Order F16-47

VANCOUVER BOARD OF EDUCATION – SCHOOL DISTRICT 39

Susan Rowed
Adjudicator

December 1, 2016

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Summary: The applicant requested that the Vancouver Board of Education provide all records containing information pertaining to the applicant. The Board disclosed some records while withholding others under s. 13 (policy advice or recommendations), s. 14 (legal advice) and s. 22 (disclosure harmful to personal privacy). The adjudicator found that the Board is authorized to refuse to disclose information under s.13 and is required to refuse to disclose the majority of information under s. 22.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, Chapter 165, sections 2, 13, 22, 57.

Authorities Considered: B.C.: Order F10-37,2010 BCIPC 55 (CanLII); Order F16-38, 2016 BCIPC 42 (CanLII); Order F15-60, 2015 BCIPC 64 (CanLII); Order F14-57, 2014 BCIPC No. 61 (CanLII); Order F16-11, 2016 BCIPC 13 (CanLII); Order 02-38, 2002 CanLII 42472 (BC IPC); Order F15-52, 2015 BCIPC 55 (CanLII); Order F15-63, 2015 BCIPC 69 (CanLII); Order F16-19, 2016 BCIPC 21 (CanLII); Order F05-18, 2005 CanLII 24734 (BC IPC); Order 02-26 CanLII 42456 (BC IPC); Order 01-07, 2001 CanLII 21561 (BC IPC); Order F15-54, 2015 BCIPC 57 (CanLII); Order F16-44, 2016 BCIPC 48 (CanLII); Order 04-35, 2004 CanLII 43766 (BC IPC); Order 01-37, 2001 CanLII 21591 (BC IPC); Order F14-10, 2014 BCIPC 12 (CanLII); Order F15-29 2015 BCIPC No. 32 (CanLII); Order F05-34, 2005 CanLII 39588 (BC IPC).

Cases Considered: *John Doe v. Ontario (Finance),* 2014 SCC 36; *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner*, 2002 BCCA 665; *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner),* 2013 BCSC 2322.

INTRODUCTION

[1] This inquiry involves an applicant's request to the Vancouver Board of Education, School District 39 ("VBE") under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") for all information pertaining to him between May 2013 and June 11, 2014. VBE disclosed some records to the applicant but withheld information from them pursuant to sections 13 (advice or recommendations), 14 (solicitor client privilege) and 22 (harm to third party privacy) of FIPPA. The applicant requested a review of the VBE's decision by the Office of the Information and Privacy Commissioner ("OIPC"). Mediation by the OIPC led to the disclosure of some but not all of the information previously withheld under sections 13 and 22. The VBE continued to withhold some information under sections 13, 14 and 22. The applicant requested that the matter proceed to inquiry. A notice of written inquiry was sent to the applicant and the VBE on April 25, 2016. Both parties provided written submissions.

ISSUES

[2] The questions I must decide are:

a) whether the VBE is authorized to refuse to disclose information under sections 13 and 14 of FIPPA, and
b) whether the VBE is required to refuse to disclose other information under section 22.

[3] In accordance with s. 57(1), the VBE has the burden of proving that the applicant has no right of access to information under ss. 13 and 14. In accordance with s. 57(2), the applicant has the burden of proving that disclosure of any personal information of third parties would not be an unreasonable invasion of their personal privacy under s. 22.

DISCUSSION

[4] **Background –** The applicant is a parent of children attending a VBE school. The applicant was involved in matrimonial proceedings during which time a court order was provided to the VBE regarding parental access.

[5] In June 2012 the applicant was involved in an interaction at the school which was attended by the police. An employee of the VBE prepared a letter on school letterhead describing the interaction and provided it to the applicant's former spouse. Suffice to say that at some point thereafter the applicant's relationship with the VBE deteriorated such that the VBE issued a section 177 Order.[1] During his

[1] The *School Act*, R.S.B.C. 1996, Chapter 412, section 177 prohibits a person from disturbing or interrupting the proceedings of a school or an official school function.

dealings with the VBE the applicant obtained and posted audiotapes on social media of the June 2012 interaction and of a conversation with a VBE employee regarding the issuance of the s.177 Order.

[6] From what I can glean from the materials the applicant has expressed his dissatisfaction with respect to the events described above through social and news media, through complaints to the Ombudsman and in emails to various individuals in the educational community including school trustees and persons in other school districts. The applicant has filed a Notice of Civil Claim, naming the VBE and two VBE employees. The applicant alleges, among other things, defamation, slander, and negligence.

[7] **Records –** The information in dispute is on 27 pages of emails and four pages of internal VBE documents.

[8] **Preliminary Matters –** There were two preliminary matters raised by the parties in this inquiry.

Adequacy of the VBE's search for responsive records.

[9] In his response submission, the applicant raised the issue of the adequacy of the VBE search for records responsive to his request.[2] The matter of the VBE's compliance with its duty under s. 6(1) of FIPPA to conduct an adequate search for responsive records is not listed as an issue in the Notice of Inquiry or in the investigator's Fact Report. Past orders and decisions of the OIPC have said parties may raise new issues at the inquiry stage only if permitted to do so.[3] The applicant did not ask the permission of the OIPC to raise this new issue in the inquiry. Furthermore, the complaint about the adequacy of VSB's search has already been dealt with by the OIPC and the complaint closed by the OIPC as being unfounded.[4] For these reasons I decline to permit the applicant to raise this issue now.

Scope of inquiry

[10] The applicant raises concerns with how the VBE has responded to several other access requests made by the applicant. However the only matter before me is the June 11, 2014 request, which is the subject of the Investigator's Fact Report and the Notice of Inquiry. For that reason I will not address the VBE's decisions regarding any other access requests.

[2] Applicant Affidavit paragraphs 4, 6, 12, 15, 16, 17, 18, and 20.
[3] See for example Order F10-37, 2010 BCIPC 55 (CanLII).
[4] VSB Reply Submission. The complaint was closed in February 2016.

[11] **Policy Advice and Recommendations (s. 13) –** The VBE is withholding excerpts from several pages of records under s. 13.[5] Section 13 of FIPPA authorizes public bodies to refuse to disclose policy advice or recommendations developed by or for a public body or a minister, subject to specified exceptions in s. 13(2). In making a determination regarding s. 13, a public body must first determine whether the material fits within the scope of s. 13(1). If it does, the public body must then go on to determine whether the material falls within any of the categories set out in s. 13(2). If the records at issue are caught by one of the categories under s. 13(2), the public body must not refuse disclosure under s. 13(1). If the public body determines that the material falls within s. 13(1) and is not caught by any of the s. 13(2) categories, the public body must then decide whether to exercise its discretion to refuse disclosure.

[12] As the Supreme Court of Canada stated in *John Doe v. Ontario (Finance)* [*John Doe*], the purpose of exempting advice or recommendations from disclosure "is to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice."[6] The British Columbia Court of Appeal similarly stated in the *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)* [*Physicians*] that s. 13 of FIPPA "recognizes that some degree of deliberative secrecy fosters the decision-making process by keeping investigations and deliberations focussed on the substantive issues, free of disruption from extensive and routine inquiries."[7]

[13] As stated in *Physicians* advice and recommendations under s. 13(1) includes "information...the purpose of which is to present background explanations or analysis...for...consideration in making a decision...".[8] The Court also said that "advice" includes "an opinion that involves exercising judgment and skill to weigh the significance of matters of fact and expert opinion on matters of fact on which a public body must make a decision for future action".[9]

[14] Previous orders have stated that s. 13(1) applies to information that directly reveals advice or recommendations, as well as information that would enable an individual to draw accurate inferences about advice or recommendations.[10]

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[5] Pages 37, 79 and 81 (also described as page 7 and page 8 of 31), 181, 713, 1027, 1028, 1037, 1051, 1052-1053, and 1056.
[6] *John Doe v. Ontario (Finance),* 2014 SCC 36 (CanLII).
[7] *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner*, 2002 BCCA 665 (CanLII) at para. 105
[8] *Ibid*, at para. 110.
[9] *Ibid* at para. 113.
[10] For example, Order F16-38, 2016 BCIPC 42 (CanLII); Order F15-60, 2015 BCIPC 64 (CanLII); Order F14-57, 2014 BCIPC No. 61 (CanLII).

Parties' Positions

[15] VBE submits that that the information it is withholding under s. 13 can generally be described as communications relating to giving or seeking advice from VBE representatives with respect to a particular course of action to be taken.

[16] The applicant does not specifically elaborate or provide any explanation as to why s. 13 does not apply. I infer that it is the applicant's submission that s. 13 ought not to apply to the disclosure of any notes taken at meetings where he was not present and the discussion involved matters pertaining to him. In addition the applicant is specifically disputing that s. 13 applies to the information contained in a record VBE describes as a "safety plan". [11]

[17] Neither party has addressed the exceptions under section 13(2).

Section 13(1)

[18] In my view all of the severed information directly reveals advice and recommendations. It is information about options, and the possible impact of those options. I find that that all of the redactions fall squarely within s. 13(1).

Section 13(2)

[19] I find that none of the information falls within the enumerated categories set out in s. 13(2). I have specifically considered sections 13(2) (a) and 13(2) (l), which state:

> (2) The head of public body must not refuse to disclose under subsection (1)
>
> (a) any factual material,
> …
> (l) a plan or proposal to establish a new program or activity or to change a program or activity, if the plan or proposal has been approved or rejected by the head of a public body.

Factual material:

[20] In *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, Dardi, J. stated: "The structure and wording of s. 13 mandate an interpretation whereby 'factual material' is distinct from factual

[11] Document 1037 as described in the Table of Documents in Issue provided by the VBE to the applicant; Applicant's submissions paras 21, 22.

'information'. Section 13(2) (a) is a narrow exemption from what is included in s. 13(1)."[12]

[21] Madam Justice Dardi further stated:

> The *Canadian Oxford English Dictionary* defines "material" in part as "the matter from which a thing is or can be made". Accordingly, whatever constitutes the "material" exists *prior* to its use in service of a particular purpose or goal. …
>
> It is important to recognize that source materials accessed by the experts or background facts not necessary to the expert's "advice" or the deliberative process at hand would constitute "factual material" under s. 13(2)(a) and accordingly would not be protected from disclosure. However, if the factual information is compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body or if the expert's advice can be inferred from the work product it falls under s. 13(1) and not under s. 13(2)(a). As I held earlier, these compilations do not exist separately and independently from the opinions and advice in the reports. Rather, the compilation of factual information and weighing the significance of matters of fact is an integral component of the expert's advice and informs the decision-making process. Based on the principles articulated in *Physicians*, the documents created as part of a public body's deliberative process are subject to protection.[13]

[22] In this case, the summaries of factual information are an integral part of the advice provided and do not exist separate and independently from the advice. Any information is clearly background factual information selected for the express purpose of giving context to the advice and recommendation. I find that none of the information in dispute is "factual material" under s. 13(2)(a).

Plan or proposal

[23] I have considered whether s. 13(2)(l) applies to the information being withheld under s. 13 and I find that it does not.

[24] There is no evidence before me that the safety plan was approved or rejected by the head of the public body. Even it were approved, I have considered whether the information contained therein was a plan for the purpose of establishing a new "program or activity". FIPPA defines this phrase as follows: "program or activity includes, when used in relation to a public body, a common or

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[12] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII), para 91.
[13] *Ibid* at paragraphs 93, 94.

integrated program or activity respecting which the public body provides one or more services."[14]

[25] In my view, the terms "program" or "activity" involve a public body's designed delivery of services to more than one individual. In this case, the VBE's plan is unique to the applicant's relationship with the VBE. It is not a program or activity that would be applicable to other students and/or parents and guardians attending the VBE.

[26] In summary, I find that s. 13(1) applies to all of the information that the VBE withheld under that exception, and none of this information falls into the categories listed in s. 13(2).

Exercise of Discretion

[27] Section 13 is a discretionary exception to disclosure. The issue of discretion is not about determining whether I believe the head of a public body ought to disclose the information. It is about confirming that the head of the public body considered whether to disclose the information, and that the exercise of this discretion was not in bad faith, or based on irrelevant or extraneous grounds. Previous orders have stated that when exercising discretion to refuse access under s. 13(1), a public body should consider relevant factors such as: the age of the record; past practice in releasing similar records; the nature and sensitivity of the record; the purpose of the legislation; and the applicant's right to have access to his or her own personal information.[15]

[28] In summary, based on the materials before me, I am satisfied that the VBE has appropriately exercised its discretion when deciding whether to refuse to disclose the withheld information under s. 13 of FIPPA.

[29] VBE also withheld some of this information under s. 14 and s. 22.[16] As I have found that VBE may properly withhold this information under s. 13, I will not address the alternative grounds for redaction.

[30] **Disclosure harmful to personal privacy (s. 22) –** Section 22 of FIPPA requires that public bodies refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. I will now consider the information the VBE withheld under s. 22 that I have not already found can be withheld under s. 13.[17]

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[14] Schedule 1 of FIPPA
[15] Order F16-11, 2016 BCIPC 13 (CanLII) at paragraph 30; Order 02-38, 2002 CanLII 42472 (BC IPC)
[16] Pages 79, 81, 1028, 1051, 1052-1053.
[17] Pages 47, 53, 1046, 937, 941, 97, 339, 399, 405, 491-492, 949, 999, 1017, 1048-1049, 1050, 1057, 1061.

[31] Numerous orders have considered the analytical approach to s. 22. The public body must first determine if the information in dispute is personal information of a third party as defined by FIPPA. If the information is personal information, the public body must consider whether the information meets the criteria identified in s. 22(4). If s. 22(4) applies, disclosure is presumed to not be an unreasonable invasion of the third parties personal privacy. If s. 22(4) does not apply, the public body must determine whether disclosure of the information falls within s. 22(3). If s. 22(3) applies, disclosure is presumed to be an unreasonable invasion of third party privacy. However, the presumptions can be rebutted after considering all of the relevant circumstances including those listed in s. 22(2). Regardless of whether s. 22(3) applies, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information at issue would be an unreasonable invasion of a third party's personal privacy.[18]

Personal information

[32] Personal information is defined as "recorded information about an identifiable individual other than contact information." Contact information is defined 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."[19]

[33] I find that most of the information withheld is third party personal information. It includes the names of third parties and information relating to the personal feelings and/or concerns of identifiable third parties. Some of the expressed feelings and concerns are highly personal and sensitive.

[34] One email document contains a comment by a third party (whose identity has been disclosed already) about the applicant's actions.[20] This comment is about the applicant, so it is the applicant's personal information. However it also is the third party's personal information in that it represents her view about the applicant.[21]

[35] In addition, a small portion of the information is a mix of both the personal information of the applicant and the third parties.[22] For instance, there is a reference to the applicant in a third party's opinion about the VBE, and

[18] Order F15-52, 2015 BCIPC 55 (CanLII) at para 32; Order F15-63, 2015 BCIPC 69 (CanLII) at para 13.
[19] Both definitions are in FIPPA, Schedule 1.
[20] Page 999.
[21] Order F16-19, 2016 BCIPC 21 (CanLII) at para 23.
[22] Page 949, a 3 line redaction to an email dated February 8, 2014, and pages 1057, 1061 described as a chronology.

a chronology that contains personal information of third parties intertwined with the applicant's own personal information.

Is the information the type set out in s. 22(4)?

[36] Subsection 22(4) of FIPPA specifies circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. Neither party suggests that s. 22(4) applies. Based on my review of the material provided, I find that none of the circumstances in s. 22(4) apply to the withheld information.

[37] In particular, the employment information contains intimate personal feelings and concerns which have arisen following workplace events. None of the employment information is about the position, function or remuneration of those individuals or the how, when or why of their discharge of official functions. It therefore falls outside s. 22(4)(e) of the Act.

Is there a s. 22(3) presumption of an unreasonable invasion of a third party's privacy?

[38] 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:

> (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,

[39] The VBE submits that the presumption in s. 22(3)(d) applies to some of the redacted information because it is largely the personal feelings and opinions of third parties about workplace issues, conditions and events pertaining to themselves or other third parties and because it includes information about performance issues related to other VBE employees.[23] The applicant has not made any submissions relating to this section.

[40] All of the information which contains the personal feelings and concerns of VBE employees is information which I consider to be sensitive. However, only a small portion of that information (for reasons I am unable to articulate because it would disclose the very content of the information at issue) is information which does relate to employment history.[24] The remainder is the personal information of those third parties VBE employees.

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[23] Pages, 79/81, 339, 405, 949, 999, 1017, 1028, 1051, 1052/1053. As previously stated above I have concluded 79/81, 1028, 1051, 1052/1053 were properly redacted on other grounds; VBE submissions paras 32 to 34.

[24] Page 339 excerpt at point 2.

[41] I find that information about the performance of other identifiable VBE employees is personal information relating to employment history.[25]

[42] Therefore, for those portions described above which I have found to be information relating to employment history, there is a presumption that disclosure would be an unreasonable invasion of privacy.[26] Other circumstances can of course strengthen or rebut that presumption and I have considered this below.

Relevant circumstances – s. 22(2)

[43] The final step in the s. 22 analysis is to consider all relevant circumstances and determine if the personal information falls into any of the types of information listed in s. 22(4). It is at this step that the s. 22(3) (d) presumption may be rebutted.

[44] Subsection 22(2) states in part:

> (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 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,

[45] The VBE submits that in making its decisions on disclosure it considered the factors listed in s. 22(2) and circumstances unique to this matter. The VBE further submits that disclosure of third party personal information involving strangers to the conflict between the applicant, the applicant's former spouse or the VBE is not desirable for public accountability; that the redacted information is not relevant to the issues arising from the applicant's litigation and that in any event the Applicant's rights can be addressed in the current litigation; that the VBE has, with few exceptions only, withheld the third parties identity, feelings or private matters; and lastly, that disclosure exposes the third parties to a risk of harm. The applicant does not address any of the s. 22(2) circumstances directly.

[25] Page 949.
[26] Page 339 excerpt at point 2 and page 949.

Subsection 22(2)(a) public scrutiny

[46] Section 22(2)(a) requires consideration of whether disclosure is desirable for the purpose of subjecting the public body to public scrutiny. VBE submits that disclosing the third parties' personal information does not foster such accountability.

[47] If the disclosure of records would foster accountability of a public body, this may in some circumstances weigh in favour of disclosure of third party personal information.[27] It is the actions of a public body which is subject to scrutiny, not those of an individual who has had dealings with that public body or has acted in any capacity other than as a representative of the public body, unless the information would also show how the public body dealt with those individuals.[28] In the present circumstances disclosure would not reveal any information about the actions of the VBE. The information only reveals the actions of third party individuals who directly or indirectly had dealings with the VBE. Further, the information relating to VBE representatives is of a personal and sensitive nature relating to feelings not actions. Finally, the information relates to a discreet matter between the VBE and the applicant which does not warrant public scrutiny. I therefore find that s. 22(2)(a) does not favour disclosure of the information in this case.

Subsection 22(2)(c) – fair determination

[48] The VBE submits that none of the information is relevant to the issues raised in the applicant's related litigation. The applicant deposes that he seeks the name of the individual who emailed the VBE on December 19, 2013.[29] I glean from the applicant's submissions that the identity of this individual may be relevant to the issues arising in the applicant's litigation and that the applicant is implicitly raising the application of s. 22(2)(c).

[49] 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.

[27] Order F05-18, 2005 CanLII 24734 (BC IPC).
[28] Order 02-26 CanLII 42456 (BC IPC) at para 23.
[29] Document 491, Applicant Affidavit para 14.

4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[30]

[50] I find that the criteria set out at points 3 and 4 above have not been met. The applicant's claims relate to the conduct of actions of the VBE and its employees. All of that type of information has been disclosed by VBE. I find that none of the redacted information is relevant to the issues raised in the applicant's litigation, so I am not satisfied that it would have any bearing on, or significance for, a determination of the applicant's lawsuit. Further, I can find no basis to conclude that the identity of the person who wrote the December 19, 2013 email, or of any other third party, for that matter, is necessary in order to prepare for, or ensure, a fair hearing.

[51] Therefore, I find that the withheld personal information is not relevant to a fair determination of the applicant's rights within the meaning of s. 22(2)(c).

Subsection 22(2)(e) - unfair financial or other harm

[52] The VBE submits that certain third parties will be exposed unfairly to harm if their personal information is disclosed. Further, VBE submits that the information refers to persons who are not involved in the conflict between the VBE and the applicant. The VBE makes no submissions as to the type of harm which may occur.

[53] 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. It is not necessary to find or assume that harm will occur. It is sufficient that disclosure of the third party information would at least expose the third party to the kind of harm contemplated by s. 22(2)(e). It is the exposure to harm, not the likelihood of harm that matters.[31]

[54] I note that some of information relates to the personal feelings of third parties which, as previously stated, I consider sensitive. I find that given the deterioration over time of VBE interactions with the applicant, along with the applicant's use of social and news media, that disclosure of this information could expose these third parties to harm in form of mental distress or anguish of the type contemplated by s. 22(2)(e).[32] In my view, s. 22(2)(e) is a relevant circumstance in this case and it favours the view that disclosure of the above information would unreasonably invade the third parties personal privacy.

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[30] See, for example, Order 01-07, 2001 CanLII 21561 (BC IPC), Order F15-54, 2015 BCIPC 57 (CanLII) and Order F16-44, 2016 BCIPC 48 (CanLII) at paras. 21, 22.
[31] 01-37, 2001 CanLII 21591 (BC IPC) at para. 42.
[32] Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 42; Order F14-10, 2014 BCIPC 12 (CanLII) at para 31; Order F15-29 2015 BCIPC No. 32 (CanLII).

[55] However, with respect to the email containing the comment about the applicant I find that although its release may be embarrassing to its author, disclosure would not expose the author to any harm within the meaning of s. 22(2)(e).

Subsection 22(f) – supplied in confidence

[56] I have also considered whether the information was supplied in confidence. I note that while there are no express statements in the records that the information was supplied in confidence, it is clear from the sensitive nature of some of the subject matter, such as describing of one's feelings and/or concerns, that the third party intended that their comments be kept confidential.

[57] With respect to the identity of the author of the email dated December 19, 2013, I again note that all but the name of the individual who sent it has been disclosed. I note that the third party states that they had a telephone conversation with the applicant and had reviewed some documentation. When the third party sent the email to the VBE the applicant was not copied. Had this person wanted to include the applicant they could have done so. In the email, the third party was seeking guidance from the VBE and says that the matter was "sensitive". The VBE responder acknowledged that the matter was sensitive and it "has legal implications". On this basis I conclude that an implied expectation of confidence existed between the third party and the VBE.

[58] I therefore find that for all of the above information s. 22(2)(f) is a relevant circumstance and that it favours the view that disclosure would unreasonably invade the third parties personal privacy.

Conclusion – s. 22

[59] Having considered all of the above factors and relevant circumstances I find that with respect to the personal information to which s. 22(3)(d) applies[33], the presumption against disclosure has not been rebutted. Therefore, disclosure would be an unreasonable invasion of third party personal privacy.

[60] As for the third party information that is not subject to any presumption against disclosure, I find that, save and except the email comment about the applicant, the relevant circumstances weigh against disclosure. I therefore conclude that except for the email comment disclosure of all of the third party personal information at issue would be an unreasonable invasion of the personal privacy of third parties.

[61] As for the information which is a mix of both the personal information of the applicant and the third parties, section 4(2) of FIPPA states that if the information

[33] Pages 339, excerpt at point 2 and page 949.

can reasonably be severed from a record, an applicant has the right of access to the remainder of that record. Previous orders have stated that it will only be in rare cases that the application of s. 22 means that an applicant is not entitled to have access to his or her own personal information.[34] In this case, I have determined that the applicant's own personal information can be reasonably severed from third party personal information and must be disclosed to the applicant. I find that, except the applicant's personal information, which I have highlighted in a copy of the excerpted pages of the records that will be sent to the VBE along with this decision, the VBE is required to refuse to disclose the balance of the information in dispute under section 22.

CONCLUSION

[62] For the reasons above, under s. 58 of FIPPA, I order that the VBE is:

a) authorized to refuse to disclose the information withheld under s. 13 of FIPPA.
b) required to refuse to disclose all of the information withheld under s. 22 of FIPPA subject to paragraph c below.
c) required to give the applicant access to the information I have highlighted in the excerpted pages of the records that will be sent to the VBE along with this decision.

[63] The VBE must comply with this Order on or before Tuesday, January 17. The VBE must concurrently copy the OIPC's Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

December 1, 2016

ORIGINAL SIGNED BY

Susan Rowed, Adjudicator

OIPC File No.: F14-60065

[34] Order F05-34, 2005 CanLII 39588 (BC IPC)