



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F15-29

LANGARA COLLEGE

Hamish Flanagan
Adjudicator

June 30, 2015

CanLII Cite: 2015 BCIPC No. 32
Quicklaw Cite: [2015] B.C.I.P.C.D. No. 32

Summary: An applicant requested records from Langara College relating to complaints made against him as well as complaints he had made. The College disclosed most of the information but withheld some identifying information of complainants and witnesses and some other personal information as relating to law enforcement investigations under s. 22 of FIPPA. The adjudicator determined that s. 22 of FIPPA applied to some of the withheld information in dispute. However, the adjudicator found that it was not unreasonable to disclose information that the applicant already knew.

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

Authorities Considered: B.C.: Order F13-12, 2012 BCIPC 18 (CanLII); Order F07-04, 2007 CanLII 9595 (BC IPC); Order F10-11, 2010 BCIPC 18 (CanLII); Order 01-07, 2001 CanLII 21561 (BC IPC); Order F14-10, 2014 BCIPC 12 (CanLII); Order F14-12, 2014 BCIPC 15 (CanLII); Order F14-17, 2014 BCIPC 20 (CanLII); Decision F10-10, 2010 BCIPC 49 (CanLII).

INTRODUCTION

[1] This inquiry concerns a request to Langara College (“College”) for records related to complaints that were made to the College about or by the applicant.

[2] The College disclosed some information, but withheld other information on the basis that disclosure was an unreasonable invasion of the privacy of third parties under s. 22 of the *Freedom of Information and Protection of Privacy Act*

("FIPPA"). In particular the College cited s. 22(3)(b) (law enforcement investigation), s. 22(3)(d) (educational history), s. 22(2)(e) (harm to third parties) and s. 22(2)(f) (confidential information) as the grounds for determining that disclosure of the withheld information would be an unreasonable invasion of the third parties' personal privacy.

[3] The applicant made a request to the Office of the Information and Privacy Commissioner ("OIPC") for a review of the College's decision to withhold information. Mediation did not resolve this matter, and the applicant requested that it proceed to an inquiry.

ISSUES

[4] The issue in this case is whether the College is required to refuse to disclose information because disclosure would be an unreasonable invasion of a third party's personal privacy under s. 22 of FIPPA.

[5] Section 57(2) of FIPPA places the burden of proof on the applicant to establish that disclosure of personal information would not be an unreasonable invasion of a third party's personal privacy under s. 22 of FIPPA.

DISCUSSION

[6] **Background**— The applicant is a student at the College. Several individuals have complained to the College about the applicant's behaviour on and off campus. The complaints are about unwanted and persistent attention and physical altercations. Some of the complainants have also laid complaints with police about these incidents. The applicant has also made complaints about fellow College students, generally arising from the same incidents. The applicant submits that he is the subject of an organized campaign whereby certain individuals are paid to provoke and unsettle him.

[7] The College investigated and took action in response to the complaints, including advising the applicant and third parties to avoid further contact and arranging additional security for certain third parties on the College campus.

[8] Most of the information that is responsive to the applicant's request has already been disclosed to him by the College. The information disclosed includes much of the detail of the complaints, and in one case, the name of a complainant. The College also provided a summary of the complaints to the applicant to allow him to participate in disciplinary action brought against him under the College's Code of Conduct.¹

¹ Exhibit A to the Affidavit of the Manager, Records Management and Privacy.

[9] **Records**—The records in issue in this inquiry arise out of the complaints about the applicant, as well as those made by the applicant, outlined above. The records include complainant or witness statements, some of which were made by the applicant; records created by the College's Campus Security to document and investigate incidents, and records of actions taken by the College with respect to the incidents or complaints.

Section 22

General approach and parties' position

[10] Section 22 of FIPPA requires public bodies to withhold information if disclosing it would be an unreasonable invasion of a third party's personal privacy. In considering s. 22, a public body must first determine if the information in issue is personal information, as defined by FIPPA, because s. 22 only applies to "personal information" of third parties.² If it is personal information, the public body must consider whether the information meets any of the criteria identified in s. 22(4). If s. 22(4) applies, the public body must not refuse access to the information under s. 22. If s. 22(4) does not apply, the public body must determine if the information falls within any of the categories in s. 22(3). If s. 22(3) applies, a rebuttable presumption arises that disclosure is an unreasonable invasion of third party privacy. Whether or not a s. 22(3) presumption applies, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.³

[11] The College's position is that the information in dispute is personal information, so s. 22 applies. It is withholding some records entirely because it says the information they contain forms part of an investigation into a violation of law (i.e., the s. 22(3)(b) presumption applies).⁴ Other information is being withheld under s. 22(3)(d) because, the College submits, it reveals the educational history of third parties. The information to which s. 22(3)(d) has been applied includes complainant and witness names, College student numbers, addresses, phone numbers, dates of birth, driver's licence numbers and signature information.

[12] In support of its view that disclosure of the withheld information would be an unreasonable invasion of personal privacy, the College also says that all of the information was supplied in confidence (s. 22(2)(f)) and disclosure of it will expose the third parties to harm (s. 22(2)(e)).

² FIPPA, Schedule 2.

³ See for example, Order 01-53, 2001 CanLII 21607 (BC IPC) at paras. 22-24.

⁴ Records at pp. 6, 33-37 and 45-51.

[13] The applicant's position is that s. 22 does not apply to the withheld information. He says that he needs to know the identity of those who made allegations about him so he can adequately defend himself against their allegations.

Personal Information

[14] The term personal information under FIPPA means “recorded information about an identifiable individual other than contact information”.⁵ FIPPA defines contact information as “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.”

[15] The College says the information is not contact information and is about identifiable individuals and therefore is personal information. The applicant does not dispute that the information is personal information.

[16] All of the withheld information is about identifiable individuals and though it includes telephone numbers, it is not contact information as defined by FIPPA because the information is about people in their personal, rather than business, capacities. I therefore find that all of the information in dispute is personal information.

Section 22(4)

[17] Subsection 22(4) specifies circumstances when disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. Neither of the parties suggests that s. 22(4) applies in this case. Based on my review of the materials, I find that none of the circumstances in s. 22(4) apply to the withheld information.

Presumptions – s. 22(3)

[18] Subsection 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:

- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
 - ...
 - (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the

⁵ Definitions are in Schedule 1 of FIPPA.

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,

...

Law enforcement investigation - s.22(3)(b)

[19] The College submits that s. 22(3)(b) applies to certain records because the information in them relates to investigations of complaints made to the police by some of the complainants.

[20] I find that s. 22(3)(b) does apply to some of the information in dispute, because it reveals details that formed part of a law enforcement investigation by police. This includes information about the nature of incidents reported to police, actions taken by police about those incidents, and related details such as police investigation file numbers.

[21] However, some of the information withheld from the records under s. 22(3)(b) falls outside of the scope of s. 22(3)(b). For some records withheld entirely under s. 22(3)(b), only portions of the record relates to a police investigation, while the remaining information in the record relates to Campus Security investigations⁶ or other matters.⁷ The College does not suggest that Campus Security's investigations or other College matters form part of a law enforcement investigation under s. 22(3)(b). It only submits that s. 22(3)(b) applies to information related to the investigations by police. I agree that in this context Campus Security's own investigations and the other matters canvassed in the records are not law enforcement investigations for the purpose of s. 22(3)(b). Therefore, s. 22(3)(b) does not apply to the information that is not related to the police investigations.

[22] Because s. 22(3)(b) only applies to information that is compiled and is identifiable as part of an investigation into a possible violation of law, information that reveals only that the complainant *intended* to complain to the police,⁸ and information compiled by the College before the police began any law enforcement investigation⁹ also does not fall within s. 22(3)(b).

[23] One record withheld by the College under s. 22(3)(b) contains only personal information of the applicant, and personal information of College security staff and police officers carrying out their everyday work functions. No complainant or other third party personal information appears except for a third

⁶ Most information at pp.36-7. Records at pp. 46, 48-49.

⁷ Records at p. 36, 45, 47, 50, 51.

⁸ Some information in the record at p. 6.

⁹ Some information in the record at p. 33.

party's name.¹⁰ I therefore do not consider it an unreasonable invasion of personal privacy to release this information, except the third party's name, to the applicant.

Educational or employment history - s. 22(3)(d)

[24] The College submits that s. 22(3)(d) applies to some of the information because it relates to third parties' educational history. Specifically, the College submits that it is withholding the names, addresses, telephone numbers, student numbers, dates of birth and driver's licence numbers of complainants and witnesses because they are part of those individuals' educational history and should not be disclosed. The College points to previous orders, for example Order 01-53,¹¹ that have consistently found that information compiled as part of a workplace investigation is part of an individual's employment history. The College submits that, by analogy, an investigation relating to a student at the College is the equivalent to a workplace investigation and it forms part of the individual's educational history.

[25] Order F10-11,¹² which also involved a request for the College's records, provides insight into the meaning of educational history. The adjudicator in that case stated that educational history "is about what programs and courses an individual took and what institution they attended."¹³ I agree with that statement, and I find that in the context in which they appear the third parties' names, addresses, telephone numbers, student numbers, dates of birth and driver's licence numbers link the third parties to attendance at the College, so is about what institution they attended. Therefore, this information discloses their educational history, and the presumption in s. 22(3)(d) applies.

[26] There is also one instance of information that reveals details of a third party's employment history, so I also find that the s. 22(3)(d) presumption applies on that basis.¹⁴

[27] In summary, I find that the s. 22(3)(b) presumption applies to some of the personal information because the information relates to complaints made, and investigated, by the police. Further, disclosure of the third party identifying information (names, phone numbers, etc.) that links those individuals to the College reveals their educational or employment history, so disclosure would be a presumed invasion of personal privacy under s. 22(3)(d). Finally, I also find that some details about a third party's employment history falls under s. 22(3)(d).

¹⁰ Record at p. 35.

¹¹ At paras. 53-58.

¹² 2010 BCIPC 18.

¹³ At para. 19.

¹⁴ Information at pp. 36-37. The College withheld this information under s. 22(3)(b), not s. 22(3)(d).

Relevant Factors – s. 22(2)

[28] Section 22(2) states that all relevant circumstances, including those listed in s. 22(2), must be considered in determining whether a disclosure of third party personal information is unreasonable. Section 22(2) states in part:

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

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

[29] The College submits that ss. 22(2)(e) and (f) are relevant circumstances that weigh in favour of withholding the information.

[30] The applicant says he needs to know the identity of those who made allegations about him so he can adequately defend himself against their allegations. This raises the issue of whether s. 22(2)(c) is relevant.

Fair determination of applicants' rights –s. 22(2)(c)

[31] Previous orders have held that s. 22(2)(c) only applies if all of the following circumstances are met:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds.
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed.
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question.
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.¹⁵

¹⁵ Order 01-07, 2001 CanLII 21561 (BC IPC) at para. 31 citing Ontario Order P-651, [1994] O.I.P.C. No. 104.

[32] In this case, the applicant did not explain what legal rights he is protecting. Further, there is no evidence that any proceeding is either underway or contemplated in relation to the matters at issue in the records, so elements 2 to 4 of the above test are not met. I therefore find that s. 22(2)(c) is not a relevant factor in favour of disclosure of any information in this case.

Unfair exposure to harm – s. 22(2)(e)

[33] Section 22(2)(e) requires consideration of whether a third party would be unfairly exposed to financial or other harm if the information is disclosed. Previous orders, such as Order 01-37, have stated that harm under s. 22(2)(e) includes “serious mental distress or anguish or harassment”.¹⁶ For s. 22(2)(e) to be relevant, the unfair exposure to harm must relate to disclosure of the information.¹⁷

[34] The College points to the similarities in this case to that in Order F14-12. In that order, I found that s. 22(2)(e) was a relevant factor in support of withholding personal information of individuals that allowed them to be identified and contacted, particularly for those records which identified third parties not already known to the applicant.¹⁸ In the context of that inquiry, there was a real risk of exposing the third parties to harassment if their identities were disclosed.

[35] In this case, the College’s Manager, Records Management and Privacy deposed that the third parties did not consent to the disclosure of their personal information because they were fearful of the applicant.¹⁹ The applicant denies the third parties fear him and says that if they did they would not have continued to interact with him.

[36] I agree that s. 22(2)(e) is a relevant factor weighing in favour of withholding the personal information such as student numbers, dates of birth, phone numbers and driver’s licence numbers because access to that information increases the risk of unwanted attention from the applicant. The College’s evidence is that the applicant’s behaviour has caused the third parties mental distress, and that is understandable given the applicant’s harassing behaviour evident from my review of the records. In my view, disclosing the third parties’ personal information would unfairly expose the third parties to harm by creating a new or heightened risk of harassment.

[37] The applicant submits that the third parties continued to have interactions with him, which indicates they were not fearful of him. From my review of the disputed information, the interactions that took place between the applicant and

¹⁶ Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 42.

¹⁷ Order F14-10, 2014 BCIPC 12 (CanLII) at p. 8.

¹⁸ Order F14-12, 2014 BCIPC 15 (CanLII) at para 54.

¹⁹ Affidavit of Manager, Records Management and Privacy at para. 12.

the third parties were generally either initiated by the applicant or incidental to the third parties' presence on the same campus as the applicant. These interactions do not contradict the evidence of the College that the third parties fear the applicant.

Information supplied in confidence – s. 22(2)(f)

[38] Section 22(2)(f) requires considering whether personal information has been supplied in confidence when determining whether disclosure would be an unreasonable invasion of personal privacy.

[39] The College submits that all of the withheld information was supplied in confidence. They say that given the nature of the complaints, the third parties would not have provided the information they did, in particular their identifying and contact information, if they knew that it would be disclosed to the applicant.

[40] Most of the complainant and witness statements are on a College Security Statement template. That template contains a section at the bottom of each page that states "Permission to Release" and is followed by check boxes for "Yes" and "No". The template does not say who the information would be released to. On almost all of the records where the template was used by complainants or witnesses the "Yes" checkbox is marked. However, the College's Manager, Records Management and Privacy, deposes that when processing the applicant's request she considered the third parties permission to release information did not constitute informed consent to disclose the withheld information to the applicant. She says that she subsequently consulted the complainants by phone and email about their understanding of what information from the security reports should be disclosed to the applicant. She says that the third parties understood that the information regarding the events that formed the basis of the complaints could be provided to the applicant in the course of investigating the complaints. However, their names, addresses, personal phone numbers, student numbers, dates of birth and driver's licence numbers were implicitly supplied in confidence and must be withheld under s. 22 - despite the fact the complaints ticked the "yes" checkbox on the template.

[41] While the affidavit evidence of the College's Manager, Records Management and Privacy about the third parties is hearsay and therefore I consider it with caution, nonetheless it is consistent with a common sense interpretation of the third parties' intentions with regards to disclosure of the withheld personal information. Given the nature of the third parties' complaints, it seems quite unlikely that they would consent to the disclosure of their phone numbers and other similar personal information to the applicant. I accept that the third parties supplied their personal information in confidence, so s. 22(2)(f) is a factor weighing against its disclosure.

[42] However, s. 22(2)(f) is not applicable to all of the withheld personal information because some was clearly not “supplied” by third parties, for example, the College’s advice to complainants on security measures. Further, some of the withheld information was supplied by the applicant. Previous orders such as Order 01-53 have stated that s. 22(2)(f) does not support withholding information supplied by an applicant because the applicant is the source of the information.²⁰

Complainant identity information

[43] Previous orders of this office have typically found that public bodies are required to withhold a complainant’s name and other identity information under s. 22.²¹ For example, in Decision F10-10, an applicant requested the names of complainants who made complaints against her to BC Housing. In that case, an inquiry was not held because the adjudicator determined that it was plain and obvious that s. 22 applied and there were no arguable issues meriting an inquiry. Adjudicator McEvoy stated in this decision that:

...Past orders have determined the disclosure of the kind of information at issue here would be an unreasonable invasion of third party privacy and therefore a public body must not release it. Order 00-18, for example, found the public body properly withheld, under s. 22(1), the identity of a complainant to the Motor Vehicle Branch that a person was unfit to drive a car. Commissioner Loukidelis found this information was confidentially provided and no other circumstances weighed in favour of its disclosure. Further, Senior Adjudicator Francis concluded in Decision F08-06 it was plain and obvious that s. 22(1) protected information that included the names of complainants in a municipal property use dispute...²²

[44] The fact that some withheld information identifies third party complainants and witnesses is therefore a factor that suggests that disclosure would be an unreasonable invasion of personal privacy.

Applicant’s knowledge

[45] The College acknowledges that it has already given the applicant information about the complaints, including the identity of some of the complainants. The records also show that the applicant has some third parties’ telephone numbers, as he has contacted some of them that way.

[46] Further, some of the withheld information originates in the applicant’s own statements, which means it is already known by him. These statements include information that demonstrates that he clearly knows the identity of some third

²⁰ Order 01-53, 2001 CanLII 21607 (BC IPC).

²¹ For example, Order F14-17, 2014 BCIPC 20 (CanLII).

²² Decision F10-10, 2010 BCIPC 49 (CanLII) at para. 14.

parties. In Order F14-10,²³ Adjudicator Alexander found that the presumptions in that case had been rebutted because the applicant supplied the third party identity information in her complaint.

[47] I agree that disclosure to the applicant of information that he already has could not cause damage to the third parties' reputations or expose them to harm.²⁴ Therefore, the fact that the applicant already knows, and in some cases supplied this third party personal information is a factor that strongly suggests that if the College disclosed this information to him it would not be an unreasonable invasion of the third parties' personal privacy.

[48] I note that one complainant's last name has been withheld in several places in the record but was disclosed in the records already,²⁵ and it is clear from the records that the applicant knows the identity of that complainant. In other places a third party's name has been withheld in the applicant's own complaint about the third party. In all these instances, it is clear from the content of what has already been disclosed to the applicant and his knowledge of the events and authorship of the complaints, that the applicant already knows the identity of the third party. Therefore, it would not be unreasonable to disclose this information because it would reveal nothing new.

[49] Therefore, in those instances where the applicant already knows the identity of a withheld third party's name, that knowledge is a significant factor weighing in favour of disclosure.

Conclusion – s. 22

[50] Section 22 requires public bodies to refuse to disclose personal information to an applicant if disclosure would be an unreasonable invasion of a third party's personal privacy.

[51] Disclosure of some of the information at issue is presumed to be an unreasonable invasion of personal privacy because it relates to a police investigation (s. 22(3)(b)) or discloses third parties' educational or employment history (s. 22(3)(d)).

[52] Section 22(2)(e) supports withholding information that identifies third parties, and s. 22(2)(f) supports withholding information supplied by third parties.

[53] Where the applicant's existing knowledge means he already knows the withheld information, I find any presumptions that apply are rebutted. In

²³ 2014 BCIPC 12 (CanLII).

²⁴ Order F14-10, 2014 BCIPC 12 (CanLII) at para. 44.

²⁵ At page 1 of the records.

particular, the presumption is rebutted for the names of third parties where the applicant already knows the individual's identity.

ORDER

[54] For the reasons given, under s. 58 of FIPPA, I make the following order:

- (a) The College is required under s. 22 of FIPPA to refuse to disclose the information that is highlighted in the copy of the records accompanying the College's copy of this order;
- (b) Subject to para (a), the College is required to give the applicant access to the balance of the withheld information by August 13, 2015 pursuant to s. 59 of FIPPA. The College must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

June 30, 2015

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

OIPC File No.: F14-56901