Order F26-54

THE UNIVERSITY OF BRITISH COLUMBIA

Erika Syrotuck
Adjudicator

June 25, 2026

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Summary: An applicant requested records from The University of British Columbia (University) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). In response, the University identified 700 pages of responsive records. It submitted that some of these records did not relate to the business of the public body under s. 3(5)(b) and therefore should be excluded from the scope of Part 2 of FIPPA. The University withheld some of the remaining information under ss. 13(1) (advice or recommendations), 21(1) (business interests of a third party) and 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator found that s. 3(5)(b) applied to the relevant records and that those records are excluded from the scope of part 2 of FIPPA. The adjudicator found that s. 13(1) applied to some of the information in dispute and that s. 22(1) applied to all of the information in dispute under that exception. However, the adjudicator found that s. 21(1) did not apply to the information in dispute under that provision. The adjudicator ordered the University to disclose some information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 3(5)(b), 13(1), 21(1), 22(1), 22(2), 22(3)(d), 22(4)(e).

INTRODUCTION

[1] An applicant requested that The University of British Columbia (University) provide access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for correspondence involving a named professor at the University (Professor):

1. On the topic of Catholic or Corporation of Catholic Entities Party to the Indian Residential Schools Settlement (CCEPIRSS) involvement with the Indian Residential Schools Settlement Agreement (IRSSA);

2. Between the Professor and the Canadian Broadcasting Corporation (CBC) and;

3. Between the Professor and *The Globe and Mail*.

[2] The University responded to the access applicant's request. It provided 342 pages of records with some information withheld under various exceptions to disclosure (Severed Records). The University identified an additional 358 pages of records but did not provide them to the applicant because they did not relate to the business of the public body under s. 3(5)(b) of FIPPA.

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the University's response.

[4] The applicant confirmed that ss. 15 and 19 are no longer at issue. Mediation did not resolve the remaining issues, and the applicant requested an inquiry.

[5] At the inquiry, the OIPC invited the CBC and the Professor to make submissions as appropriate persons under s. 54(b). The Professor provided a written submission but the CBC did not.

[6] The University requested that some information in its submissions be accepted *in camera*. The Director of Adjudication considered the University's request and gave it permission to provide some information *in camera.* This means that I will consider the *in camera* information privately.

Preliminary issue – expansion of s. 3(5)(b)

[7] In its initial inquiry submissions, the University asserted that s. 3(5)(b) also applied to 24 pages of the Severed Records.[1] It had initially withheld these pages in their entirety under s. 22(1) and continues to assert that this exception applies in the alternative.

[8] The applicant and the Professor did not expressly comment on the University's request to expand the scope of s. 3(5)(b).

[9] While public bodies should make every effort to accurately apply any exclusions or exceptions to disclosure before the inquiry stage starts, I do not find that it would be unfair to expand the scope of s. 3(5)(b) in this case. The parties had notice of the issue and the parties had the opportunity to make submissions on s. 3(5)(b) without any delay to the proceedings. In addition, the

[1] Pages 316-331, 334-338 and 340-342 of the Severed Records.

OIPC has allowed public bodies to expand an exception to disclosure in past inquiries.[2]

[10] For these reasons, I will consider whether the 24 pages of the Severed Records are excluded from Part 2 of FIPPA under s. 3(5)(b).

Preliminary issue – scope of the information at issue

[11] During the inquiry, the applicant confirmed that they are seeking access to the following information only:

- all of the information in dispute under s. 3(5)(b);
- the information on five pages that has been withheld under s. 13(1);[3]
- information on three pages that has been withheld under s. 21(1);[4] and
- the information on five pages that has been withheld under s. 22(1), except for any phone numbers, email addresses or physical addresses.[5]

[12] As a result, this is the only information I will consider in this inquiry. I will not review the University's decision to withhold any other information.

ISSUES

[13] At this inquiry, I must decide:

1. Is the University authorized to withhold information under s. 13(1) of FIPPA?

2. Is the University required to withhold information under ss. 21(1) or 22(1) of FIPPA?

3. Are some of the pages of records excluded from Part 2 of FIPPA under s. 3(5)(b)?

[14] Section 57 sets out the burden of proof in an inquiry. Under s. 57(1), the burden is on the University to prove that the applicant has no right of access under ss. 13(1) and 21(1). However, under s. 57(2), the applicant bears the burden to prove that disclosure would not be an unreasonable invasion of a third party's personal privacy under s. 22(1).

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[2] Order F23-65, 2023 BCIPC 75 (CanLII) at para 8.
[3] Pages 89-95 of the Severed Records.
[4] Pages 204-206 of the Severed Records.
[5] Pages 189, 204, 230, 234 and 259 of the Severed Records.

[15] Section 57 is silent with respect to which party bears the burden of proof when s. 3 is at issue. Past orders have put the burden on the party asserting that records are excluded under s. 3.[6] I will do the same.

DISCUSSION

Background

[16] The University is a post secondary institution in British Columbia, continued as a University under the *University Act*.[7] The University's core mandate is to design, administer and deliver post secondary programs of study to its students.

[17] The Professor was employed at the University's School of Law.

Section 3(5)(b) – record that does not relate to the business of the public body

[18] Section 3(5)(b) says that Part 2 of FIPPA does not apply to a record that does not relate to the business of the public body. If a record falls under this provision, the applicant will not be able to access any part of that record.

[19] Section 3(5)(b) was introduced in 2021 and has only been considered in one previous order of the OIPC. In Order F24-40, the adjudicator provided the following overview of s. 3(5)(b) and its purpose:

> I find ... s. 3(5)(b) [is] intended to distinguish between records that relate to a public body's business and records that are personal in nature. The relevant distinction is … between records related to a public body's business and records related to personal matters that have nothing to do with a public body's business. I also find this interpretation is consistent with the twin purposes of FIPPA which, as previously noted, are to make public bodies more accountable to the public and to protect personal privacy.
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> …
>
> Therefore, considering this definition and the purpose of s. 3(5)(b) which I have found is to exclude records related to personal, non-governmental matters, I find a record does not relate to the business of a public body when it has nothing to do with a public body's mandate, purpose, transactions, operations, programs, policies, procedures, decisions or obligations.[8]

[6] Order F24-40, 2024 BCIPC 48 (CanLII) at para 10.
[7] *University Act*, RSBC 1996, c 468, at s. 3(1)(a).
[8] Order F24-40, 2024 BCIPC 48 (CanLII) at paras 32 and 36.

[20] The University says that s. 3(5)(b) should be interpreted in a way that has the effect of removing all non-governmental communications from the scope of part 2 of FIPPA, including those of a purely personal nature.

[21] The University refers to the purposes of FIPPA as set out in s. 2(1), which include to make public bodies more accountable to the public. The University says that FIPPA was never intended to expose non-government or personal records to a right of public access. Further, it argues that the legislative purposes of access and transparency are in no way furthered by exposing personal and private communications of public servants or by putting a public body to the time and expense of locating, processing and redacting records which are manifestly unrelated to its core functions.

[22] Noting that the adjudicator in Order F24-40 referred to the definition of "government information" in the *Information Management Act*[9] as a useful interpretive aid,[10] the University proposes using s. 47(2) of the *University Act* to describe the "business" of the University. That provision states:

> (1) In this section, "university" means a university named in section 3 (1).
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> (2) A university must, so far as and to the full extent that its resources from time to time permit, do all of the following:
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>> (a) establish and maintain colleges, schools, institutes, faculties, departments, chairs and courses of instruction;
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>> (b) provide instruction in all branches of knowledge;
>>
>> (c) establish facilities for the pursuit of original research in all branches of knowledge;
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>> (d) establish fellowships, scholarships, exhibitions, bursaries, prizes, rewards and pecuniary and other aids to facilitate or encourage proficiency in the subjects taught in the university and original research in all branches of knowledge;
>>
>> (e) provide a program of continuing education in all academic and cultural fields throughout British Columbia;
>>
>> (f) generally, promote and carry on the work of a university in all its branches, through the cooperative effort of the board, senate and other constituent parts of the university.[11]

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[9] *Information Management Act*, SBC 2015, c. 27, s. 1.
[10] Order F24-40, 2024 BCIPC 48 (CanLII) at paras 33 – 35.
[11] *University Act,* RSBC 1996 c. 468, s 47.

[23] The University says that the 382 pages of records in dispute under s. 3(5)(b) are not related to the business of the University. The University says the records are:

- communications related to the Professor's role as legal counsel and lawyer and not to her duties and responsibilities as a University employee (Legal Services Communications);
- communications between the Professor and a former student from a time when the Professor was teaching at another institution; and
- other records, that the University has described *in camera* because of their sensitive and uniquely personal nature.

[24] The Professor says that she has reviewed the University's submissions and agrees with how it has characterized the records in dispute under s. 3(5)(b), specifically that the records in dispute do not relate to the business of the public body.

[25] In response to the University's submission that the *University Act* should define the scope of its business, the applicant refers to the faculty collective agreement which says:

> The academic workload of a faculty member is a combination of self-directed and assigned tasks undertaken in fulfilment of their academic responsibilities in the areas of teaching, scholarly activity, educational leadership, and service to the University and the community as appropriate to the member's stream or rank.[12]

[26] The applicant notes that "service" is also defined in the collective agreement, is rather open-ended, and includes "professional, academic and public service work done to advance the inclusion of all those who have been historically excluded based on gender, race, religion, sexuality, age, disability or economic circumstance."[13]

[27] The applicant also states that it is possible that the University's business and other matters are intertwined.

[28] The applicant questions whether the Professor's correspondence with the media is truly outside the scope of her employment. In reply, the University says that it is unnecessary to respond to this argument because s. 3(5)(b) has not been applied to withhold any research materials or media communications.

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[12] Collective Agreement Between The University of British Columbia and The Faculty Association of The University of British Columbia, July 1 2019 - June 30 2022 Part1, Article 13.01 https://hr.ubc.ca/sites/default/files/documents/UBC%20and%20UBCFA%20Collective%20Agreement_2019-2022.pdf

[13] *Ibid* Part 4, Article 4.05

Analysis and findings – s. 3(5)(b)

[29] With respect to the applicant's concern about personal or other matters becoming intertwined with University business, in my view, s. 3(5)(b) does not apply to information that is intertwined with the public body's business. This aligns with the adjudicator's finding in Order F24-40 that a record does not relate to the business of the public body if it has nothing to do with a public body's mandate, purpose, transactions, operations, programs, policies, procedures, decisions or obligations. In other words, a record that contains information that is intertwined with a public body's business would "relate to the business of the public body."

[30] I will assess whether the records are subject to s. 3(5)(b), organized by the categories identified by the University.

[31] Legal services communications: The University says that the Legal Services Communications relate to the Professor's role as legal counsel and lawyer, not to her duties and responsibilities as a University employee. The University says that, like many members of the School of Law, the Professor was a practicing lawyer and was permitted to engage in the practice of law separate and apart from her employment with the University. The University says that the Professor was not subject to any controls, direction or oversight by the University in carrying out any communications or other actions related to her external legal practice.

[32] The University explains that it consulted with the Professor and her correspondent, and both provided a written objection to disclosure to the University.[14] Some of the information provided to the University is *in camera*. The University says that the Professor and the correspondent explain that all of the communications were sent to and received by the Professor in her capacity as a lawyer and formed part of the legal work she was carrying out with her part-time legal practice.

[33] The Professor says that she held a dual role at the University; as a law professor and as the Academic Director of the Indian Residential School History and Dialogue Centre. In addition to her employment with the University, the Professor says that she was a practicing lawyer and member of the Law Society of British Columbia. The Professor says that her law practice was largely comprised of advising First Nations governments and organizations, as well as other clients on a large range of matters.

[34] The Professor explains that her email address at the University was public facing, and she would receive emails at that address pertaining to her law

[14] Affidavit of the Freedom of Information Specialist, at Exhibits "C" and "D", received partially *in camera.*

practice rather than to her law firm address. The Professor says that, just because she was emailed about a matter relating to residential schools, did not mean that the email was in relation to her role as an Academic Director.

[35] I am persuaded that the records that relate to the Professor's legal practice fall into s. 3(5)(b). I accept that the Professor was a practicing lawyer who carried on a law practice that was separate from her role with the University. The evidence from both the Professor and the correspondent satisfy me that these particular records arose from the Professor's legal practice and not from her role with the University.

[36] <u>Communications with a former student:</u> The University says that these communications are purely personal in nature, arising from the Professor's past employment with another institution.

[37] The Professor says that these comprise communications of a personal nature that she exchanged with a former student during a period when she worked as a law professor at another educational institution. The Professor says that these communications have nothing to do with her employment at the University or its programs or activities.

[38] I accept that these records do not relate to the business of the University. I accept that they are personal in nature; no connection to University programs or activities is apparent to me.

[39] My finding should not be taken to mean that communications with a former student can never "relate to the business of the public body." Rather, in my view, it is significant here that the student was a student of the Professor's at an institution that is not the University and the communications themselves have no clear connection to the University. In making this finding, I am mindful that s. 3(5)(b) includes the definite article "the" qualifying "public body."

[40] <u>Other records:</u> The University says that these records are sensitive and uniquely personal to the Professor and it has provided evidence explaining their nature *in camera.* The University also says that the nature and sensitivity of these records is clear from their content and the current context. The University says that these records do not relate to any University program or activity.

[41] I have reviewed these records and am satisfied that they do not relate to the business of the University. Rather, they relate to the Professor in her personal capacity. I cannot say more without revealing the *in camera* information or the information in dispute.

Conclusion – s. 3(5)(b)

[42] In conclusion, I find that the records in dispute under s. 3(5)(b) do not relate to the business of the University. Therefore, these records are not subject to Part 2 of FIPPA.

Section 13(1) – advice or recommendations

[43] Under s. 13(1), a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister. The purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.[15]

[44] The information in dispute under s. 13(1) is contained in six pages of emails.[16] The withheld information on two of the pages is a draft article that the Professor wrote and the balance of the information is parts of an email exchange.

[45] The first step in the s. 13(1) analysis is to determine whether the information in dispute is "advice or recommendations developed by or for a public body or a minister." If so, the next step is to determine whether any of the circumstances in ss. 13(2) or (3) apply. These provisions exclude some types of records and/or information from s. 13(1). This means that, if information falls within ss. 13(2) or (3) the public body may not refuse to disclose it, even if it is "advice" or "recommendations" within the meaning of s. 13(1).

Does the information reveal "advice" or "recommendations"?

[46] "Recommendations" include material relating to a suggested course of action that will ultimately be accepted or rejected by the person being advised.[17] The term "advice" is broader than "recommendations"[18] and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.[19] Section 13(1) also encompasses information that would allow an individual to make accurate inferences about any advice or recommendations.[20]

[47] Past orders have repeatedly said that information is not advice or recommendations merely because it is a draft.[21] However, past orders have also

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[15] *Insurance Corporation of British Columbia v. Automotive Retailers Association* 2013 BCSC 2025 at para 52.
[16] Pages 89-90, 92-95 of the Severed Records.
[17] *John Doe v Ontario (Finance)* 2014 SCC 36 at para 23.
[18] *Ibid* at para 24.
[19] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 at para 113.
[20] Order F19-28, 2019 BCIPC 30 (CanLII) at para 14.
[21] Order F18-41, 2018 BCIPC 44 (CanLII) at para 29.

acknowledged that comparing a draft version and final version may, in some cases, reveal advice or recommendations by inference.[22]

[48] The University says that the information comprises editing suggestions and recommendations on the drafting of the article that the Professor prepared for publication.

[49] The applicant says that s. 13(1) should not apply because the information at issue is not internal deliberations, rather the communications involve a national newspaper. The applicant also questions whether the Professor was truly free to accept or reject the editor's suggestions. The applicant suggests that Professor may have felt she needed to accept the editor's suggestions to ensure the piece would be published.

[50] In my view, the information in dispute is, for the most part, recommendations developed by or for a public body.

[51] First, the fact that these communications involve a national newspaper does not mean that s. 13(1) cannot apply. Section 13(1) can apply to recommendations or advice developed either by *or* for a public body. There is no requirement that the advice or recommendations be exclusively internal.

[52] The information in dispute is a back-and-forth between a representative at a news outlet (presumably a journalist or editor) and the Professor about an article that the Professor wrote. More specifically, some of the information is editorial comments embedded in the draft article. The remaining information is parts of an email exchange about the draft article.

[53] In my view, the editorial comments and the parts of the email exchange would reveal recommendations within the meaning of s. 13(1). I am satisfied that they would reveal the journalist's suggestions about what to remove or add. I am also satisfied that those suggestions could have been accepted or rejected by the Professor. On my review, the disclosed information shows that the Professor accepted some but not all of the suggestions.[23]

[54] I have also considered whether disclosing the remaining parts of the draft would reveal advice or recommendations. Except for a small amount of information, in my view, they would. Due to the nature of the recommendations and information in the records that has been disclosed about them, I believe it would be possible to infer the journalist's recommendations if the remainder of the draft were disclosed. For this reason, I find that s. 13(1) applies to most of the draft article. However, I find that a small amount of information can be severed without revealing any advice or recommendations.

[22] *Ibid.*
[23] Disclosed information on pages 92, 93 and 95 of the Severed Records.

Sections 13(2) and (3)

[55] Section 13(2) says that a public body must not refuse to disclose the types of records or information set out in ss. 13(2)(a) through (n). Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years.

[56] None of the circumstances in s. 13(2) apply. In addition, the information in dispute is not more than 10 years old, so s. 13(3) does not apply.

Discretion, s. 13

[57] Section 13(1) is a discretionary exception to disclosure. This means that public bodies are authorized, but not required, to withhold advice or recommendations under this provision.

[58] A public body must properly exercise its discretion. A public body has failed to properly exercise its discretion where "the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or, the decision failed to take into account relevant considerations."[24]

[59] Where a public body has failed to properly exercise its discretion, the Commissioner can order it to do so.

[60] The applicant says that the University failed to consider whether the decision to which the advice or recommendations relates has already been made. The applicant says that the article in question is nearly five years old, and therefore any decisions about its editing and publication have already been made.

[61] The University says that the evidence establishes that the University properly used its discretion by considering relevant factors. It says that its evidence demonstrates that factors including age, content and sensitivity and the need to facilitate a candid exchange of ideas and opinions were considered. The University says that the fact that the article may have been published in its final form does not diminish the relevance of the factors that the University considered.

[62] While the University did not explicitly state that it considered the fact that the article has already been published, it did clearly identify the age of the record as a factor. As the applicant's submissions suggest, the fact that the article was published five years ago is closely tied to the fact that any editorial decisions were made by the time of publication. In other words, it seems to me that the

[24] *John Doe v Ontario (Finance)* 2014 SCC 36 (CanLII) at para 52.

University did consider that factor, albeit described somewhat differently. In this particular case, I am not persuaded that the University failed to exercise its discretion fairly.

Conclusion - s. 13

[63] I find that s. 13(1) applies to all but a small amount of the information in dispute under s. 13.

Section 21(1) – harm to third party business interests

[64] Section 21(1) requires the head of a public body to refuse to disclose to an applicant information that could reasonably be expected to harm the business interests of a third party.

[65] Section 21(1) reads as follows:

21 (1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[66] The burden is on the University to show that all three of (a), (b) and (c) apply to the information in dispute.

[67] The information in dispute is part of an email forwarded from a CBC journalist to the Professor.[25]

[68] In this case, I will address s. 21(1)(b) first.

Section 21(1)(b) – supplied in confidence

[69] Section 21(1)(b) has two parts. First, the information must be "supplied" and second, the information must be supplied implicitly or explicitly, in confidence.

[70] Beginning with the confidentiality requirement, no party is asserting that the information at issue was supplied explicitly in confidence and nothing in the record itself indicates to me that it was. I find that it was not supplied explicitly in confidence.

[71] With respect to whether information was supplied implicitly in confidence, past orders have looked at a number of factors, including whether the information was:

1. communicated to the public body on the basis that it was confidential and that it was to be kept confidential;
2. treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the public body;
3. not otherwise disclosed or available from sources to which the public has access;
4. prepared for a purpose which would not entail disclosure.[26]

[72] The University says that it can reasonably be assumed that the journalist understood and believed that [they were] collaborating with the Professor on an implicitly confidential basis.[27]

[73] The applicant says that nothing in the records explicitly indicates that the redacted material was supplied in confidence or on an exclusive basis. Further,

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[25] Pages 204-206 of the Severed Records.
[26] Order 01-36, 2001 CanLII 21590 (BC IPC) at para 26.
[27] The applicant says that the University's arguments seem to be in reference to a different record, also withheld under s. 21 but not in dispute in this inquiry. The University confirmed that its arguments do apply to this record.

the applicant submits that the unredacted portion of the record indicates that the journalist was "hastily forwarding something he has not fully read or digested, not that he has made a considered decision to share sensitive information in confidence."[28]

[74] I am not persuaded that the email was shared implicitly in confidence. I take the applicant's point that the journalist's comments do not support the University's position that the communication was implicitly confidential. When looking at the four factors above, there is simply not enough evidence to determine that any of them indicate that the communication was intended to be confidential. For these reasons, I am not satisfied that the communication was implicitly confidential within the meaning of s. 21(1)(b) at the time it was supplied.

[75] In short, I find that the University has not established that s. 21(1)(b) applies. Since all parts of the s. 21(1) test must be satisfied in order for this exception to apply, the University's claim that s. 21(1) applies to the information in dispute fails. I do not need to consider the other parts of the analysis.

Section 22 – unreasonable invasion of a third party's personal privacy

[76] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. As mentioned above, the burden is on the applicant to show that the disclosure would not be an unreasonable invasion.

[77] The only information in dispute under s. 22(1) appears in five pages of records.[29]

[78] The analysis under s. 22(1) involves four steps.

Personal Information

[79] The first step in the s. 22(1) analysis is to determine whether the information in dispute is "personal information" within the meaning of FIPPA.

[80] Schedule 1 of FIPPA says that "personal information" means recorded information about an identifiable individual other than contact information. Information is about an identifiable individual when it is reasonably capable of identifying an individual alone or when combined with other sources of information.[30]

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[28] Applicant's submission, para 58.
[29] Pages 189, 204, 230, 234 and 259 of the Severed Records.
[30] Order F18-11, 2018 BCIPC 14 (CanLII) at para 32.

[81] FIPPA says that "contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual. Past OIPC orders have repeatedly said that whether information is "contact information" depends on the context in which it appears.[31]

[82] I am satisfied that the information that I am considering under s. 22(1) is personal information because it is about identifiable individuals. Nothing indicates to me that the purpose of the information in the records is to enable an individual to be contacted at a place of business, so it is not contact information.

Section 22(4) – not an unreasonable invasion of privacy

[83] The next step in the s. 22 analysis is to consider s. 22(4). Section 22(4) sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If any of the circumstances in s. 22(4) apply, the public body may not withhold the personal information under s. 22(1).

[84] The University says that none of the circumstances in s. 22(4) apply.

[85] The applicant speculates that the information in dispute is the name of a specific individual. If the information in dispute is about this individual, the applicant says that s. 22(4)(e) could apply because the individual is a member of a regulated profession. Section 22(4)(e) says that disclosure of personal information about a 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 is not an unreasonable invasion of a third party's personal privacy.

[86] I cannot confirm or deny the applicant's suspicions without revealing details about the information in dispute. However, based on my own review of the information, I find that none of the circumstances in s. 22(4), including s. 22(4)(e) apply to it.

Section 22(3) – disclosure presumed to be an unreasonable invasion of personal privacy

[87] The next step in the s. 22 analysis is to consider whether any circumstances in s. 22(3) apply. Section 22(3) sets out circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

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[31] Order F22-62, 2022 BCIPC 70 (CanLII) at para 18; Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

[88] No party specifically addressed s. 22(3) in relation to the information in dispute.

[89] Section 22(3)(d) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to employment, occupational or educational history. In my view, a small amount of information is a third party's employment history within the meaning of s. 22(3)(d) because it describes where a third party works.[32]

[90] In my view, no presumptions under s. 22(3) apply to any other parts of the information in dispute.

Section 22(2) – relevant circumstances

[91] The final step in the s. 22(1) analysis is to consider all the relevant circumstances, including those listed in s. 22(2)(a) through (i) to determine whether disclosure is an unreasonable invasion of a third party's personal privacy.

[92] None of the parties specifically addressed any of the circumstances in s. 22(2) in relation to the information in dispute.

[93] The applicant says that the person he speculates is named in the information in dispute has been disclosed in federal access to information releases. The applicant also says that this individual is an activist who, by his own account, has played a key role in shaping media coverage. The applicant's submissions include hyperlinks to news articles where this individual has been named. The applicant says that this person's activities are public knowledge and that should weigh in favour of disclosure. The applicant sets out some circumstantial evidence that he says supports his speculation that this individual is named in the information in dispute.

[94] In reply, the University says that whether individuals are politically active does not deprive them of their right to privacy in respect of their private communications. The University also submits that the communications at issue are private communications with limited distribution to two or three parties.

[95] I find that disclosure would be an unreasonable invasion of a third party's personal privacy, particularly for the information that is about a third party's employment history. In addition, I am not persuaded that the personal information that would be revealed through disclosure of the information in dispute is publicly known. Therefore, I find that this is not a circumstance weighing in favour of

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[32] For clarity, the third party does not work for a "public body" as defined in FIPPA and so s. 22(4)(e) does not apply.

disclosing the personal information in dispute in the records. I cannot elaborate further without revealing the information in dispute.

Conclusion s. 22(1)

[96] I find that s. 22(1) applies to the personal information in dispute.

CONCLUSION

[97] For the reasons above, I make the following orders under s. 58 of FIPPA:

1. I confirm, in part, the University's decision to refuse access to the information in dispute under s. 13(1). I require the University to give the applicant access to the information that I have highlighted in orange in page 89 of a copy of the Severed Records given to the University along with this order.

2. As I have found that the University is not authorized or required to refuse access to the information in dispute under s. 21(1), I require the University to give the applicant access to the information that I have highlighted in orange on pages 204-206 of a copy of the Severed Records given to the University along with this order.

3. I require the University to refuse access to the information in dispute on pages 189, 204, 230, 234 and 259 of the Severed Records because disclosure would be an unreasonable invasion of a third party's personal privacy under s. 22(1).

4. The public body must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the pages described above at items 1 and 2.

[98] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **August 10, 2026**.

June 25, 2026

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

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