



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

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Order F14-06

**BC PAVILION CORPORATION (“PavCo”)**

Vaughan L. Barrett  
Adjudicator

February 24, 2014

CanLII Cite: 2014 BCIPC No. 7  
Quicklaw Cite: [2014] B.C.I.P.C.D. No. 7

**Summary:** The applicant requested copies of all resignation letters received by PavCo during the September 2011 to September 2012 operating year. PavCo claimed that it was required under s. 22(1) of FIPPA to refuse disclosure of the letters because they contain personal information that relates to employment, occupational or educational history and disclosure would be an unreasonable invasion of third party personal privacy. PavCo correctly denied the applicant access to the personal information and it must be severed from the remaining portions of the record.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 4(2); 22(1); 22(2); 22(3)(d); 22(4); 57(2).

**Authorities Considered: B.C.:** Order 01-15, 2001 CanLII 21569; Order 01-53, 2001 CanLII 21607; Order F11-22, 2011 BCIPC 28 (CanLII); Order F10-37, 2010 BCIPC 55 (CanLII); Order 01-18, 2001 CanLII 21572; Decision F07-03, 2007 CanLII 30393; Order No. 106-1996, [1996] B.C.I.P.C.D. No. 32; Order 00-48, 2000 CanLII 14413; Order F06-14, 2006 CanLII 25574.

**INTRODUCTION**

[1] The applicant filed a request under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) with the BC Pavilion Corporation (“PavCo”) for copies of all letters of resignation sent to, received or reviewed by PavCo from September 2011 to September 2012.

[2] PavCo identified the resignation letters of four of its previous board members as responsive to the applicant's request and held that it was required under s. 22(3)(d) of FIPPA to refuse their disclosure.

[3] The applicant requested that the Office of the Information and Privacy Commissioner ("OIPC") review PavCo's decision. Mediation failed to resolve the dispute and the matter proceeded to a written inquiry under Part 5 of FIPPA.

## ISSUE

[4] Is PavCo required, under s. 22(1) of FIPPA, to refuse disclosure of the requested information?

[5] Section 57(2) of FIPPA imposes the burden on the applicant to prove that disclosure of personal information would not be an unreasonable invasion of third-party privacy under s. 22(1).

## DISCUSSION

[6] **Background**—PavCo is a crown corporation of the Ministry of Transportation and Infrastructure<sup>1</sup> and is responsible for the operations of two of British Columbia's largest public event venues, BC Place Stadium and the Vancouver Convention Centre. Its chair and board of directors are appointed by the Province of British Columbia.

[7] On September 17, 2012, the applicant requested that PavCo provide him with copies of all letters of resignation it had received in the preceding year.

[8] PavCo responded that it was refusing disclosure under s. 22(3)(d) because the requested letters contain personal information about the employment and occupational history of third parties. Therefore, disclosure is presumed to be an unreasonable invasion of their personal privacy.

[9] **Record at Issue**—The four resignation letters requested by the applicant constitute the record in this inquiry. The letters confirm that the board members tendered their resignations and offer brief explanations for those resignations.

[10] **Preliminary Issue**—PavCo submits that the applicant's request represents an abuse of process because it is one of many requests he filed over a short period of time for substantially the same information. PavCo adds that the applicant's acquiescence regarding opinions previously offered by the OIPC's investigator on the matter should be interpreted as meaning the issue has been resolved.

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<sup>1</sup> At the time of the applicant's request PavCo was under the Ministry of Energy, Mines and Natural Gas.

[11] Past orders and decisions of the OIPC have stated that parties may raise new issues at the inquiry stage only if permitted to do so. In this case there is no reference in the Notice of Inquiry or in the investigator's Fact Report to PavCo having claimed abuse of process during the mediation or investigative stages. As well, PavCo has not asked permission prior to or during this inquiry to raise this issue. Nor has it provided explanation as to why it did not raise the issue until its initial submission. If a public body believes an applicant's request to be repetitious, systematic, frivolous or vexatious it may seek relief under s. 43 of FIPPA. PavCo has not done so. Under the circumstances, including the fact that the applicant was not given notice of the abuse of process claim and the opportunity to address it in his initial submissions, I have decided not to permit PavCo to raise abuse of process in this inquiry.<sup>2</sup>

[12] **Disclosure Harmful to Personal Privacy**—The relevant portions of s. 22 of FIPPA read as follows:

- 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.
- 22(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,
  - (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
  - (c) the personal information is relevant to a fair determination of the applicant's rights,
  - (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,
  - (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,
  - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

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<sup>2</sup> See for example Order F11-22, 2011 BCIPC 28 (CanLII) at para. 9; Order F10-37, 2010 BCIPC 55 (CanLII) at para.10; Order 01-18, 2001 CanLII 21572 at para. 6; Decision F07-03, 2007 CanLII 30393 at para. 6; Order No. 106-1996, [1996] B.C.I.P.C.D. No. 32 at para. 14.

- (i) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.
- 22(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, ...

[13] Previous orders provide authoritative guidance on what public bodies must consider in determining whether they are prohibited from disclosing requested information under s. 22(1) of FIPPA. Order 01-53 states:

1. First the public body must determine if the information in dispute is personal information.
2. If so, it must consider whether the information falls within the parameters of s. 22(4), in which case disclosure is not an unreasonable invasion of third-party personal privacy and s. 22(1) would not apply.
3. If s. 22(4) does not apply, the public body must determine whether the information falls within s. 22(3), in which case disclosure is *presumed* to be an unreasonable invasion of third-party privacy.
4. If any of the presumptions in s. 22(3) apply it is necessary to consider whether or not they have been rebutted by considering all relevant circumstances, including those listed in s. 22(2).<sup>3</sup>

[14] I adopt this approach here and apply it to the circumstances in this case.

*Is the requested information personal information?*

[15] FIPPA defines "personal information" as recorded information about an identifiable individual other than contact information.<sup>4</sup> 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.<sup>5</sup>

<sup>3</sup> Order 01-53, 2001 CanLII 21607 at paras. 22 to 24.

<sup>4</sup> Schedule 1 of FIPPA.

<sup>5</sup> *Ibid.*

[16] The letters requested contain information about the individual member's identity, their reasons for resigning and their personal feelings about their experience working with PavCo. I am satisfied that these portions of the letters are recorded information about an identifiable individual and qualify as personal information under FIPPA. However, despite PavCo's argument that the resignation letters "in their entirety constitute personal information",<sup>6</sup> I conclude that the dates of the letters and the contact details of the recipient at his place of work (which is the same for each letter) is not personal information as defined by FIPPA.

*Does s. 22(4) apply?*

[17] Section 22(4) provides a list of circumstances under which the release of personal information would not constitute an unreasonable invasion of a third party's personal privacy. The applicant makes no submissions on this section. PavCo provides comment on each factor listed under s. 22(4) to support its position that none of the criteria are applicable.<sup>7</sup> Having considered those arguments and the provisions of s. 24(4). I am satisfied that the section does not apply.

*Applicability of s. 22(3)(d)*

[18] Next I will consider whether any of the presumptions in s. 22(3) apply. PavCo argues that the information requested is personal information that relates to the employment, occupational or educational history of third parties and thus its disclosure would constitute an unreasonable invasion of those parties' privacy under s. 22(3)(d). Previous Orders have held that "employment history" includes information about a person's "reasons for leaving a job"<sup>8</sup> and that personal information in resignation letters falls under s. 22(3)(d).<sup>9</sup>

[19] The applicant claims that at least two of the board members who resigned were not "employees" of PavCo but were "appointees" of the government. I infer from this that the applicant believes s. 22(3)(d) does not apply to these two individuals. I do not agree. PavCo pays director's fees to each board member which is considered employment income by Canada Revenue Agency.<sup>10</sup> It also holds personnel files on each board member, which are treated as employee personnel files.<sup>11</sup> Thus I consider their resignations from the board to be part of their "employment history". Moreover, previous orders have held official

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<sup>6</sup> PavCo Initial Submission at para. 35.

<sup>7</sup> *Ibid* at para. 37.

<sup>8</sup> Order F01-15, 2001 CanLII 21569 at para. 41.

<sup>9</sup> See for example Orders 00-48, 2000 CanLII 14413 at p. 9, para.6 and F06-14, 2006 CanLII 25574 at para. 20.

<sup>10</sup> Affidavit of Alexandra Wagner at para. 5.

<sup>11</sup> *Ibid* at para. 6.

appointments of the kind at issue here to be part of a person's "occupational history".<sup>12</sup>

[20] I am satisfied that the personal information of the four board members relates to their employment or occupational history and that its disclosure is presumed to be an unreasonable invasion of their personal privacy.

*Has the presumption been rebutted by relevant circumstances?*

[21] My consideration of the relevant circumstances included careful review of the parties' submissions and the factors listed under s. 22(2). The applicant submits that resignation letters do not contain "sensitive information"<sup>13</sup> such as personal banking or medical information so should not be shielded from disclosure. I do not find this submission persuasive because FIPPA identifies employment or occupational history as sufficiently sensitive such that its disclosure is presumed to be an unreasonable invasion of privacy. The presumption is not rebutted by comparing it to medical history whose disclosure is also presumed to be an unreasonable invasion of privacy. For this reason I am not persuaded by the applicant's submission on this point.

[22] PavCo submits that the circumstances referred to in ss. 22(2)(a), (b), (c), (d) and (i), that might serve to rebut the presumption against disclosure, do not apply.<sup>14</sup> It also argues that s. 22(2)(f) weighs in favour of non-disclosure in that the authors of the letters were consulted and each confirmed that they provided the letters in confidence.<sup>15</sup>

[23] The applicant submits that PavCo offers no evidence that it consulted with the authors of the letters seeking their permission to disclose the letters' contents.<sup>16</sup>

[24] I accept PavCo's affidavit evidence as satisfactorily establishing that the authors of the resignation letters were contacted and that they did not consent to disclosure. I also agree with PavCo's arguments that those parts of s. 22(2) that favour disclosure do not apply to the circumstances of this inquiry. Moreover, although there is nothing in the letters that specifically confirms they were provided in "confidence", I conclude that the content of the letters themselves and the authors' subsequent confirmation of their expectations of confidentiality favours non-disclosure.

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<sup>12</sup> Order F06-14, 2006 CanLII 25574 at para. 20.

<sup>13</sup> Applicant's Initial Submission at para. 8.

<sup>14</sup> PavCo Initial Submission at para. 42.

<sup>15</sup> Affidavit of Alexandra Wagner sworn May 21, 2013, at para. 10(a).

<sup>16</sup> Applicant's Reply Submission at para. 3.

[25] In favour of disclosure of the names of three of the officials is that their resignations were previously made public either by news release or by removal of their names from PavCo's website (no explanations for those removals were offered). Although I have no evidence that the fourth member's resignation was publicized, the fact that her tenure was connected to a public crown corporation favours disclosure of her name. This reasoning does not apply to the balance of the information because the reasons for the resignations were not publicized and it is of course the reasons that the applicant seeks to find through his access request.

[26] Therefore, having considered all of the relevant circumstances I conclude that, with the exception of the names of the Board members, the applicant has not rebutted the presumption that disclosure of the balance of the withheld information would be an unreasonable invasion of their privacy.

## **CONCLUSION**

[27] For all of the above reasons and with regard to the exception noted, I conclude that disclosure of the personal information would be an unreasonable invasion of third party privacy. I have highlighted in yellow, in a copy of the record that will accompany PavCo's copy of this order, the personal information that PavCo must refuse to disclose under s. 22(1) of FIPPA.

## **ORDER**

[28] Under s. 58 of FIPPA, I order the BC Pavilion Corporation to:

1. Refuse access under s. 22(1) to the personal information highlighted in yellow in the copy of the records that accompanies PavCo's copy of this Order.
2. On or before **April 7, 2014**, provide the applicant with a copy of the records, severed in the manner indicated in para. 1. above, and concurrently send me a copy of its cover letter to the applicant, together with a copy of the records provided to the applicant.

February 24, 2014

## **ORIGINAL SIGNED BY**

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Vaughan Barrett, Adjudicator

OIPC File No: F12-51500