would not add to the public's understanding of that process.

[36] It is clear from the material before me that the applicant had a considerable personal interest in the outcome of the VCHA's human rights investigation. As the third parties point out, however, and despite the applicant's protestations to the contrary, the applicant has received considerable information on the complaints in the form of the investigation report and its appendices. It also appears from the applicant's submissions that the courts have considered the conduct of the investigation. In view of these circumstances, it is not evident to me how disclosure of the information in dispute in this case—which, as I note elsewhere, is largely the same as that already disclosed—would subject the activities of the VCHA or the PHSA to public scrutiny or add to the public's understanding of the investigation. I find that s. 22(2)(a) does not apply.

Inaccurate or unreliable information

[37] One of the third parties is concerned about the accuracy of some of the personal information in the disputed records that is attributed to that third party. This third party gives particulars of the information said to be inaccurate in an *in camera* portion of the third party's affidavit. In this person's view, therefore, s. 22(2)(g) applies to that information (para. 15, group initial submission; *in camera* affidavit of third party), favouring its withholding. The applicant argues in his reply (at p. 6) that he should have access to that information, as "it relates to an inaccuracy that was used in the malicious prosecution of the Applicant".

[38] The information in question is the applicant's own personal information. Whether or not this information is inaccurate, the identical information appears elsewhere in the records that the VCHA disclosed to the applicant in response to his request and which he also received during the investigation. I find that the factor in s. 22(2)(g) therefore has no relevance to the information in question.

Fair determination of applicant's rights

[39] The third parties say that the human rights policy provided for adequate disclosure of information to the applicant to allow him to respond to the complaints. Moreover, they say, the investigation is complete. Thus, they believe, disclosure of their personal information is neither relevant to, nor necessary for, a fair determination of the applicant's rights and s. 22(2)(c) is not applicable. They also say the applicant has not shown how the withheld personal information is relevant to a fair determination of the applicant's rights in that or any other proceeding (paras. 15-16, group initial submission; para. 4, group reply submission; p. 2, individual reply submission).

[40] For his part, the applicant believes that his legal rights are at stake. He says that the human rights complaint investigation process "led to the destruction of a person's career and life". The information is critical to his employment and his life, he says, and he has a right to have his name cleared (p. 3, initial submission). Again, the applicant does not provide any support for his arguments on these points.

[41] There is no doubt that the human rights or harassment complaint investigation from 2001 (which involved the applicant and a number of third parties) is complete. The applicant has long since received the investigation report and there are indications in the applicant's initial submission (p. 3) that proceedings through various levels within the CWHC, the British Columbia Supreme Court and Court of Appeal arose from that investigation. The applicant also says he was suspended from his work, among other things. It is not clear from the material before me that the disputed information is relevant to any of these apparently now-completed proceedings.

[42] I gather from the applicant's and the individual third party's submissions that, in addition to the VCHA human rights investigation in 2001, there is or has been another, more recent human rights or harassment investigation involving the applicant and the

individual third party. The applicant says the information may have great relevance to this other human rights proceeding, which was apparently ongoing at the time of this inquiry (pp. 3-5, initial submission). The applicant does not, however, explain how the disputed information is relevant to a fair determination of any rights he may have at stake in this other proceeding.

[43] In the individual third party's view, that proceeding is also complete and the applicant may not rely on s. 22(2)(c) with regard to that process (p. 2, individual reply submission). In a series of post-inquiry letters, the applicant and individual third party contradict each other as to whether this other process is in fact over. The difference of opinion appears to hinge on the significance of the recent exchange of what are called "final" submissions in that process. However, neither party explains what this other process involves, what stage it is at, what information the current investigator has received to date and whether (or how) the withheld personal information in dispute in this inquiry relates to or will be used in that process.

[44] The applicant merely asserts that the information in dispute is relevant to his rights under the human rights policy and to his legal rights, and that "the information may have great relevance to other human rights proceedings when it is seen how extensive the abuse was from the human rights investigator and his entourage of abusers" (pp. 3-4, initial submission). The applicant does not, however, explain what rights he believes are at stake in any current or past human rights (or harassment) process or in any other process, how they are "legal rights", as this term has been interpreted (see Order 01-07, for example, and *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*[6]), nor how the information in dispute is relevant to a fair determination of any such legal rights. I am also not able to determine any of these things from the material before me, including the disputed records, which largely duplicate information the applicant has already received in one form or another through various processes. I therefore find that s. 22(2)(c) does not apply here.

Supply in confidence

[45] With regard to most of the withheld personal information, the VCHA says that it was personal information collected in confidence during the human rights investigation conducted under the CWHC's human rights policy, a copy of which it provides with its submission. The VCHA says that the complainants were assured that the personal information they provided would be kept confidential.

[46] The third parties made a number of arguments related to the confidentiality of the complaint investigation process (paras. 3-5 & 13-14, group third parties' initial submission; group third parties' affidavits; p. 1, individual third party's initial submission). They state that they expected, and received, assurances that all the records generated during the human rights investigation would remain confidential, including information considered to be the personal information of the applicant.

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[6] [1999] B.C.J. No. 198

[47] They also say they understood that, in accordance with the CWHC's human rights policy, any information they provided would be disclosed to the applicant (as respondent) in summary form during the informal stage of the human rights investigation and that he would receive a detailed account of the allegations during the formal phase of investigation, so that the applicant could respond to the allegations. They state that confidentiality in the human rights investigation process was a significant concern and that they would not have participated in the process if they had known that information and records collected and created during the investigation would be subject to disclosure under the Act.

[48] It appears that, in saying these things, the third parties are suggesting that they were not aware that the applicant had a right under the Act to request access to information they provided during the human rights investigation and that he might have access to some of this information. If so, public bodies should inform complainants and witnesses in workplace investigations, not only that the information and records they provide may be disclosed during the investigation process, but also that records arising from the investigation are subject to requests from respondents (or others) under the Act and may be disclosed. Witnesses and complainants should also know that confidentiality of supply during a workplace investigation is not determinative of a decision on disclosure under the Act. It is a factor that public bodies must consider in assessing whether disclosure of personal information would be an unreasonable invasion of third-party privacy under the Act.

[49] With regard to the confidentiality factor in s. 22(2)(f), the applicant points out that, in Order 04-33[7], I rejected "chilling effect" arguments similar to those the third parties made. (The individual third party acknowledges this; see p. 2, reply submission.) The applicant also argues that the point of the confidentiality provision in the CWHC's human rights policy is to prevent disclosure to those outside the complaint process—that is, unrelated outsiders—not to prevent disclosure to him as the respondent. He says, among other things, that the policy provided for disclosure of the complaint details to him as the respondent, although he claims never to have received such a detailed account. "An assurance of confidentiality is certainly not a veto on disclosure", he suggests. He also notes that there is no affidavit evidence on the confidentiality issue from either of the human rights investigators (p. 3, initial submission; pp. 1-2 & 4-5, reply submission).

[50] The third parties place great reliance on their understanding of the confidential nature of the CWHC's human rights complaint process and, despite the disclosure of considerable details on the complaints to the applicant in that process, seem to equate that with a prohibition on disclosure under the Act. The CWHC's Human Rights Policy of July 2000 contains the following provisions on confidentiality and on the conduct of a complaint investigation:

[7] [2004] B.C.I.P.C.D. No. 34.

> **3.1 Confidentiality**
>
> No information disclosed during the Human Rights process will be shared with others except as dictated by law in the area of child abuse, subpoena, or perceived risk to others. A breach of confidentiality will be considered a violation of this Policy.

[51] The policy includes the following relevant provisions:

- at the intake stage, the human rights advisor and complainant will do an initial review of the complaint in "an environment of safety and confidentiality",

- in the informal resolution phase,

  - the human rights advisor contacts the respondent to "present the concerns of the complainant, [and] provide an opportunity for the respondent to present his/her perspective"; any mediation process between the complainant and respondent is to be conducted in confidence

  - where there is agreement on a resolution of the complaint in this phase, the human rights advisor makes a note of it and, on request, circulates a summary of the agreement to the complainant and respondent

- in the formal investigation stage,

  - the human rights advisor notifies the respondent of the complaint and provides the respondent with "a detailed account of the allegations"

  - where the respondent provides a response to the allegations, the human rights advisor reviews it with the complainant

  - the investigation is conducted "confidentially, within the framework of natural justice", under a number of guidelines, including the following:

    > a. The Investigator shall provide an opportunity to both the complainant and the respondent to provide verbal and/or written information related to the allegations. All potential witnesses may be interviewed by the investigator. The complainant and respondent will be provided an opportunity to respond to all relevant information provided by witnesses.

- the investigation report that results from the formal phase will contain, among other things, a summary of the allegations and testimony of witnesses and respondent, and will be submitted to a number of specified officials within the CWHC, as well as the complainant and respondent

[52] I am inclined to agree with the applicant that the point of the confidentiality provisions in the CWHC's human rights policy is to ensure that unconnected outsiders (presumably the "others" in the confidentiality provision in Part 3.1 of the Human Rights Policy cited above) are not privy to complaint details. The CWHC's human rights policy is not intended to deprive the applicant of access to his own personal information (in the form of the allegations against him) during a complaint investigation. Rather, it explicitly provides for a respondent to receive detailed information on allegations and complaints, with the advance knowledge of the complainants.

[53] I would say, however, that the third parties have accurately portrayed the complaint policy and understood correctly that the complaint process would be conducted confidentially. From the material before me, I accept that the third parties participated in the complaint investigation on the understanding that it would be a confidential process and that they provided their personal information in confidence. I therefore find that the factor in s. 22(2)(f) is relevant here and favours the withholding of third-party personal information. As I discuss below, however, other factors outweigh the confidentiality factor respecting much of the withheld third-party personal information.

Applicant's awareness of third-party personal information

[54] A number of orders have found that an applicant's knowledge or awareness of withheld personal information is a factor that public bodies should consider in deciding whether disclosure would be an unreasonable invasion of third-party privacy. It may favour disclosure in a given case, such as where the applicant supplied third-party personal information to the public body in the first place or, as here, where the applicant has already received copies of records containing the same personal information. See, for example, Order 03-24[8].

[55] The applicant says he already knows the names of the complainants because he was the respondent in the "bogus human rights campaign". He also says that "versions" of the complaints and the investigation report have been made public in the courts, along with the names of the complainants. (He provides no documentary evidence to support this assertion. Nor does the applicant show what, if any, records he may have received in any court or other proceedings.) He says that the complaints against him are his personal information (p. 4, 6, reply submission).

[56] The third parties do not address this issue directly. However, I infer from their submissions that they consider that the applicant's previous receipt of his own and their personal information, first through the complaint investigation and later under the Act, has no bearing on whether the remaining third-party personal information should be disclosed.

[8] [2003] B.C.I.P.C.D. No. 24.

[57] The material before me (which includes copies of both the disclosed records and the severed and withheld records) shows that, during the informal and formal phases of the investigation, the applicant received considerable detail on the allegations against him, including the names of the complainants linked to their complaints, as well as other related information. It is also evident that the applicant responded at some length, both in personal interviews and in writing, to those allegations. The applicant also received the final investigation report, a 45-page document which contains several pages of details of the individual third party's complaints. Attached to the report are another 31 pages of appendices with details of the third parties' complaints and the applicant's responses to those allegations. The applicant thus already has, to say the least, considerable knowledge, not only of the names of the complainants, but also details of their complaints against him and their views of the effect of his behaviour on them and their workplace. From my review of the material before me, I would say that the applicant is already aware of almost all of the withheld third-party personal information through having received it in other forms.

[58] The VCHA considered—correctly, in my view—the extent of previous disclosures as a reason for re-disclosing many of the requested records. Indeed, given the extent of the complaint information that the applicant has already received through the complaint investigation and under the Act, it is not clear why the VCHA did not disclose (either earlier or after its recent reconsideration) the rest of the withheld information, where it was the same as the previously disclosed information.

[59] In comparing the withheld and disclosed records, I note many instances where the complaint details were transferred, often word-for-word, from the interview notes and letters, first to the draft and final complaint summaries and accounts, and later to the investigation report and its appendices.

[60] In this regard, see, for example, p. 10 of the investigation report which states that the applicant received "a full summary" of the individual third party's complaints. See also pp. 14-18 and 33-34 of the investigation report and the 11-page Appendix 2 of the report, which set out details of the individual third party's complaints, as well as pp. 19-32 of the report which set out the applicant's response to those complaints. The VCHA also disclosed an earlier annotated version of the individual third party's complaints (pp. 7-12, File #2, LA's file) which contains the same information as the report, as well as duplicate accounts of this individual's complaints (pp. 106-134, File #2, LA's file). Yet the VCHA withheld another annotated version of the same complaint information (pp. 16-20, File # 2, LA's file), as well as related interview notes (*e.g.*, pp. 14-15, File #2, LA's file), complaint summaries and correspondence, all containing the same information regarding the individual third party's complaints.

[61] See also p. 4 of the investigation report which states that the respondent received "a description of specific incidents presented by nine of the Complainants". In addition, see the nine-page Appendix 1 of the report which reproduces details of the group third-party complainants' allegations and complaints against the applicant, including the names of the complainants and others involved in the incidents, as well as accounts of the

effect the applicant's behaviour had on them. Yet the VCHA severed or withheld the same information in the form of complainants' interview notes, letters and complaint summaries and accounts. It also withheld a summary of complainants' allegations (pp. 16-18, File #1, RJ's file) that an investigator evidently provided to the applicant with a letter of January 15, 2001 (pp. 14-15, File #1, RJ's file), to which the applicant responded in detail in a letter of January 22, 2001 (see pp. 41-48, File #1, RJ's file; duplicates at pp. 122-127, File #1, LA's file, and pp. 1-6, File #2, LA's file).

[62] In addition, one withheld page of notes (p. 105, File # 2, LA's file) appears to have been prepared as part of the complaint investigation. As noted above, part of it consists of the applicant's personal information, while part contains information related to the complainants. The wording of this record indicates that the entire contents were intended for discussion with the applicant, likely in accordance with the CWHC's Human Rights Policy.

[63] The VCHA also withheld notes of a conversation (p. 158, File #2, LA's file) with a named individual. This individual is, however, evidently the applicant's lawyer in litigation in which the applicant was involved at the time, as may be seen from a reference to this lawyer in a letter of February 20, 2001 from the applicant's other lawyer, his legal counsel in the complaint investigation (see para. 2 of p. 101, File #1, LA's file).

[64] The VCHA also disclosed letters from an individual (pp. 143-145, File #3, LA's file) who had concerns about the applicant but who did not become a formal complainant. Yet it withheld in full notes of an interview with this individual (p. 11, File #1, RJ's file) which contains some of the same information.

[65] The VCHA also withheld what appear to be an investigator's notes of points to discuss with a named witness about the complaints against the applicant (p. 140, File #2, LA's file), although it disclosed notes of the interview with the same witness in which those points were discussed (pp. 137-139, File #2, LA's file). This witness's interview is also described in detail at pp. 34-36 of the investigation report.

[66] The VCHA also withheld interview notes with two senior CWHC employees (who were apparently in a position of authority over the applicant) regarding a particular decision regarding the applicant's employment (pp. 157 and 159, File #2, LA's file). However, the same information appears in a letter of May 6, 1999 between these two employees (pp. 144-148, File #2, LA's file). This letter was copied to the applicant at the time and the VCHA also disclosed it in response to the applicant's freedom of information request. The applicant is in any case well aware of these employees' role in that decision.

[67] It is clear that the complainants have undergone frustrating, stressful and emotionally exhausting processes in attempting to have the PHSA deal with their complaints. Nevertheless, I cannot ignore the fact that, before providing their complaint details, the complainants were aware that the applicant would receive details of their

complaints and allegations during the complaint investigation and that they are also aware that he did receive such details. Nor can I overlook the fact that the applicant is aware of almost all of the withheld information about himself and others because he has already received it—albeit in other forms—both under the Act and through the investigation.

[68] It seems to me that any invasion of the third parties' privacy, unreasonable or otherwise, happened years ago during the complaint investigation, through the disclosure of third-party personal information that occurred during that process. I see no material difference in the character and content of the complaint information and complainants' names already disclosed in the complaint summaries, the report and the appendices from the same information withheld in the interview notes, complainants' letters and annotated complaint summaries. There is also no indication in the material before me that circumstances that did not previously exist at the time of earlier disclosures have since arisen that would suggest a different result under s. 22.

[69] In these circumstances, I have difficulty understanding how re-disclosure of the same third-party personal information would unreasonably invade third-party privacy. The factors of complainants' advance knowledge that the applicant would receive their complaint details, the previous disclosure of these complaint details, through the investigation and under the Act, and the applicant's consequent awareness of the complaint details, in this case serve, in my view, to outweigh the confidentiality factor and to override any unreasonable invasion of third-party privacy with regard to the remaining withheld personal information, where it is the same as the disclosed information. This applies to almost all of the information in dispute, including the applicant's own personal information where intertwined with third-party personal information. This information, along with other portions containing the applicant's personal information in isolation, can all reasonably be severed from the records and disclosed to the applicant. I have therefore prepared severed copies of the relevant records in dispute for the PHSA to disclose to the applicant.

[70] There remains some third-party personal information which falls under ss. 22(3)(a) and (d) that the applicant has not, to my knowledge, already received and to which the factor of awareness therefore does not apply. This information must be withheld. In the case of some patient medical information that falls under s. 22(3)(a), the applicant's status as a former physician of these patients does not in my view outweigh third-party privacy in this case. The applicant has not otherwise shown how any relevant circumstances apply to favour disclosure of this information and it must be also withheld.

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

[71] The parties did not discuss whether s. 22(5) applies in this case to require the creation of summary of the applicant's personal information that was supplied in confidence, if this can be done in a way that does not reveal the identity of the third parties who supplied it. Because of my decision that the records can reasonably be severed, I do not need to consider s. 22(5) here.

4.0 CONCLUSION

[72] For reasons discussed above, under s. 58 of the Act, I make the following orders:

1. I require the VCHA to withhold the page it withheld under s. 14, as shown in the copies of the disputed records that I am providing to the VCHA with this order.

2. Subject to para. 3 below, I require the VCHA to give the applicant access to the information which it withheld under s. 22, as shown in the copies of the disputed records that I am providing to the VCHA with this order.

3. I require the VCHA to refuse to disclose to the applicant some of the information it withheld under s. 22 of the Act, as highlighted in pink in the copies of the disputed records that I am providing to the VCHA with this order.

4. I require the VCHA to comply with Part 2 of the Act by determining whether to apply one or more exceptions to all or part of pp. 20, 120 and 121, File #1, LA's file, within 30 days (as defined in the Act) of the date of this order and by providing a response to the applicant that meets the requirements of s. 8 of the Act. As a condition under s. 58(4), I require the VCHA to provide me with a copy of that response concurrently with its delivery to the applicant.

October 12, 2005

ORIGINAL SIGNED BY

Celia Francis
Adjudicator