



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F17-02

**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY
(TRANSLINK)**

Celia Francis
Adjudicator

January 9, 2017

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Summary: A journalist requested a specific contract between TransLink and Burrard Communications, in addition to any reports from Burrard about its activities under the contract. TransLink disclosed the records in severed form, withholding some information under s. 22(1) (harm to third-party personal privacy). The adjudicator found that s. 22(1) applies to some of the information. However, the adjudicator found that s. 22(1) does not apply to some information about Burrard's principal, as the journalist already knows this information, and ordered TransLink to disclose this information to the journalist.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(a), 23(3)(d).

Authorities Considered: B.C.: Order F15-03, 2015 BCIPC 3 (CanLII); Order F14-22, 2014 BCIPC 25 (CanLII); Order F09-24, 2009 CanLII 66961 (BC IPC); Order F15-14, 2015 BCIPC 14 (CanLII); Order 03-24, 2005 CanLII 11964 (BC IPC); Order F10-41, 2010 BCIPC No. 61.

INTRODUCTION

[1] In April 2014, a journalist made a request under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) to the South Coast British Columbia Transportation Authority (“TransLink”) for the following records: TransLink’s contract with Burrard Communications (“Burrard”) and Burrard’s reports to TransLink regarding its activities.¹ TransLink disclosed a copy of the contract and its attachments, withholding some information under s. 21(1) (harm to third-party business interests) and s. 22(1) (harm to third-party personal privacy) of FIPPA. The journalist requested that the Office of the Information and Privacy Commissioner (“OIPC”) review TransLink’s decision to deny him access to the withheld information.

[2] Mediation by the OIPC led to the disclosure of three more pages in February 2016. TransLink also decided to apply s. 22(1) to some of the information that it had been withholding under s. 21(1). Mediation was otherwise unsuccessful and the matter proceeded to inquiry. The OIPC issued a Notice of Inquiry to the journalist, TransLink and Burrard. The journalist and TransLink made submissions but Burrard did not.

[3] After the OIPC issued the Notice of Inquiry, TransLink decided to withdraw its application of s. 21(1). It disclosed to the applicant all of the pages it had withheld under that exception in August 2016. In its initial submission to this inquiry, TransLink also disclosed to the journalist information it had previously withheld on one additional page. TransLink said it had concluded that disclosing this information would not be an unreasonable invasion of personal privacy under s. 22(4)(f) of FIPPA.²

ISSUE

[4] The issue before me is whether TransLink is required by s. 22(1) of FIPPA to refuse to disclose information to the journalist. Under s. 57(2) of FIPPA, the journalist has the burden of proving that disclosure of the withheld personal information would not be an unreasonable invasion of third-party personal privacy under s. 22(1).

DISCUSSION

Information in dispute

[5] The record in this case is the April 2003 Purchase Order Agreement (“POA”) with Burrard, including two attachments: TransLink’s Request for

¹ The request covered the period from January 1, 2005 to December 31, 2009.

² The newly disclosed information was the hourly charge-out rates of Burrard’s principal and senior associate.

Proposals (“RFP”) for Contract Q3-003 and Burrard’s March 2003 proposal.³ TransLink disclosed the POA and RFP in full. TransLink disclosed the proposal in severed form, withholding what it calls “biographical information” under s. 22(1). This withheld information is the information in dispute.⁴

Preliminary issue

[6] In his submission, the journalist said that, during mediation, TransLink had claimed that there were no reports by Burrard to TransLink about its activities under the POA. He questioned this claim, saying TransLink had not provided proof that Burrard had delivered anything for which it was contracted and paid.⁵

[7] The journalist did not raise this issue in his request for review and it is not clear if he raised it directly with the OIPC during mediation. In addition, the investigator’s Fact Report and the Notice of Inquiry do not refer to the adequacy of TransLink’s search for responsive records as an issue to be decided in this inquiry. Therefore, I do not consider this issue to be properly before me in this inquiry and I will not consider it.

[8] In any case, the OIPC’s usual practice is to investigate and dispose of all complaints that a public body failed in its duty to assist under s. 6 of FIPPA, without an inquiry. If the journalist is dissatisfied with TransLink’s search, his proper recourse is to make his complaint directly to the OIPC’s investigation section.

Third-party privacy – s. 22(1)

[9] TransLink argued that s. 22(1) applies to the withheld information. The journalist argued generally that the information should be disclosed for transparency reasons.

Approach to applying s. 22(1)

[10] The approach to applying s. 22(1) of FIPPA has long been established. See, for example, Order F15-03:

Numerous orders have considered the approach to s. 22 of FIPPA, which states that a “public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.” This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be

³ The POA covered the period from April 2003 to April 2006.

⁴ The withheld information appears on pp. 33, 37, 38, 40 and 44-45. TransLink withheld pp. 44-45 in full and disclosed the other pages in severed form.

⁵ Journalist’s submission, paras. 2 & 12. TransLink did not address this issue.

an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, 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.⁶

[11] I have taken the same approach in considering the s. 22 issues here.

Is the information “personal information”?

[12] FIPPA defines “personal information” as recorded information about an identifiable individual, other than contact information.⁷ TransLink argued that the withheld information is about “named individuals” and is therefore “personal information”.⁸ The journalist did not address this issue.

[13] Page 33 – The withheld information on this page is a four-line sentence in the “Background” portion of the proposal. The first line refers to the principal of Burrard by name. I agree that it is about him as an identifiable individual and I find that it is his personal information.

[14] The information in the remaining three lines is not about an identifiable individual but rather is about Burrard's business. I therefore find that it is not personal information. This means that s. 22(1) does not apply to these three lines.

[15] Pages 37, 38, 44-45 – The withheld information on these pages relates to Burrard's principal and senior associate. It is about them as identifiable individuals and I find that it is their personal information.

[16] Page 40 – The withheld information on this page is the address of Burrard's principal in his role as its president and secretary, in a section entitled “Names, Addresses of Corporate Officers and Directors.” The material before me indicates that the address was also the principal's home address at the time. However, it is clear from the context that it is the address for contacting the principal in his business capacity. In my view, this is information to enable one to contact the principal at his place of business. I therefore find that it is “contact

⁶ 2015 BCIPC 3 (CanLII), at para. 58.

⁷ 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.” See Schedule 1 of FIPPA for these definitions.

⁸ TransLink's initial submission, para. 13.

information” and not personal information. This means that s. 22(1) does not apply to it.⁹

Does s. 22(4) apply?

[17] I will now consider whether s. 22(4) applies to the information I found above was “personal information.” Section 22(4) of FIPPA sets out a number of situations in which disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy. TransLink argued that s. 22(4) does not apply to the withheld information.¹⁰ The journalist argued that ss. 22(4)(e), (f), (h) and (i) apply to the withheld information.¹¹

[18] I see no basis for the application of s. 22(4) to the withheld information, including the sections to which the journalist referred. For example, the Burrard principal and senior associate are not officers, employees or members of a public body, so s. 22(4)(e) does not apply. Nor is the withheld information about any of the other types of information listed in s. 22(4). I find that s. 22(4) does not apply to the withheld information.

Presumed unreasonable invasion of third-party privacy – s. 22(3)

[19] The next step is to consider whether disclosure of the personal information is presumed to be an unreasonable invasion of a third party’s personal privacy. TransLink argued that the personal information falls under s. 22(3)(d).¹² The journalist did not address this issue. Section 22(3)(d) reads as follows:

22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if

...

(d) the personal information relates to employment, occupational or educational history,

...

⁹ I would add that, even if I found that the address is “personal information”, it is clear from the material before me that the journalist already knows it, not least because TransLink disclosed the same information in numerous other places in the proposal. This would, in my view, rebut any presumed invasion of privacy respecting this information.

¹⁰ TransLink’s initial submission, para. 14.

¹¹ Journalist’s submission, para. 20. Under ss. 22(4)(e), (f), (h) and (i), it is not an unreasonable invasion of third-party privacy to disclose information about the following: the third party’s position, functions or remuneration as an employee of a public body; financial or other details of a contract to supply goods or services; information about expenses incurred by the third party while travelling at the expense of a public body; and information about a licence, permit or other discretionary benefit held by a third party.

¹² TransLink’s initial submission, para. 15.

[20] TransLink argued that the personal information is “in substance”, résumé information and referred to past orders, which it said have held that résumés are “presumptively exempt from disclosure” under s. 22(3)(d). Two pages of the withheld personal information are attached to the proposal and are described in the covering letter to the proposal as the senior associate’s “résumé”. The covering letter describes the other withheld personal information as the “biographies” of the principal and senior associate and is embedded in the proposal.

[21] All of this withheld personal information describes the past work history of Burrard’s principal and senior associate, including appointments and positions they have held, as well as their educational attainments. I am satisfied that this personal information relates to the educational and employment history of the Burrard principal and senior associate, as past orders have interpreted these terms¹³ and I find that s. 22(3)(d) applies to it. This means that disclosure of the personal information in this case is presumed to be an unreasonable invasion of third-party privacy.

Relevant circumstances – s. 22(2)

[22] In determining whether disclosure of personal information is an unreasonable invasion of third-party personal privacy under s. 22(1) or 22(3), a public body must consider all the relevant circumstances, including those set out in s. 22(2). At this point, the presumption that disclosure of the withheld information would be an unreasonable invasion of personal privacy may be rebutted. TransLink argued that there is no basis for rebutting the presumption.¹⁴

[23] Public scrutiny – The journalist made submissions that relate to s. 22(2)(a), which says this:

22 (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

...

¹³ See, for example, Order F14-22, 2014 BCIPC 25 (CanLII), Order F15-03 and Order F09-24, 2009 CanLII 66961 (BC IPC).

¹⁴ TransLink’s initial submission, para. 16.

[24] The journalist said that the principal of Burrard has been a registered lobbyist, has “been intimately involved in the political process” and “has invited media attention about his business and political activities.” He also argued that the public has “a right to know about those who work in governments and for political parties that form governments” and “about those who are contracted by public bodies and paid scarce public funds for goods and services.”¹⁵

[25] I acknowledge the journalist’s point about the Burrard principal’s connections and the need for transparency of contracts with public bodies. The journalist has, however, received a complete copy of the contract in this case (*i.e.*, the POA), which includes the maximum amount payable under the POA. He has also received much of Burrard’s proposal and is thus aware of the services and expertise Burrard offered, its past experience and the hourly rates of Burrard’s principal and senior associate. His request for review and his submission in this inquiry show that he is also well aware of the extent of the principal’s political connections, past and present. The journalist did not explain how, in light of the information he already has, disclosure of the personal information of the Burrard principal and senior associate, which dates back more than 13 years, would be desirable for subjecting TransLink to public scrutiny.

[26] In support of his arguments, the journalist referred to a 2012 report by the BC Comptroller General that, according to the journalist, found that TransLink had not always followed its own procurement policies.¹⁶ The journalist did not, however, provide any evidence suggesting that procurement policies were not followed in the case of the 2003 POA or that disclosure would shed light on any impropriety in the awarding of the POA. Further, there is nothing that indicates that disclosure of the personal information would add anything to what the applicant already knows about the principal’s political connections.

[27] For these reasons, the journalist has not persuaded me that disclosure of the personal information of Burrard’s principal and senior associate would be desirable for subjecting TransLink to public scrutiny for the purposes of s. 22(2)(a).

[28] Applicant’s existing knowledge of personal information – Previous orders have found that a relevant circumstance under s. 22(2) is the fact that an applicant is aware of or already knows the personal information in issue, for example, from other sources or from the disclosed records. This factor may or may not favour disclosure, depending on the case.¹⁷

¹⁵ Journalist’s submission, paras. 4, 5, 11.

¹⁶ Journalist’s submission, para. 18.

¹⁷ See, for example, Order F15-14, 2015 BCIPC 14 (CanLII), Order 03-24, 2005 CanLII 11964 (BC IPC), and Order F10-41, 2010 BCIPC No. 61.

[29] The journalist's request for review and his submission, which included the Burrard principal's publicly available LinkedIn profile,¹⁸ show that the journalist already knows some of the withheld information about Burrard's principal, specifically, the principal's role with Burrard, where he lived at the time, some of his work experience and appointments and the skills and expertise he offered. Moreover, some of the withheld information about him on p. 37 is similar to some of the information disclosed elsewhere in the proposal.

[30] In my view, the journalist's existing knowledge of this information favours disclosure of the first withheld line on p. 33 and some of the information on p. 37.

Conclusion on s. 22(1)

[31] I found above that some of the withheld information was not personal information,¹⁹ so s. 22(1) does not apply to it. However, the rest of the withheld information is the personal information of Burrard's principal and senior associate. I found that s. 22(4) does not apply to this personal information, but that the s. 22(3)(d) presumption does.

[32] I also found that the fact that the journalist already knows some of the personal information about Burrard's principal is a relevant circumstance under s. 22(2) favouring its disclosure. In my view, this factor rebuts the presumption in s. 22(3)(d) for the information the journalist clearly already knows. I find that the journalist has met his burden of proof respecting this information by establishing that disclosure would not be an unreasonable invasion of third-party personal privacy under s. 22(1).

[33] However, I find that the journalist has not rebutted the s. 22(3)(d) presumption respecting the remaining withheld information (*i.e.*, some information about Burrard's principal and the information about Burrard's senior associate). I find that the journalist has not met his burden of proof regarding that personal information and s. 22(1) requires that this information be withheld.

CONCLUSION

[34] For reasons set out above,

1. Under s. 58(2)(c) of FIPPA, subject to item 2 below, I require TransLink to refuse the journalist access to the information it withheld under s. 22(1) of FIPPA.

¹⁸ This profile indicates that it was printed in September 2016.

¹⁹ The last three withheld lines on p. 33; the withheld information on p. 40.

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2. Under s. 58(2)(a) of FIPPA, I have determined that TransLink is not required to refuse the journalist access to some of the information it withheld under s. 22(1), which is highlighted in pink in the attached copy of the records provided to TransLink with its copy of this order. I require TransLink to give the journalist access to this information by Tuesday, February 21, 2017. TransLink must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

January 9, 2017

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

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