



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

Order F08-04

UNIVERSITY OF BRITISH COLUMBIA

Catherine Boies Parker, Adjudicator

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Summary: The applicant requested a report of an investigation into an incident involving trees which were mistakenly cut down by UBC employees. UBC released the report, but withheld the names and positions of the employees who were involved in the incident and those who were interviewed in the investigation. UBC is required by s. 22 of FIPPA to withhold the names of the employees.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1) 22(2)(a), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(d), 22(3)(g) 22(4)(e), 25, 58.

Authorities Considered: **B.C.:** Decision F06-11, [2006] B.C.I.P.C.D. No. 37; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F06-14, [2006] B.C.I.P.C.D. No. 21; Order No. 97-1996, [2001] B.C.I.P.C.D. No. 23; Order 00-53, [2000] B.C.I.P.C.D. No. 57; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order F05-32, [2005] B.C.I.P.C.D. No. 44; Order F06-11, [2006] B.C.I.P.C.D. No. 18; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order F08-03, [2008] B.C.I.P.C.D. No. 6.
Ont: Order P-1117, [1996] O.I.P.C. No. 49; Ontario Order P-694 (Ontario (Natural Resources) (Re), 1994 CanLII 6616 (ON I.P.C.)); Order M-615, [1995] O.I.P.C. No. 432.

Cases Considered: *John Doe v. Ontario (Information and Privacy Commissioner)* (1993) O.R. (3d) 767.

1.0 INTRODUCTION

[1] This inquiry arose out of the applicant's request for "the final version (and the 1st draft) of UBC's reports on the mistaken cutting down of trees on GVRD property behind the UBC Anthropology Museum" in 2006.¹ The University of British Columbia ("UBC") responded by releasing a severed version of an eight-page final report (the "Report") regarding an internal investigation into the removal of vegetation around the UBC Museum of Anthropology ("MOA"). UBC stated that it was withholding certain information pursuant to ss. 22(1) and 22(3)(d) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The withheld information consisted of the names and positions of the individuals involved in the incident which was the subject of the investigation, as well as the names of the investigators. UBC also stated that there is no first draft of the document.

[2] The applicant wrote to this office requesting a review of the decision to withhold the information and asking for the immediate release of the information pursuant to s. 25 of FIPPA. Through the mediation process, UBC released a new version of the report in which the names of the investigators in the Report were released and the names of individual employees were replaced with "Person A", "Person B", etc., in an effort to increase the readability of the Report for the applicant.

[3] UBC also requested that, pursuant to s. 56 of FIPPA, the Commissioner decline to conduct an inquiry in this matter. The Commissioner's delegate denied that request in Decision F06-11.²

2.0 ISSUES

[4] The issues before me in this inquiry are:

1. Whether s. 25(1) requires UBC to disclose the withheld information, and
2. Whether UBC is required by ss. 22(1) and 22(3)(d) to withhold the information.

[5] Section 57 of the Act provides that in an inquiry into a decision to refuse access to part of a record, it is up to the public body to prove that the applicant has no right of access. However, if the personal information to which the applicant is refused access is about a third party, it is up to the applicant to prove

¹ The facts in this introduction are taken from the Portfolio Officer's Fact report issued by this Office.

² [2006] B.C.I.P.C.D. No. 37.

that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy. Because s. 57 is silent on the burden of proof with respect to whether s. 25 applies, both parties must lead evidence and make argument about whether s. 25 applies and requires disclosure.

3.0 DISCUSSION

[6] **3.1 Factual Background**—In March 2006, it was discovered that UBC landscape crews had cleared trees, vegetation and debris from the Pacific Spirit Park, which is on Greater Vancouver Regional District (“GVRD”) land. The land in question adjoins the MOA. The GVRD complained about the tree removal. UBC conducted an internal investigation to determine why the work had been conducted, who did it, what orders were given, whether disciplinary action should be taken and what action should be taken to ensure that such an incident did not recur.³ During the months of March and April 2006, over 20 interviews were conducted in order to understand the actions of UBC crews who performed the work.⁴

[7] The Report is a summary of the investigation and the associated findings. The Report is divided into the following sections:

- “What Happened”, which includes the subheadings “Context” and “Commencement of Work”, followed by descriptions of the three phases of work which were performed and investigated;
- “Who Performed/Directed the work?”;
- “Why did this work occur?” and;
- “Culpability/Accountability”, which outlines and comments on the activities of nine specific employees, including a determination of which employees were accountable to determine the correct property line location before undertaking or directing work.

[8] The Report does not address disciplinary measures.

[9] The UBC Employee Relations Manager, Human Resources, deposed that he provided human resources advice and guidance throughout the investigation. He stated that at all times he understood that the investigation and the Report were to be confidential. He testified that it was his understanding that the purpose of conducting the investigation was to “investigate the specific incident, to investigate the personnel issues involving UBC employees who were involved

³ UBC initial submission, paras. 1-3; Employee Relations Manager's affidavit, para. 5; Associate Director's affidavit, para. 5.

⁴ UBC initial submission, para. 3.

in the incident and to make recommendations as to an outcome for the future so that the incident would not recur.”⁵

[10] The Associate Director, Business and Resource Management, for Land and Building Services at UBC, led the initial investigation. He deposed that it was his understanding that the purpose of the investigation was to investigate the specific incident and the personnel issues involving UBC employees. The Associate Director stated that the investigation was conducted on a confidential basis and that each witness was advised of the confidentiality of the process at the outset of his or her interview. He stated that he had drafted the Report and that at all times the information was treated with the strictest confidence and only shared with those who had been charged with investigating what had occurred and those who had to make decisions arising from the Report.⁶

[11] Most of the individuals whose names were withheld provided affidavit evidence. However, their names and positions were provided *in camera*. Many of these affidavits state that the employees are very concerned about their names being released, that there could be resulting harm to their reputations in the community, that unfair inferences might be drawn and that their professional reputations might be permanently damaged. Some employees noted that the incident was the subject of media reports at the time of its occurrence and expressed concern about future reports with their name attached. Some of the employees stated that they were the subject of discipline as a result of the actions which were investigated and some stated that they disagree with the contents of the Report. All testified as to their understanding that the investigation process was confidential.

[12] **3.2 Does Section 25 Require Disclosure?**—In his original request, the applicant asked UBC to apply s. 25 of FIPPA. Section 25 of FIPPA requires the mandatory disclosure of certain information and provides, in part:

- 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
 - (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
 - (b) the disclosure of which is, for any other reason, clearly in the public interest.
- (2) Subsection (1) applies despite any other provision of this Act.

⁵ Employee Relations Manager's affidavit, paras. 3-5.

⁶ Associate Director's affidavit, paras. 3-5.

[13] In his submissions, the applicant states “This tree-cutting in question is an issue of keen public interest and the subject of many news stories.”⁷ Some of the news reports are attached to the applicant’s submissions. The applicant states that the incident was the subject of discussion at a meeting of the GVRD, and reports that one GVRD councillor lamented aloud, “I don’t know if we’ll ever know the full story about this.” The applicant states that the release of the full report “would relieve that void of understanding.”⁸

[14] UBC argues s. 25 applies only in the “clearest and most serious” of situations.⁹ UBC says that there is no evidence that there is any urgent or compelling need for disclosure in this case.¹⁰

[15] Many previous orders have discussed the application of s. 25.¹¹ These have established that the disclosure requirement under s. 25(1)(b) is triggered only when there is an urgent and compelling need for public disclosure without delay and that disclosure is clearly in the public interest. The fact that the public may be interested in a record does not mean that it is “clearly in the public interest” to disclose it, without delay, under FIPPA.¹²

[16] As the Commissioner noted in Order 02-38,¹³ the circumstances under which s. 25 is triggered are those of clear gravity and present significance which compels disclosure without delay. The applicant offers no explanation as to why the current situation carries with it any temporal urgency or why there may be a compelling need for disclosure of the employees’ names. I agree with UBC that there is no evidence to suggest that there is an urgent or compelling need to disclose the names of the individuals who were involved in the tree cutting. I find that s. 25(1) does not require UBC to disclose the withheld information in the public interest.

[17] **3.3 Is UBC Required to Withhold the Information Under s. 22?**— Section 22(1) of FIPPA requires a public body to refuse disclosure of personal information if the disclosure would be an unreasonable invasion of a third party’s privacy. Section 22(2) sets out those factors which must be considered in determining whether disclosure would constitute an unreasonable invasion of a third party’s privacy. Section 22(3) sets out certain types of information the disclosure of which is presumed to be an unreasonable invasion of a third party’s privacy. Section 22(4) sets out circumstances where the disclosure of information is not an unreasonable invasion of a third party’s privacy.

⁷ Applicant’s initial submission, page 2.

⁸ Applicant’s initial submission, page 2.

⁹ UBC’s initial submission, para 35.

¹⁰ UBC’s initial submission, para. 42, UBC reply submission, paras. 3-5.

¹¹ See, for example, Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F06-14, [2006] B.C.I.P.C.D. No. 21.

¹² Order 01-20, [2001] B.C.I.P.C.D. No. 21, para 37.

¹³ [2002] B.C.I.P.C.D. No. 38, para 53.

[18] The relevant portions of s. 22 of FIPPA provide:

- 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.
- (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,
 - (e) the third party will be exposed unfairly to financial or other harm,
 - (f) the personal information has been supplied in confidence,
 - (g) the personal information is likely to be inaccurate or unreliable, and
 - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if ...
- (d) the personal information relates to employment, occupational or educational history,
 - (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party, ...
- (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,

[19] As s. 22(4)(e) makes clear, disclosure of the withheld information will not be an unreasonable invasion of a third party's privacy if it is "personal information" which is "about a third party's position, functions or remuneration as an ... employee of a public body ..." As a result, s. 22 does not require a public body to refuse access to this type of information. However, if the information does not fall within s. 22(4), it is necessary to determine whether its disclosure would be an unreasonable invasion of a third party's personal privacy. That analysis will take into account any presumption which may arise under

s. 22(3), as well as any relevant circumstances, including those set out in s. 22(2).

Is the withheld information “personal information”?

[20] In this case, the withheld information consists of the names and positions of employees of the public body and, in one case, an external consultant. The applicant argues that, if UBC’s position is accepted, it would mean that the BC government personnel directory, which includes names, titles and functions, could be withheld as “personal information”.¹⁴ I note that the definition of personal information under FIPPA excludes “contact information”, which FIPPA defines as consisting of information such as an individual’s name, position, telephone numbers and other information that may be used to contact that individual at his or her place of business. Thus, an employee’s name and position, in a context in which it would allow that employee to be contacted at work, without more, is not personal information. However, where the name and position of an individual employee appear in a context such that their disclosure would reveal the employee’s activities, this will constitute the employee’s personal information.¹⁵ Of course, the fact that one’s name and position are personal information does not mean the information must be withheld if requested under FIPPA. The analysis goes further than that.

Is the withheld information “about a third party’s position, functions or remuneration as an employee of a public body”?

[21] Under s. 22(4)(e), disclosing personal information about a third party’s position, functions and remuneration as an employee of a public body is not an unreasonable invasion of the third party’s privacy. However, disclosing a third party’s employment history or the content of personnel evaluations is a presumed invasion of the third party’s privacy. These different categories of information relate to the competing principles which animate FIPPA, namely, the objectives of ensuring transparency of public bodies and appropriately protecting the privacy of individuals, including those employed by public bodies. Numerous decisions have addressed the distinction between information about the “position, functions or remuneration” of a public body employee and an employee’s employment history.¹⁶ I have applied, without repeating them, the principles arising from these orders.

[22] Where disclosure of an employee’s name and position reveals that employee’s job responsibilities, this will constitute that employee’s personal information. However, this information may fall under s. 22(4)(e), such that its

¹⁴ Applicant’s initial submission, pages 2-3.

¹⁵ See Order No. 08-03, [2008] B.C.P.I.C.D. No. 6, para. 77.

¹⁶ See, for example, Order No. 97-1996, [2001] B.C.I.P.C.D. No. 23; Order 00-53, [2000] B.C.I.P.C.D. No. 57; Order 01-53, [2001] B.C.I.P.C.D. No. 56, and Order F05-32, [2005] B.C.I.P.C.D. No. 44.

disclosure is not an unreasonable invasion of the employee's "personal privacy". Job descriptions, required qualifications and salary levels of employees of public bodies fall within s. 22(4)(e).

[23] Where, as here, the employee's name and position are set out in the context of an investigation into a specific workplace incident, it is not information which goes to the position, function or remuneration of that employee, but rather is part of that employee's employment history. As stated in Order 01-53:

[40] I accept that the name, and other identifying information of the third party, is the third party's personal information and that it is, in this context, information that "relates to" the third party's employment history under s. 22(3)(d). The third party's name and other identifying information is covered by s. 22(3)(d) only because that information appears in the context of a workplace investigation. This is not to say that, in the ordinary course, the name or other identifying information of a public body officer, employee or member is covered by s. 22(3)(d). Moreover, even in cases such as this, where the identifying information is covered by s. 22(3)(d), any third-party identifying information that in some way relates to the third party's job duties in the normal course of work-related activities falls into s. 22(4)(e). I refer here to objective, factual statements about what the third party she [sic] did or said in the normal course of discharging her or his job duties, but not qualitative assessments or evaluations of such actions. For a similar finding, see, for example, Order 00-53, [2000] B.C.I.P.C.D. No. 57.

[24] The applicant states that he is only seeking the "bare bones notations" of the employees' official functions.¹⁷ However, because the information about the employees' positions appears in the context of the investigation into a specific incident, the disclosure of the employees' name would disclose more than just their official functions. In numerous orders under FIPPA, it has been held that information arising from workplace investigations into specific employee behaviour does not fall within s. 22(4)(e).¹⁸

[25] Order F05-32¹⁹ dealt with a report resulting from an investigation by an independent consultant for Coast Mountain Bus Company, an operating subsidiary of the Greater Vancouver Transportation Authority ("Translink"). Translink withheld portions of the report related to descriptions by employees of interactions to which they were parties. The adjudicator held, at paras. 8-9:

The severed information clearly was recorded as part of a workplace investigation. As the investigator has deposed, the purpose of the investigation was to examine personnel issues in which the applicant was involved. From the affidavit of the investigator and my review of the

¹⁷ Applicant's initial submission, page 5.

¹⁸ See, for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order F05-32, [2005] B.C.I.P.C.D. No. 44; Order 08-03, [2008] B.C.I.P.C.D. No. 6.

¹⁹ [2005] B.C.I.P.C.D. No. 44.

investigation report, I accept that the purpose of the investigation was to examine personnel issues.

In several orders, the Commissioner has found that information respecting someone's participation in this type of investigation is not information about the position, functions or remuneration of an employee of a public body.

[26] The applicant takes issue with the distinction between information relating to an employee's "functions" and information relating to specific employee activities, especially when those activities are the subject of an investigation. He states that he is "only seeking records on [the employees'] positions, functions and discharge of official actions, not about them as individual human beings, *i.e.*, the role itself, not quite as much the occupant of the role that day."²⁰ He goes on to say:

What is the difference between "functions" (records of which are disclosed under the FOIPP Act) and "actions" (which some claim are not covered by the Act)? Official functions give rise to actions; actions result from functions. Actions done directly in the course of one's official function (as in this UBC case) are inseparable from it - for if they were not, how could there be any accountability at all?²¹

[27] One can, in fact, separate information relating to an employee's official functions from information created for the purpose of an investigation of an employee's specific actions. I note that, in this case, UBC has disclosed more than just the employees' job descriptions. It has also disclosed their specific activities in carrying out their duties. It has withheld only their names. This approach is consistent with the decision reached in Order No. 97-1996.²² In that case, the former Commissioner found that the correct approach was to disclose information about the employees' activities, without identifying the specific employees. That is exactly what UBC has done in this case.

[28] I understand the applicant's concern, set out above, regarding "accountability," but in my view, these concerns are adequately addressed. First, the purposes of FIPPA as set out in s. 2(1) are two-fold: to make *public bodies* more accountable to the public and to protect personal privacy. The applicant says that the report makes little sense without names, such that withholding the names should be seen as tantamount to withholding the whole report.²³ I disagree. The report as released describes the activities of UBC's employees and their employer, UBC—one of the public bodies whose accountability is explicitly contemplated by s. 2(1)—can be held accountable for those activities. In this respect, I note that UBC has released the portions of the report setting out steps UBC should take to ensure that such an incident does not

²⁰ Applicant's initial submission, page 5.

²¹ Applicant's initial submission, page 2.

²² [1997] O.I.P.C.D. No. 23.

²³ Applicant's reply submission, page 2.

recur. As a general matter, it is doubtful that UBC's accountability will be enhanced in this case by releasing the names of the specific employees.

[29] Second, I note that the impact on UBC's accountability may be different depending on the employee's position and the nature of the work with which the employee is involved. These are all matters which are appropriately taken into account through the application of ss. 22(2) and 22(3). However, the analysis will never reach that stage if s. 22(4)(e) captures information relating to the investigation of specific employment incidents. The Legislature did not intend, as the applicant contends, that s. 22(4)(e) would go this far.

[30] The applicant seems to accept that there may be cases where an employee's privacy would be breached if a public body were to release investigation reports involving certain kinds of allegations, for example, harassment.²⁴ However, if all investigative reports into workplace behaviour fell within s. 22(4)(e), there would be no opportunity to apply the s. 22(2) factors which might favour non-disclosure.

[31] For the reasons set out above, I find that the withheld information does not fall within s. 22(4)(e).

Does the withheld information fall within s. 22(3)(d)?

[32] As noted above, numerous orders have held that personal information relating to a workplace investigation into a specific employment incident is within the scope of s. 22(3)(d).²⁵ On the basis of these cases, UBC argues that the withheld information is within s. 22(3)(d).²⁶

[33] The applicant referred me to numerous cases from other jurisdictions. Many of these cases involve contact information or other information which would not be employment history under the FIPPA. However, some Ontario cases do suggest that, under Ontario's freedom of information legislation, information relating to the investigation of employment-related incidents may not constitute "employment history", especially if they allege improper work-related behaviour.²⁷ These cases, however, are decided under a different statutory scheme.

[34] Like FIPPA's s. 22(2), s. 21(2) of the Ontario *Freedom of Information and Protection of Privacy Act* (the "Ontario Act") sets out factors to be considered in determining whether disclosure of a third party's personal information will be an unreasonable invasion of the third party's privacy. Like FIPPA's s. 22(3), s. 21(3)

²⁴ Applicant's initial submission, page 4.

²⁵ Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order F05-32, [2005] B.C.I.P.C.D. No. 44; Order F08-03, [2007] B.C.I.P.C.D. No. 6.

²⁶ UBC initial submission, paras. 9, 13-20.

²⁷ See, for example, Ontario Order P-1117, [1996] O.I.P.C. No. 49; Ontario Order P-694 (Ontario (Natural Resources) (Re), 1994 CanLII 6616 (ON I.P.C.)); Order M-615, [1995] O.I.P.C. No. 432.

of the Ontario Act sets out circumstances where there is a presumption that disclosure would constitute an unreasonable invasion of the third party's privacy. This includes a presumption regarding employment history. Finally, like FIPPA's s. 22(4), s. 21(4) of the Ontario Act set out circumstances where, notwithstanding s. 21(3), the disclosure of certain information will not be an unreasonable invasion of a third party's privacy.

[35] However, the relevant provisions of the Ontario Act differ in at least one important respect from FIPPA. Under the Ontario Act, a finding that information falls within "employment history" means that it will never be disclosable unless it falls within the specific exceptions set out in s. 21(4) of the Ontario Act.²⁸ In other words, once the presumption against the disclosure of employment history is triggered, there is no consideration of other relevant factors set out in the Ontario Act relating to whether the record should be disclosed. Ontario's *Municipal Freedom of Information and Protection of Privacy Act* contains a similar scheme.

[36] In contrast, a finding that information constitutes employment history under FIPPA leads only to a rebuttable presumption that its disclosure will constitute an unreasonable invasion of third party privacy, thus allowing for the consideration of the factors set out in s. 22(2) of FIPPA.

[37] It is well established that, under FIPPA, reports of investigations into workplace behaviour come within the definition of employment history for the purposes of s. 22(3)(d). To the extent that the Ontario cases are inconsistent with the BC cases, I decline to follow them. The Report outlines the activities of various employees with a view to determining who was responsible for cutting down trees which should not have been cut down. Because the information is contained in a report which examines the behaviour of individual employees and assesses their culpability with respect to workplace actions, I find that it is part of the employment history of the third parties and falls under s. 22(3)(d).

Does the withheld information fall within s. 22(3)(g)?

[38] UBC also argues that the withheld information falls within s. 22(3)(g). Previous orders have held that in order to come within this section, the information must be evaluative of the third party's performance in the workplace.²⁹ UBC argues that the information does include evaluative conclusions about the employees' workplace performance. UBC lists several examples where findings are made about employees making incorrect assumptions and the report draws conclusions about who was accountable for determining the correct property line before cutting down the trees.³⁰

²⁸ *John Doe v. Ontario (Information and Privacy Commissioner)* [1993] O.J. No. 1527.

²⁹ See, for example, Order 01-07, [2001] B.C.I.P.C.D. No. 7.

³⁰ UBC initial submission, paras. 22-26.

[39] The applicant argues that:

[t]he report entails just a dry chronology of facts, with no subjective evaluations on the morality or legality of actions, to invoke section 22(3)(d) here as UBC does is to trivialize the very concept of “personal information.”³¹

[40] Much of the Report is simply a narrative of events. However, as noted above, the final section of the Report, titled “Culpability/Accountability”, does involve an analysis of each employee’s role in the incident being investigated and makes a determination regarding whether each individual was accountable to determine the property line before undertaking or directing work. The evidence of those conducting the investigation is that one of the purposes of the Report was to determine who, if anyone, should be the subject of discipline. Parts of the Report are, therefore, evaluative. I find that this information falls under s. 22(3)(g).

Do the circumstances favour disclosure?

[41] I have found that the withheld information is subject to the presumption set out in s. 22(3)(d), and that its release would be an unreasonable invasion of a third party’s privacy. Parts of the Report are also subject to the presumption set out in s. 22(3)(g). As noted in Order 01-07, at para. 17, an “applicant must, in order to rebut such a s. 22(3) presumption, provide a specific reason—based on evidence as appropriate—to conclude that the presumption has been rebutted.”

[42] The applicant notes that the Report is not stamped confidential or secret and he suggests that it is “perhaps already quasi-public”.³² In his reply submission, he states that the fact that witnesses were advised of the confidentiality of the process is irrelevant.³³ UBC asserts that, pursuant to s. 22(2)(f), it is relevant that the witnesses interviews were conducted in confidence and that the Report has been treated by UBC as being confidential.³⁴

[43] Assurances of confidentiality in the investigation process cannot operate as a veto on disclosure and there can be no absolute guarantee of confidentiality. Nonetheless, confidentiality is a factor to be taken into account.³⁵ In this case, I find that the witness statements which formed the basis of the Report were supplied in confidence and that this is a factor which weighs against disclosure of the personal information.

³¹ Applicant’s initial submission, para. 2. While the applicant made this submission in relation to s. 22(3)(d), it also appears relevant to the s. 22(3)(g) analysis

³² Applicant’s initial submission, page 2.

³³ Applicant’s reply submission, page 1.

³⁴ UBC’s initial submission para. 29; Employee Relations Manager’s affidavit, para. 4; Associate Director’s affidavit, paras. 3 and 4; UBC reply submission, para. 12.

³⁵ Order 01-07, [2001] B.C.I.P.C.D. No. 7, paras. 24-27.

[44] The applicant notes that s. 22(2)(a) provides that it is relevant whether disclosure is desirable for the purpose of subjecting the public body to scrutiny.³⁶ Although the applicant does not make any additional submissions directly on this point, it appears that this is the concern which underlies his statement, set out above, that non-disclosure will interfere with the principle of accountability. Again, the Report's recommendations regarding steps to take to avoid a similar incident have been fully disclosed. I find that, in this case, disclosure of the names of individual employees would not assist in further subjecting UBC's activities to public scrutiny. I find that this factor is therefore neutral in this case.

[45] UBC argues that s. 22(2)(e) and s. 22(2)(g) are relevant factors favouring non-disclosure.³⁷ UBC notes that the employees involved have expressed concern that the release of their names will harm their reputations and that inferences will be drawn that they were subjected to discipline as a result of the investigation. UBC states that the employees will have no way to refute the conclusions in the Report which may be incorrect.³⁸

[46] In response, the applicant notes that there are options of reply for employees. The applicant suggests that it would be open to employees to write letters to the editor, presumably taking issue with the contents of the Report.³⁹ The applicant criticizes the use of "personal affidavits that appear mainly as standardized legal boilerplate written by others."⁴⁰ He states that "it is untenable for officials acting in their official duties" to object that releasing their names would constitute an invasion of privacy.⁴¹

[47] I agree with the applicant that the affidavits of the individual employees could have been more specific about the kind of harm that they are concerned about and why they believe that this harm would be unfair. However, I find that there are at least some legitimate concerns raised in this regard. I do not agree with the applicant's suggestion that FIPPA renders all employees of public bodies without any privacy rights with respect to their workplace actions and the manner in which they discharge their duties.

[48] I have found that ss. 22(3)(d) and (g) apply to the withheld information and so, there is a presumption against disclosure. The relevant circumstances favour withholding the severed information. The applicant has not rebutted the s. 22(3) presumption and, therefore, UBC is required by s. 22(1) to refuse to disclose the severed information.

³⁶ Applicant's initial submission, page 6.

³⁷ UBC initial submission, paras. 28, 30, and 32.

³⁸ UBC's initial submission, para. 28.

³⁹ Applicant's reply submission, page 1.

⁴⁰ Applicant's reply submission, page 2.

⁴¹ Applicant's reply submission, page 2.

4.0 CONCLUSION

[49] For the reasons given above, under s. 58(2)(c), I require UBC to refuse access to the information withheld under s. 22(1) of FIPPA.

February 1, 2008

ORIGINAL SIGNED BY

Catherine Boies Parker
Adjudicator

OIPC File No. F06-29276