



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F14-12

VANCOUVER COASTAL HEALTH AUTHORITY

Hamish Flanagan
Adjudicator

May 15, 2014

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Summary: The applicant requested information relating to paternity testing conducted at Vancouver General Hospital. Vancouver Coastal Health Authority withheld some records under s. 3(1)(c), s. 14, s. 15(1)(l) and s. 22 of FIPPA. The Adjudicator found that VCHA was authorized to withhold the records withheld under ss. 3(1)(c) and 14 and was required to withhold some records under s. 22 FIPPA. The remaining records must be disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 3(1)(c), 14, 15(1)(l) and 22.

Authorities Considered: B.C.: Order 01-43, 2001 CanLII 21597; Decision F06-06, 2006 CanLII 32975; Order F13-07, 2013 BCIPC 8 (CanLII); Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order F07-15, 2007 CanLII 35476; Order F13-09, 2013 BCIPC 10 (CanLII); Order F12-08, 2012 BCIPC 12 (CanLII); Order 01-37, 2001 CanLII 21591; Order F13-12, 2012 BCIPC 18 (CanLII); Order F07-04, 2007 CanLII 9595 (BCIPC), Order F14-10, 2014 BCIPC No. 12 (CanLII).

Cases Considered: *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665; *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875; *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773; *R. v. B.*, 1995 CanLII 2007 (BCSC); *Canada v. Solosky*, [1980] 1 S.C.R. 82.

INTRODUCTION

[1] This inquiry relates to a request by the applicant for all information related to paternity testing for the applicant's child conducted by Vancouver General Hospital. Vancouver Coastal Health Authority ("VCHA") released some information to the applicant but withheld some information on the basis that:

1. the records are outside the scope of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") under s. 3(1)(c) because they were created for and relate to the functions of an officer of the Legislature;
2. disclosure could reasonably be expected to harm the security of a system under s. 15 of FIPPA;
3. the information is subject to solicitor-client privilege under s. 14 of FIPPA;
or
4. disclosure would be an unreasonable invasion of the privacy of third parties within the meaning of s. 22 of the FIPPA.

[2] The applicant requested the Office of the Information and Privacy Commissioner ("OIPC") review VCHA's decision to withhold the information and VCHA subsequently released more information from the records. However, OIPC mediation did not resolve the remaining issues, and this matter proceeded to an inquiry under Part 5 of FIPPA.

ISSUES

[3] The issues in dispute are whether VCHA is:

- 1) entitled to withhold some of the records because they were created for and relate to the functions of an officer of the Legislature and therefore are outside the scope of FIPPA under s. 3(1)(c);
- 2) authorized to withhold information in two documents because disclosure could reasonably be expected to harm the security of a system under s. 15(1)(l) of FIPPA;
- 3) authorized to withhold information in four documents it claims are subject to solicitor-client privilege under s. 14 of FIPPA;
- 4) required to withhold some information because disclosure would be an unreasonable invasion of a third party's personal privacy within the meaning of s. 22 of FIPPA.

[4] Section 57(2) of FIPPA places the burden on the applicant to establish that disclosure of any personal information would not be an unreasonable invasion of a third party's personal privacy under s. 22 of FIPPA. However, VCHA has the burden of proof to establish that it is authorized to withhold the requested information for the other three issues.¹

DISCUSSION

Information in Dispute

[5] The information comprises records relating to paternity testing for the applicant's child conducted at Vancouver General Hospital, and subsequent disputes about the accuracy of the paternity test results.

Preliminary Issue

[6] The applicant's submission contains numerous references to rules of court and related legal authorities about the rights of parties to litigation to access documents. FIPPA does not limit the information available by law to a party to a proceeding. However, the rights of a party to litigation to access records are not relevant to the issues in this inquiry, which concern the applicant's right to access records under FIPPA.

Records Outside Scope of FIPPA – s. 3(1)(c)

[7] VCHA submits that s. 3(1)(c) applies to two records comprising of correspondence between the Ombudsperson and VCHA. The applicant submits that s. 3(1)(c) is not relevant to her request for records related to paternity testing because the paternity test records were not created for an officer of the Legislature.

[8] Under s. 3(1)(c), FIPPA does not apply to records when:²

- 1) an "officer of the Legislature" is involved; and
- 2) the record was either:
 - a. created by or for the officer of the Legislature; or
 - b. is in the custody or control of the officer of the Legislature; and
- 3) the record relates to the exercise of the officer's functions under an Act.

¹ Section 57(1) of FIPPA.

² Order 01-43, 2001 CanLII 21597; Decision F06-06, 2006 CanLII 32975, at para. 5.

[9] The records involve an “officer of the Legislature” as defined in Schedule 1 of FIPPA, who in this case is the Ombudsperson, because they comprise correspondence directly related to an investigation by the Ombudsperson.

[10] The first record was created by the Ombudsperson, and the second was created for the Ombudsperson. The records relate to the Ombudsperson’s functions, namely the investigation of a complaint made to the Ombudsperson under the *Ombudsperson Act*.

[11] I find that the two records VCHA withheld under s. 3(1)(c) meet the three requirements of that section, so they are excluded from the scope of FIPPA.

Harm the security of a system – s. 15(1)(l)

[12] VCHA submits that s. 15(1)(l) applies to information in two records namely:

- the system username of a VCHA employee;
- codes used by hospital staff to communicate the nature of particular emergency events in the hospital.

[13] The relevant portions of s. 15(1)(l) of FIPPA read as follows:

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

- (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[14] The applicant submits that as her request is merely for provision of paternity test records it could not possibly cause the harm referred to in s. 15(1)(l).

[15] The standard of proof applicable to harms-based exceptions like s. 15 is whether disclosure of the information could reasonably be expected to cause the specific harm.³ Although there is no need to establish certainty of harm, it is not sufficient to rely on speculation.⁴ In Order F07-15, former Commissioner

³ Order F13-07, 2013 BCIPC 8 (CanLII).

⁴ Order 00-10, [2000] B.C.I.P.C.D. No. 11, at p.10.

Loukidelis outlined the evidentiary requirements to establish a reasonable expectation of harm:

...there must be a confident and objective evidentiary basis for concluding that disclosure of the information could reasonably be expected to result in harm... Referring to language used by the Supreme Court of Canada in an access to information case, I have said 'there must be a clear and direct connection between disclosure of specific information and the harm that is alleged'.⁵

[16] Further, in *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*,⁶ Bracken, J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm, and that the burden rests with the public body to establish that the disclosure of the information in question could result in the identified harm.

[17] VCHA argues the system username it withheld under s. 15(1)(l) is one component for gaining access to a computer network containing sensitive personal information. VCHA is concerned about harm that would occur if access to its computer system occurred and sensitive information was released due to disclosure of the username. It concedes that the security concern is "somewhat speculative",⁷ but argues that the information is of no informational value to the applicant and therefore a lower threshold for establishing the exception should suffice.

[18] In my view, VCHA's security concern is speculative. Access to the employee's password and to a device that enables access to VCHA's computer network would be required to gain access to the VCHA computer system. Some additional expertise would then be required to use VCHA software to gain access to personal information. While it is preferable for employees to keep their system login secret, the additional steps to gaining access I mentioned above, among others, generally mean the risk of access to a computer system from disclosure of a system username is minimal. I do not accept that VCHA has met its burden to establish that it may withhold the employee's system username because disclosure could reasonably be expected to cause the harm of unauthorized access to the VCHA computer system.

[19] VCHA has also withheld a record⁸ that contains a hospital emergency code. Emergency codes are used by hospital staff for efficiently reporting and describing incidents. VCHA says releasing the code would cause harm by

⁵ Order F07-15, 2007 CanLII 35476 at para. 17, referring to *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773.

⁶ 2012 BCSC 875, at para. 43.

⁷ Initial submissions at para. 34.

⁸ At p. 282 of the records.

preventing staff from being able to communicate concerns to fellow staff without alarming patients and visitors.

[20] Hospital emergency codes in BC are prescribed by the Ministry of Health and are a matter of public record. Given this, I am not satisfied that disclosing a hospital emergency code could reasonably be expected to cause harm under s. 15(1)(l). The inquiry materials do not include any evidence or submissions explaining VCHA's reasons for withholding the remaining information in this record under s. 15(1)(l), so I find that s. 15(1)(l) does not apply to this information.

[21] In summary, I find s. 15(1)(l) does not apply to any of the information withheld from the records.

Legal Advice – s. 14

[22] Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. This provision encompasses both legal advice privilege and litigation privilege.⁹ VCHA are relying on legal advice privilege for the information in the four documents they are withholding.

[23] For legal advice privilege to apply, the following conditions must be satisfied:

- 1) there must be a communication, whether oral or written;
- 2) the communication must be confidential;
- 3) the communication must be between a client (or agent) and a legal advisor; and
- 4) the communication must be directly related to the seeking, formulating, or giving of legal advice.

[24] If these four conditions are satisfied, then the communication and the papers relating to it are privileged.¹⁰

[25] As Order F14-03¹¹ confirms after a survey of relevant authorities, a client has the right to keep communications with his or her lawyer confidential even when those communications flow through others. If the communications are

⁹ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 26.

¹⁰ For a statement of these principles see also *R. v. B.*, 1995 Can LII 2007 (BCSC) at para. 22 and *Canada v. Solosky*, [1980], 1 S.C.R. 82, p. 13.

¹¹ At para. 24.

made for the purpose of obtaining or giving of legal advice, they need not be made by an applicant to their lawyer directly in order for privilege to apply.

[26] VCHA submits that s. 14 applies to:

- a letter from a law firm summarizing the outcome of a case;
- an email outlining legal strategies provided by external legal counsel;
- a portion of an email that contains strategies provided by legal counsel; and
- a portion of an email outlining steps taken on the advice of legal counsel.

[27] The applicant submits that she is entitled to these records because a party would have access to these records during litigation, and s. 3(2) of FIPPA states that FIPPA does not limit the information available by law to a party to a proceeding. However, s. 3(2) simply clarifies that FIPPA does not limit disclosure between parties in legal proceedings. It does not create additional rights to records when they are requested under FIPPA.

[28] My review of the records containing the withheld information and VCHA's evidence satisfy me that the four requirements for legal advice privilege are present in all the information withheld under s. 14. The documents contain legal advice and VCHA may withhold these records under s. 14 of FIPPA.

Unreasonable invasion of a third party's privacy – s. 22

Position of the Parties

[29] VCHA is withholding some information because it believes disclosing it would be an unreasonable invasion of third parties personal privacy under s. 22 of FIPPA.

[30] The applicant argues she is entitled to access all information withheld under s. 22 of FIPPA. The applicant cites a number of rules of court and authorities that she says support disclosure of the records. As I have stated above, the court rules and authorities relate to disclosure in a litigation setting and are not relevant to determining whether s. 22 of FIPPA applies to the records.

[31] I note that I am not considering whether s. 22 applies to the information I have already found VCHA can withhold under ss. 3(1)(c) and 14 of FIPPA.

Approach to s. 22

[32] Section 22 is a mandatory exception requiring VCHA to refuse to disclose personal information to the applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. The proper approach to s. 22 involves answering the following questions:¹²

- 1) Is the information personal information?
- 2) If it is personal information, does it meet any of the criteria identified in s. 22(4), whereby disclosure would not be an unreasonable invasion of third-party personal privacy?
- 3) If none of the s. 22(4) criteria apply, do any of the presumptions in s. 22(3) apply, such that disclosure is presumed to be an unreasonable invasion of third-party privacy?
- 4) If any s. 22(3) presumptions apply, are they rebutted after considering all relevant circumstances, including those listed in s. 22(2)?
- 5) If no s. 22(3) presumptions apply, after considering all relevant circumstances, including those listed in s. 22(2), would disclosure would be an unreasonable invasion of a third party's personal privacy?

Personal Information and Section 22(4) Factors

[33] Section 22 does not apply to information that is not the personal information of a third party. FIPPA defines personal information as recorded information about an identifiable individual other than contact information.¹³ It is possible for information to be the personal information of more than one person.

[34] Almost all of the information withheld by VCHA under s. 22 is personal information of third parties. The exceptions are some contact information,¹⁴ and a phone number¹⁵ that is unconnected to an identifiable individual. Some of the

¹² Order F13-09, 2013 BCIPC 10 (CanLII); Order F12-08, 2012 BCIPC 12 (CanLII) et al.

¹³ Schedule 1 of FIPPA.

¹⁴ Pages 185 and 191 of the records where the withheld information is a third parties work email address, and some information on p. 282 that also qualifies as contact information.

¹⁵ At p. 226 of the records.

withheld information, as well as being personal information of third parties, is also the applicant's personal information.¹⁶

[35] Section 22(4) sets out circumstances when disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. One example is where a third party consents to disclosure.¹⁷

[36] The applicant submits that one of the third parties consented to disclosure of his personal information. The applicant's evidence includes a consent form signed by the third party, the relevant part of which states:

I understand that a report with conclusions based on the results of these tests will be sent to the lawyers or family physicians involved with this investigation, otherwise, results will be kept in strictest confidence.

[37] The scope of this consent does not constitute consent to release any of the information VCHA has withheld that is the subject of this inquiry.

[38] I find that there are no s. 22(4) factors that apply to the withheld information.

Presumption of Invasion of Privacy – s. 22(3)

[39] Section 22(3) provides the circumstances in which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. It states in part:

A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
- ...
- (d) the personal information relates to employment, occupational or educational history,
- ...

¹⁶ For example some information at p. 183 of the records.

¹⁷ Section 24(4)(a) of FIPPA.

- (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

[40] VCHA submits that ss. 22(3)(a), (b) and (d) and (f) apply in this case. The applicant does not address the s. 22(3) factors. I will consider the application of the s. 22(3) factors above in turn.

Medical information – s. 22(3)(a)

[41] VCHA submits that much of the withheld information relates to a medical evaluation because it is connected to paternity testing, so s. 22(3)(a) applies. From my review of the records, a significant amount of the withheld information is medical information, including records containing the results of the paternity testing that contain DNA and other medical information of a third party.¹⁸ The s. 22(3)(a) presumption applies to much of the withheld information.¹⁹

Information compiled as part of part of an investigation – s. 22(3)(b)

[42] VCHA says that s. 22(3)(b) applies to withheld information in three records because the records reveal that they were compiled for the purposes of a law enforcement investigation. Section 22(3)(b) has been applied in certain circumstances to information that triggers a law enforcement investigation, for example a 911 call.²⁰

[43] The information in issue in all three records here was compiled before any investigation began. In one record,²¹ the information outlines the facts that precipitated and were the subject matter of a conversation with police, but the police advised they would not take any action as a result of the conversation. In another²² there is no evidence that the police were actually contacted. In the circumstances the information withheld from these two records falls outside the scope of the s. 22(3)(b) presumption because it was not part of an investigation into a possible violation of the law. In the third record,²³ conflicting evidence in the record itself whether the information triggered any police investigation makes it unclear whether s. 22(3)(b) applies to the information. In summary I am not satisfied that any of the information withheld from the records falls within the scope of s. 22(3)(b).

¹⁸ For example pp. 260-2 of the records.

¹⁹ Section 22(3)(a) also applies to some information provided by a retired VCHA employee about their husband's health at p. 268 of the records.

²⁰ See for example Order F13-12, 2012 BCIPC 18 (CanLII) at para. 13, Order F07-04, 2007 CanLII 9595 (BCIPC).

²¹ At p. 183 of the records.

²² At p. 267 of the records.

²³ At p. 277 of the records.

Information relating to a third party's employment history - s. 22(3)(d)

[44] Disclosing personal information that relates to a third party's employment history is a presumed invasion of that person's privacy under s. 22(3)(d). VCHA says s. 22(3)(d) applies to the withheld portion of one record.²⁴ Having reviewed the withheld information, I agree that the personal information relates to employment history under s. 22(3)(d) because it reveals the actions and emotional state of VCHA employees arising from incidents in their workplace. I find that s. 22(3)(d) also applies to notes of incidents arising from VCHA employees' work.²⁵

Information that describes a third parties finances – s. 22(3)(f)

[45] VCHA submits that some withheld information in one record²⁶ contains the financial information, including credit card and account information, of a third party. I agree, and I find that the withheld information is financial information of a third party under s. 22(3)(f).

[46] In summary, disclosure of some of the information withheld under s. 22 is presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3)(a), (d) and (f).

Other Factors – s. 22(2)

[47] There is a presumption that disclosure of some of the withheld information would be unreasonable, but it can be rebutted. Section 22(2) requires that public bodies must consider all relevant factors, including those listed in s. 22(2), in determining whether disclosure of personal information is an unreasonable invasion of privacy. The factors listed in s. 22(2) that are at issue in this case are:

- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
- ...
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, ...

[48] VCHA lists s. 22(2)(e), (h), and (i) as relevant, but it does not explain how s. 22(2)(i) is relevant. The relevance of s. 22(2)(i) is not apparent to me from my review of the records, so I have not considered it.

²⁴ At p. 277 of the records.

²⁵ At p. 183 and pp. 267-8 of the records.

²⁶ At p. 5 of the records.

[49] The applicant does not directly address any of the s. 22(2) factors.

[50] I will consider the s. 22(2) factors in turn.

Unfair exposure to harm – s. 22(2)(e)

[51] Section 22(2)(e) requires consideration of whether disclosure of the information would unfairly expose a third party to financial or other harm. Previous orders, such as Order 01-37, have stated that harm under s. 22(2)(e) includes “serious mental distress or anguish or harassment”.²⁷ For s. 22(2)(e) to be relevant, the unfair exposure to harm must relate to disclosure of the information.²⁸

[52] VCHA states that releasing the withheld information would cause the affected third parties mental distress, anguish or harassment. They point to evidence in the records²⁹ of the applicant harassing those involved in the paternity testing to which the withheld records relate.

[53] The records reveal the applicant does have a history of harassing those involved with these records, including phoning third parties who are medical professionals at their homes to attempt to discuss issues related to the paternity testing. The records also reveal that this behaviour has caused third parties mental distress. Balanced against this is the fact the applicant already knows the identity of many of the third parties named in the withheld records. While disclosing the records may not expose the known third parties to any greater risk of harassment than they have already been exposed to, I am mindful that it may. However, I am particularly conscious of not exposing third parties currently unknown to the applicant to the risk of harassment by disclosing their identity.

[54] Overall, I find that s. 22(2)(e) is a factor in support of withholding the records, particularly for those records which identify third parties whose identities are not already known to the applicant.

Supplied in Confidence – s. 22(2)(f)

[55] None of the parties argued that information in the records was supplied in confidence within the meaning of s. 22(2)(f). However, from my review of the records it is clear that some of the personal information would have been supplied in confidence by third parties and kept confidential by VCHA. For example, there is a copy of a birth certificate provided by a third party to verify their identity, and statements by VCHA employees and former employees

²⁷ Order 01-37, 2001 CanLII 21591 at para. 42.

²⁸ Order F14-10, 2014 BCIPC No. 12 at p. 8.

²⁹ At pp. 185, 191 and 268 of the records.

about phone calls they received at home.³⁰ Therefore, the fact that some of the information was supplied in confidence is a circumstance weighing against its disclosure.

Unfair Damage to Reputation – s.22(2)(h)

[56] Section 22(2)(h) relates to circumstances where disclosure may damage the reputation of a person referred to in the records. As is the case with s. 22(2)(e), for s. 22(2)(h) to be relevant, the unfair damage to reputation must relate to disclosure of the information.

[57] VCHA submits that it is apparent from looking at the records that disclosure of the withheld information would unfairly damage the named third parties' reputation. VCHA points in particular to affidavits that are part of the records that make serious allegations about named third parties. VCHA says that despite the fact that the allegations have not been proven in court, these affidavits appear to be part of an official record, which lends them credibility. VCHA also points to records it says establishes that the applicant has a pattern of posting on her website information she gathers related to her grievance about VCHA's paternity testing.

[58] The affidavits VCHA refers to are part of litigation by the applicant, so are already available to the applicant. Given this, the applicant is already in a position to expose the third parties named in the affidavits to the harm and damage to reputation that VCHA believes would occur from disclosure of the withheld affidavits.

[59] Other than the affidavits, VCHA did not point to any other records whose disclosure it believes would unfairly damage anyone's reputation.

[60] From my review of the records, I am not satisfied that disclosure of the withheld information could reasonably be expected to cause the kind of damage contemplated by s. 22(2)(h).

Other factors

[61] In many instances the only withheld information in a record is the name of a third party. It is clear from my review of the records that the applicant knows the names of the third parties in most instances where the names appear in the records because of the applicant and third parties' involvement in litigation regarding the matter that is the subject of the withheld documents. Further, some of the information is publicly available as a result of the litigation.

³⁰ The statements about phone calls also contain some personal information of the applicant.

[62] Even if the applicant did not already have an unredacted copy of some of the records from previous litigation, it is clear that the applicant would be able to identify the withheld names in the context in which they appear given:

- the extent of the information already released to the applicant in response to the access request
- the type of record, and
- the applicant's knowledge of the events the records relate to.

[63] Further, some of the withheld information in the records is duplicated elsewhere in the records. In some cases the information withheld in the first instance of the record was not withheld in the duplicate record, which has already been disclosed to the applicant. Where the information has already been released to the applicant, releasing it would not be an unreasonable invasion of third parties personal privacy.

[64] In short, the fact that the applicant already knows much of the information that has been withheld is a circumstance weighing in favour of its disclosure.

Section 22(1)

[65] To summarize, almost all of the withheld records in dispute contain personal information. Much of the information is subject to a presumption under s. 22(3) that disclosure would be an unreasonable invasion of third party privacy.

[66] For some of the information subject to a presumption, the relevant factors, including those listed in s. 22(2), rebut the presumption that disclosure of the withheld information would be an unreasonable invasion of the personal privacy of the caregiver under s. 22(1). Most instances where I consider the presumption rebutted involve the name of a third party which is clearly already known to the applicant because:

- 1) the applicant already has the requested record containing the name because it was created for litigation between the applicant and a third party;
- 2) the information has been disclosed by VCHA in a duplicate record; or
- 3) only the name of a third party has been withheld in the record, but it is clear from other information in the record disclosed by VCHA and/or the history of the applicant and a third party that the applicant knows the third parties' identity.

[67] For some information subject to a presumption, the relevant factors, including those listed in s. 22(2), do not rebut the presumption that disclosure of the withheld information would be an unreasonable invasion of the personal privacy of third parties under s. 22(1).³¹ This includes information where the name of a third party is not known to the applicant.

[68] Some other personal information is not presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3). In these cases, weighing all the factors, including those in s. 22(2), some of the information should be withheld.³² The information includes the name and home phone number of a former employee and a VCHA employee's system username. Disclosure of the remaining personal information would not unreasonably invade the privacy of third parties.

Severance of the applicant's personal information

[69] If the applicant's personal information can reasonably be severed from the third parties personal information, the applicant has the right to access that information under s. 4(2) of FIPPA. The applicant's personal information I have highlighted in yellow can be severed from the records and disclosed.³³ The remaining withheld information of the applicant is inextricably intertwined with the personal information of the third parties, and cannot reasonably be severed such that the applicant's personal information can be disclosed.

Summary of the record under s. 22(5)

[70] Section 22(5) requires a public body to provide an applicant with a summary of personal information about them supplied in confidence if it cannot be disclosed under s. 22, except in specified circumstances. One of the exceptions is if "the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information".

³¹ Information which is subject to the s. 22(3)(a) presumption at p. 181 and pp. 260-262 of the records. Information highlighted in green at pp. 14, 40, 78 and 113 of the records, which is subject to the s. 22(3)(a) presumption. The withheld information at p. 183 and the information at p. 277 withheld under s. 22, which is all subject to the s. 22(3)(d) presumption. Information highlighted in green at p. 5 which is subject to the s. 22(3)(f) presumption. The non-highlighted withheld information on p. 5 has already been released elsewhere in the records so there is no harm in releasing it. Except for some information that is the personal information of the applicant and can be severed from the record (highlighted yellow), all of pp. 267-269 can be withheld, the s. 22(3)(a) and (d) presumptions apply to some of that information.

³² Information highlighted in green at pp. 1, 219, 230, 282, all of pp. 12, 13, 223, 224 and all of the withheld information on pp. 207 and 283 of the records.

³³ At pp. 267-8 of the records.

[71] VCHA cannot prepare a meaningful summary of the withheld information about the applicant that was supplied in confidence without enabling a connection to be made between the information and a third party. Accordingly, I find that the exception in s. 22(5)(a) applies and VCHA is not required to provide the applicant with a s. 22(5) summary.

CONCLUSION

[72] For the above reasons, pursuant to s. 58 of FIPPA, I make the following orders:

1. Subject to paras. 2 and 3 below, I require VCHA to give the applicant access to the records by **May 27, 2014**.
2. VCHA may continue to withhold the information it has withheld under s. 3(1)(c) and s. 14 FIPPA
3. VCHA may continue to withhold the information withheld under s. 22 FIPPA identified at footnotes 31 and 32 of this Order. Where the footnote identifies that only a highlighted portion of a record may be withheld, a highlighted copy of the record accompanies VCHA's copy of this Order.
4. VCHA must concurrently copy me on its cover letter to the applicant, together with a copy of the records.

May 15, 2014

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

OIPC File No.: F13-51706