



**F09-06-MS Complaint Letter about Co-worker Not a Law
Enforcement Matter**

In the course of carrying out her duty to monitor a ministry's contractors, an employee of the ministry found out that one of them had written a letter of complaint about her to the ministry's regional manager.

Curious about the contents of the letter, she asked the ministry for a copy of the letter, citing her right of access under the *Freedom of Information and Protection of Privacy Act*. The copy of the letter she received in response to her request revealed the identity of the contractor, but some of the opinions the contractor expressed about the applicant had been severed under section 15(2)(b) of FIPPA.

Section 15(2)(b) authorizes a public body to withhold information from an applicant if two tests are met: the withheld information is in a law enforcement record and the disclosure of the information could reasonably be expected to expose to civil liability the person who authored the record or a person quoted or paraphrased in the record. FIPPA defines "law enforcement" as "policing, including criminal intelligence operations; investigations that lead or could lead to a penalty or sanction being imposed; or proceedings that could lead to a penalty or sanction being imposed".

Normally, complaints containing information about tensions or conflict in the workplace are not law enforcement records, under the FIPPA definition. The ministry did not provide evidence to show that the information was part of a law enforcement record and did not indicate how the disclosure of the contractor's opinions could reasonably be expected to expose the third party (the author of the letter) to civil liability.

Because the opinions being withheld were the personal information of both the third party contractor and the applicant, we also considered the application of section 22 of FIPPA. Section 22(1) requires a public body to deny access to personal information if disclosure of that information would be an unreasonable invasion of a third party's personal privacy. In this case, the ministry needed to show that releasing the opinions expressed about the applicant would be an unreasonable invasion of the contractor's personal privacy. The Commissioner's interpretation of section 22(1) in orders published on the OIPC website indicates that only in rare circumstances would the disclosure of an applicant's personal information cause an unreasonable invasion of a third party's personal privacy.

Under section 22(3)(h) of FIPPA, an unreasonable invasion of a third party's personal privacy is presumed to occur if the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation, or evaluation, character reference or personnel evaluation. The Commissioner has interpreted this type of information to include evaluative information that might be supplied, for example, in a formal performance review or job or academic references. It would not extend to the type of information in the contractor's letter (opinions about a ministry employee's workplace actions or behaviours). Furthermore, even if the contractor's opinions were the type of information contemplated by section 22(3)(h), it is not clear their disclosure would cause an unreasonable invasion of the third party's personal privacy, given the applicant already knew the identity of the third party.

After considering this analysis, the ministry revised its decision and agreed to release the record to the applicant in its entirety.