



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

Order F10-03

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Jay Fedorak, Adjudicator

February 10, 2010

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Summary: Applicant requested copy of an unsolicited letter to the Ministry about applicant's possible health problem that could affect his driving ability. Ministry released letter to applicant, but severed personal information that would reveal identity of the letter's author. Ministry required to withhold that personal information under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 22(1).

Authorities Considered: **B.C.:** Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 00-18 [2000] B.C.I.P.C.D. No. 21; Order No. 331-1999, [1999] B.C.I.P.C.D. No. 44.

1.0 INTRODUCTION

[1] This Order arises from a request by an applicant for his driving records from the Office of the Superintendent of Motor Vehicles ("OSMV") which operates under the Ministry of Public Safety and Solicitor General ("Ministry"). The Ministry made a decision to withhold some information in the requested records under ss. 15 and 22(1) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The applicant requested a review of the Ministry's decision to withhold information in one of the records under s. 22(1) of FIPPA. Mediation did not resolve the matter and an inquiry was held under Part 5 of FIPPA. The Office of the Information and Privacy Commissioner ("OIPC") provided notice of this inquiry to the applicant and the Ministry.

[2] The Ministry asked the OIPC to invite the third party to make submissions in this inquiry. The third party also contacted the OIPC and the Registrar of Inquiries discussed the matter with them. In the end, the third party decided not to participate.

2.0 ISSUE

[3] The issue in this inquiry is whether the Ministry is required to refuse access to personal information under s. 22(1) of FIPPA.

[4] Under s. 57(2) of FIPPA, the applicant has the burden of proving that release of the requested information would not be an unreasonable invasion of the third party's personal privacy.

3.0 DISCUSSION

[5] **3.1 Record in Dispute**—The record consists of an unsolicited letter that a third party sent to the OSMV alleging that the applicant was suffering from medical conditions that had the potential to affect his ability to drive. The information that the Ministry withheld from the applicant was the name and telephone number of the third party and reasons why they wanted their identity to remain confidential.

[6] **3.2 Harm to Personal Privacy**—The relevant provisions of s. 22 in this case are 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.
- (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

[7] The application of s. 22 in numerous Orders and the principles for its application are well established.¹ I have applied those principles here without repeating them.

[8] Although the applicant has the burden of proof with respect to third-party personal information, his submissions do not specifically address any of the provisions of s. 22. The applicant submits that the third party's allegations about his health are false. He also suggests that the third party might be unfit to drive and that the Ministry should investigate them. The applicant also makes a series of allegations against a former employer of his that have no bearing on this case.

Does the record contain personal information?

[9] The Ministry submits that the information withheld from the applicant is the third party's name, telephone number and other information that could identify the third party.² This is clearly the personal information of the third party.

Is disclosure an unreasonable invasion of privacy?

[10] As none of the provisions of s. 22(3) or s. 22(4) apply to this information, it is necessary to consider all relevant circumstances to determine whether disclosure would be an unreasonable invasion of privacy.

Public scrutiny

[11] The Ministry raises the application of s. 22(2)(a) of FIPPA and states simply that disclosure of the personal information at issue would not be desirable for the purpose of subjecting the Ministry to public scrutiny, without providing specific reasons.³ I agree that disclosing the identity of the third party would not promote the principle of public scrutiny in this case. The third party has no apparent connection to the Ministry. The information the Ministry is withholding does not reveal anything about the Ministry. I can see no reason how the disclosure of the third party's identity would reflect either to the benefit or detriment of the Ministry or enable anyone to draw any conclusions about the performance of the Ministry. Therefore, disclosure would not promote accountability with respect to the Ministry.

Supplied in confidence

[12] The Ministry submits that the third party supplied the information in confidence. The Ministry argues that the indicators of confidentiality that the

¹ See for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56 and Order 00-18 [2000] B.C.I.P.C.D. No. 21.

² Ministry's initial submission, para. 4.06.

³ Ministry's initial submission, para. 4.11.

Commissioner developed in Order No. 331-1999⁴ for the purpose of applying s. 16(1)(b) are applicable for applying s. 22(2)(f) to personal information in this case.⁵ The Ministry argues that the following considerations are relevant:

1. The third party submitted the information voluntarily.
2. The third party specifically requested that the Ministry treat the information as confidential.
3. Given the importance for the Ministry to be able to collect this kind of information, it is reasonable to expect the Ministry to keep it in confidence.

[13] In addition, OSMV has a practice of treating as confidential the unsolicited letters from members of the public about the fitness of a driver to drive. The Ministry has posted on its website the document "When the Driving Ability of Someone Concerns You: Unsolicited Driver Fitness Reports", which contains the following information: "Unsolicited reports are placed on the driver's file but OSMV will not release the report or information supplied by the writer to the driver".⁶

[14] The Ministry also points out that family members, friends and neighbours of drivers frequently submit unsolicited reports. In these cases, the person making the report often has concerns about the consequences of the driver discovering their identity. The Ministry states further:

In the event that the Ministry was compelled to disclose the sources of Unsolicited Reports, the availability of such information would be seriously curtailed and unsafe drivers would be allowed to continue driving.⁷

[15] I can confirm that the information withheld includes reasons why the third party requests that their identity remain confidential. I am persuaded that the letter was supplied in confidence and that this is a relevant consideration in this case favouring withholding the information.

[16] My conclusion is consistent with findings in Order 00-18, a similar case, where an applicant was requesting a copy of an unsolicited letter to the OSMV about the applicant's possible health problem that could affect her driving ability. The conclusion of the Order reads as follows:

As regards the name and address of the author, I find that the Ministry is required by s. 22(1) to withhold that personal information. I have arrived at this conclusion bearing in mind that that personal information was, for the

⁴ [1999] B.C.I.P.C.D. No. 44.

⁵ Ministry's initial submission, para. 4.12.

⁶ Ministry's initial submission, para. 4.15.

⁷ Ministry's initial submission, paras. 4.16; 4.23.

reasons given above, supplied in confidence within the meaning of s. 22(2)(f) of the Act. This circumstance weighs against disclosure of that personal information to the applicant. No other circumstances have been brought to my attention that would favour disclosure of that personal information to the applicant.⁸

Unfairly expose third party to harm

[17] The Ministry suggests that disclosing the information in the record would unfairly expose the third party to harm, other than financial harm. The Ministry provides support for this position with material provided appropriately *in camera*. The *in camera* information persuades me that disclosure of information in the record could unfairly expose the third party to harm and that this is a relevant consideration in this case.

[18] The applicant has failed to prove that disclosure of the personal information at issue would not be an unreasonable invasion of the privacy of the third party. The Ministry has also demonstrated that the relevant considerations in this case favour withholding of the information. Therefore, I find that s. 22(1) of FIPPA applies to the information at issue and the Ministry is required to withhold it.

4.0 CONCLUSION

[19] For the reasons given above, under s. 58 of FIPPA I require the head of the Ministry to withhold the requested information under s. 22(1) of FIPPA.

February 10, 2010

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

OIPC File No. F08-36258

⁸ Order 00-18, [2000] B.C.I.P.C.D. No. 21.