



OFFICE OF THE
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Order F18-02

MINISTRY OF EDUCATION

Elizabeth Barker
Senior Adjudicator

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Summary: A mother and her daughter asked for access to records related to the daughter's grade school education. The Ministry refused access to several records because they were outside the scope of FIPPA and to some information in other records because FIPPA exceptions applied. The adjudicator found that s. 61(2)(a) of the *Administrative Tribunals Act* applied to several records, so FIPPA did not. The adjudicator confirmed the Ministry's decision to refuse access to information under s. 13 (policy advice or recommendations) and s.14 (solicitor client privilege), and confirmed, in part, the Ministry's decision to refuse access to information under s. 22 (harm to third party personal privacy). The Ministry was ordered to disclose the information to which s. 22 did not apply.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 3(1)(b), 13, 14, 22(1), 22(3)(a), 22(3)(d), 22(4)(e), 22(4)(i); *Administrative Tribunals Act*, s. 61(2)(a); *Teachers Act*, ss. 41(1)(f) and 41(2)(c).

Authorities Considered: BC: Order 01-53, 2001 CanLII 21607 (BC IPC); Order 02-01, 2002 CanLII 42426 (BC IPC); Order F07-17, 2007 CanLII 35478 (BC IPC); F10-41, 2010 CanLII 77327 (BC IPC).

Cases Considered: *Canada v. Solosky*, 1979 CanLII 9 (SCC); *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665; *R. v. B.*, 1995 CanLII 2007 (BCSC).

INTRODUCTION

[1] This inquiry involves a joint request by a mother and her daughter to the Ministry of Education (Ministry) for access to records related to the daughter's grade school education. The Ministry provided records but it withheld some information pursuant to ss. 13 (policy advice or recommendations), 14 (solicitor client privilege), 15(1)(l) (harm to security of a computer system), 17 (harm to public body's financial or economic interests), and 22 (harm to third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicants disagreed with the Ministry's decision and requested a review by the Office of the Information and Privacy Office (OIPC). Mediation did not resolve the issues in dispute, and they requested that they proceed to inquiry.

[3] After the notice of inquiry was issued, the Ministry reconsidered its decision and informed the OIPC that it was no longer relying on s. 17 to withhold information. It also said that it had decided to refuse to disclose some information under s. 3(1)(b) (scope of Act). The OIPC agreed to these changes and the Notice of Inquiry was amended accordingly.

[4] During the inquiry, the Ministry consulted with five third parties about the impact of disclosure of information about them in the records. The Ministry informed the OIPC that one third party wanted to participate in the inquiry. The OIPC formally invited this individual to make representations about s. 22, but he did not do so.

[5] In its initial submission, the Ministry explains what information it was withholding under s. 15(1)(l) and the applicant responded that she does not dispute that severing decision.¹ Therefore, I will not consider the Ministry's decision regarding s. 15(1)(l).

[6] For ease of reference, I will refer to the mother as the applicant in this decision because most of the information pertains to her communication with the Ministry at a time when the daughter was not yet 18.²

ISSUES

[7] The issues to be decided in this inquiry are as follows:

¹ Page 172 in part 2 of the records.

² The daughter was over 18 at the time of the FIPPA access request. The access request was made by the mother and daughter's lawyer and each signed an authorization for him to access their information on their behalf. The daughter also signed a written consent for the Ministry to disclose her personal information to her mother.

1. Is some of the disputed information outside of the scope of FIPPA?
2. Is the Ministry authorized under s. 13 and/or 14 of FIPPA to refuse the applicant access to the requested information?
3. Is the Ministry required under s. 22 of FIPPA, to refuse the applicant access to the requested information?

[8] Section 57(1) of FIPPA places the onus on the Ministry to prove that the applicant has no right of access to the information it is withholding under s. 13 and 14. However, the applicant has the burden of proving that disclosure of personal information in the records would not be an unreasonable invasion of third party personal privacy under s. 22 of FIPPA. Section 57 is silent regarding the burden of proof in cases involving scope issues, and in such cases, as a practical matter, it is in the interests of both parties to present argument and evidence to support their positions.³

Background

[9] The Ministry's Teacher Regulation Branch (TRB) provides operational support and regulatory structure for the teaching profession by administering the provisions of the *Teachers Act*.⁴ It is responsible for evaluating teacher education programs, assessing applicants for certification as teachers, issuing teaching certificates and enforcing professional standards for certificate holders.⁵

[10] The TRB also provides administrative support to the Office of the Commissioner for Teacher Regulation. The Commissioner for Teacher Regulation (Commissioner) is an independent statutory decision maker authorized under the *Teachers Act* to address concerns about teacher competence and conduct. The Commissioner oversees discipline processes and considers certification appeals for both the public and independent school systems.⁶ TRB's investigators operate under powers and duties delegated by the Commissioner.⁷

[11] The Ministry's Office of the Independent School Inspector (OISI) was responsible for the administration of the *Independent Schools Act* until mid-2016. It inspected and regulated independent schools. The duties of the OISI are now

³ Order F10-41, 2010 CanLII 77327 (BC IPC).

⁴ Prior to January 9, 2012, the BC College of Teachers conducted regulatory reviews and investigations into the conduct of teachers.

⁵ Affidavit of TRB's Director of Professional Conduct, para. 8.

⁶ The Commissioner does not decide the merits of a case nor does he make any determination of guilt or innocence. He is responsible for receiving and reviewing reports and complaints about the conduct or competence of certificate holders and deciding which process in the *Teachers Act* is appropriate to address the matter.

⁷ *Teachers Act*, s. 3 (Commissioner's power to delegate).

carried out by the Ministry's Independent Schools Branch, but at the time of the events concerning the applicant, the OISI was still in place.

[12] In 2010, the applicant's daughter was a participant in a youth residential assessment and clinical treatment program operated by Venture Academy Inc. (Venture) in Kelowna. Venture, which is not itself a school, enrolled the daughter in Kleos Open Learning (Kleos), an independent distributed learning school.⁸ The applicant was dissatisfied with aspects of her daughter's treatment and education while attending Venture. In particular, she did not agree with Venture enrolling her daughter in Kleos. She took her concerns to several oversight bodies including the Ministry, the Ministry of Children and Family Development and the RCMP.

[13] The TRB investigated the applicant's allegations about five teachers.⁹ Ultimately, the Commissioner determined that no further action would be taken with respect to any of the matters the applicant raised.¹⁰

[14] The OISI investigated the applicant's concerns about Kleos and Venture. Its investigation considered whether Kleos was appropriately using Ministry funding. It also investigated whether Venture was providing educational services despite not being a school.¹¹

[15] On October 30, 2013, the applicant asked the Ministry for the following records:

- a) All records related to the Ministry's investigation into the enrolment of her daughter in Kleos.
- b) All records related to the OISI's investigation of Kleos and Venture, including financial records showing money the Ministry paid or received from Kleos for the education of students who were participating in Venture Academy.
- c) All records related to the TRB's investigation of a specific teacher.
- d) All records relating to the applicant, her daughter and the applicant's complaints to North Vancouver School District #44, including any records

⁸ The Ministry says that a distributed learning school relies on internet and electronic-based communication between students and teachers.

⁹ Initially, the investigative body was the BC College of Teachers. When the College was dissolved in 2012 the TRB took over the investigations.

¹⁰ Affidavit of TRB's Acting Director of Certification, paras. 13-14. The applicant was only provided reasons for the four complaints she made in writing.

¹¹ The outcome of the OISI investigation was treated as confidential and was not communicated to the applicant or other third parties.

involving its dealings with Venture, Kleos, Burnaby School District #41, the Ministry of Children and Family Development, and the RCMP.¹²

Records

[16] The Ministry provided me with 1137 pages of records responsive to the applicant's request. Approximately half are in dispute and have been withheld from the applicant in whole or in part. The disputed records are emails, letters, forms, memoranda, a report, handwritten notes, a teaching certificate and printouts from public websites. The records are about the TRB investigations of five teachers and the OISI investigation of Kleos and Venture.

Section 14 records not provided

[17] The Ministry did not provide the OIPC with a copy of the records or parts of records withheld under s. 14. After reviewing its submission and evidence I determined that there was insufficient information to assess its claim that the records were protected by solicitor client privilege. The OIPC has the power pursuant to s. 44(1) of FIPPA to order production of records over which solicitor client privilege is claimed. However, given the importance of solicitor client privilege to the operation of the legal system, and in order to minimally infringe on that privilege, the OIPC will only do so when necessary to adjudicate the issues in an inquiry. The OIPC's practice is to first afford the public body another opportunity to provide evidence regarding the records for which privilege is claimed. That is what the OIPC did in this case, and the Ministry responded with four additional affidavits from individuals who had direct personal knowledge of the communications contained in the records. I determined that their evidence was sufficient for me to decide if s. 14 applied and that it was unnecessary to also order production of the records for my review.

Applicant's submissions

[18] The applicant's inquiry submission is brief, so I will relate it here at the outset. She states that she seeks access to only those records that are withheld in their entirety.¹³ She submits that the Ministry has failed to sever the records in a reasonable manner in those instances where it has withheld all of a record.¹⁴ She also says that she "must depend on the general principles established by prior authority and the application of those principles by the OIPC in this review process to verify that severance of the entirety of certain records by the Public Body complies with FIPPA."¹⁵

¹² Each request covers a different time period between 2010 and 2013.

¹³ Applicant's submission, para. 7.

¹⁴ She lists the pages she means.

¹⁵ Applicant's submission, para. 3.

DISCUSSION

Scope of FIPPA, s. 3(1)(b)

[19] The Ministry submits that 15 pages are outside the scope of FIPPA because s. 3(1)(b) applies. Section 3(1)(b) states that FIPPA applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity. In support of its argument that the records are the type of record described in s. 3(1)(b), the Ministry cites s. 61 of the *Administrative Tribunals Act* (ATA). Therefore, I considered that provision as well.¹⁶ For the reasons that follow, I determined that s. 61(2)(a) applies and that it was unnecessary to also decide if s. 3(1)(b) applies.

[20] The Commissioner is appointed under the *Teachers Act*.¹⁷ Sections 41(1)(f) and 41(2)(c) of the *Teachers Act* expressly say that s. 61 of the ATA applies to the Commissioner:

41 (1) The following sections of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, apply to the commissioner and panels:

...

(f) section 61 [*application of the Freedom of Information and Protection of Privacy Act*].

(2) The following sections of the *Administrative Tribunals Act* apply to the director of certification, the commissioner and panel members:

...

(c) section 61 [*application of the Freedom of Information and Protection of Privacy Act*].

...

[21] Section 61 of the ATA says:

61(1) In this section, "decision maker" includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a facilitated settlement process.

(2) The *Freedom of Information and Protection of Privacy Act*, other than section 44 (1) (b), (2), (2.1) and (3), does not apply to any of the following:

(a) a personal note, communication or draft decision of a decision maker;¹⁸

¹⁶ I am satisfied that the applicants will not be prejudiced by my considering s. 61. They had an opportunity to speak to the s. 61 issue when they responded to what the Ministry said in its submission.

¹⁷ *Teachers Act*, s. 1 (definition of "commissioner") and s. 2 (appointment of commissioner).

[22] I understand ss. 41(1)(f) and 41(2)(c) to mean that the Commissioner is included in the non-exhaustive definition of “decision maker” in s. 61(1). Therefore, the only question to answer is whether the 15 pages fit within the categories of information and records listed in s. 61(2)(a) to (f). Given the nature of the records in this case, the only relevant category is s. 61(2)(a).

[23] The 15 pages withheld as outside the scope of FIPPA are as follows:

- a) Two memos on TRB letterhead, signed by the commissioner.¹⁹ One memo records the commissioner’s decision to investigate specific matters and what steps he asked the investigator to take. The other records his decision to not investigate a specific matter and what he instructed the investigator to say.
- b) Six forms for recording details of the commissioner’s meetings about the progress of specific reviews.²⁰ All but one has been signed by the commissioner or acting commissioner. They record either instructions to investigators about what steps to take next in the investigation or the reasons why no further action will be taken. The reasons consist of check-marked boxes next to the *Teachers Act* provisions that authorize taking no further action.
- c) A page of handwritten notes about what should be written in a letter communicating the outcome of an investigation.²¹

[24] The Ministry submits that all of these pages are the Commissioner’s “communications or instructions to file or to investigators.”²² Other than the records themselves, the only other evidence the Ministry provides about them is the following paragraph in the affidavit of the TRB’s Acting Director of Certification:

I have reviewed the information the Ministry has withheld under s. 3 of FIPPA. These records are communications by the Commissioner for Teacher Regulation to file or to investigators such as myself in relation to the TRB investigations relevant to this inquiry. The Commissioner for Teacher Regulation created these records while performing the duties of the position.²³

¹⁸ Sections 44 (1)(b), (2), (2.1) and (3) of FIPPA set out the OIPC commissioner’s investigation, audit and inquiry powers.

¹⁹ Part 3, pp. 154 and 257.

²⁰ Part 3, pp. 279-82 and 284-91.

²¹ Part 3, p. 283.

²² Ministry’s initial submission, para. 36.

²³ TRB’s Acting Director of Certification affidavit, para. 15.

[25] I am satisfied that the two memos and six forms are records of the Commissioner's communications with investigators and that the notes are his personal notes. Therefore, I find that the records are the type of records listed in s. 61(2)(a) and FIPPA does not apply to them. As FIPPA does not apply to these 15 pages, the applicant has no right to access them under s. 4 of FIPPA.

Solicitor client privilege, s. 14

[26] Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor client privilege. The law is well established that s.14 encompasses both legal advice privilege and litigation privilege.²⁴ The Ministry submits that legal advice privilege applies to the records it is withholding under s. 14.

[27] When deciding if legal advice privilege applies, BC Orders have consistently used the following criteria:

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

[28] Not every communication between client and solicitor is protected by solicitor client privilege. However, if the four conditions above are satisfied, then legal advice privilege applies to the communications and the records relating to it.²⁵

Part 1: pages 272-74, 280, 282-83, 285-87, 288-89, 303-04, 305, 345-47, 360-61, 363, 365-66, 375 and Part 2: pages 9-10.

[29] The Ministry's Inspector of Independent Schools (Inspector) provides affidavit evidence about these communications. He describes each record individually (they are all emails) and explains that he participated in those communications.²⁶ He identifies all of the individuals involved as Ministry employees or the Ministry's lawyers at Legal Services Branch (LSB). For the majority of the records, he says that the emails are communications in which he was either directly seeking or receiving legal advice from the Ministry's LSB lawyers in relation to his role as Inspector.

²⁴ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII), at para 26 [*College*].

²⁵ *R. v. B.*, 1995 CanLII 2007 (BCSC) at para. 22. See also *Canada v. Solosky*, 1979 CanLII 9 (SCC) at p. 13.

²⁶ Inspector's affidavit #2, paras.7 and 9.

[30] There are two emails, however, that he says are not direct communications with lawyers.²⁷ He says that one email is a discussion he had with colleagues about legal advice they received from a Ministry lawyer.²⁸ In the other email, he says he and his supervisor discuss the need to get legal advice on a particular issue.²⁹ He says that they did ultimately seek and receive legal advice on that issue, and he identifies which of the disputed record contains that advice.³⁰

Part 1: pp. 348-49

[31] The Ministry provides an affidavit from a LSB lawyer who deposes that she wrote this two page email.³¹ She says that she sent it in her capacity as the Ministry's lawyer. She says she sent it to five Ministry officials and two of her LSB colleagues, all of whom she names. She says that the email contains her legal advice to her clients at the Ministry and that the communication was confidential.

Part 3: p. 270

[32] This record is a TRB investigator's "memorandum to file" on Ministry letter head. Only a portion of it is withheld under s. 14. The Ministry provides an affidavit from a Legal Services Branch (LSB) lawyer, who explains that her duties include providing legal advice to employees of the TRB. She says that she has reviewed this record and the withheld portion is a description of the legal advice that her predecessor provided to the TRB investigator.³²

Part 3, pp. 244-51

[33] The Ministry's former Director of Governance and Legislation deposes that this is an eight page legal opinion provided to her by the Ministry's LSB lawyer.³³ She also relates how the record contains a statement at the end advising that it is confidential and subject to solicitor client privilege.

Conclusion, s. 14

[34] Based on the above evidence, I find that all of the records and parts of records withheld under s. 14 are communications between the Ministry and its lawyers acting in their role as the Ministry's legal advisors. I also find that they were confidential communications as there is nothing suggesting that anyone other than the Ministry and its lawyers were included in the communications.

²⁷ Inspector's affidavit #1, para. 10.

²⁸ At Part 1, pp. 288-89.

²⁹ At Part 1, p. 280.

³⁰ Inspector's affidavit #2, para 10. The legal advice is at Part 1: p. 305.

³¹ Chapman affidavit, para. 4.

³² Jackson affidavit. paras. 5-7.

³³ Shaw affidavit, paras. 5-8.

I am also satisfied that they are communications that directly relate to seeking, formulating and providing legal advice. In conclusion, the Ministry has proven that this information is protected by legal advice privilege and that it may be withheld under s. 14.

Advice or Recommendations, s. 13

[35] There is some overlap between the information that the Ministry withheld under s. 13 and 14. Below I consider only the information that I have not already found the Ministry may refuse to disclose under s. 14.³⁴

[36] Section 13 authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister, subject to certain exceptions listed in s. 13(2). The process for determining whether s. 13 applies to information involves two stages.³⁵ The first is to determine whether the disclosure of the information would reveal advice or recommendations developed by or for the public body. If so, then it is necessary to consider whether the information falls within any of the categories listed in s. 13(2). If it does, the public body must not refuse to disclose the information under s. 13(1).

[37] The information withheld under s. 13 is emails and handwritten notes between Ministry employees. These communications are clearly Ministry employees' recommendations to each other about how to investigate and communicate with others. Disclosing this information would reveal advice or recommendations developed by or for the Ministry. Further, I find that none of this information falls into the categories of information listed in s. 13(2). In conclusion, the Ministry may refuse to disclose this information to the applicant under s. 13(1).

Disclosure harmful to personal privacy, s. 22

[38] The vast majority of the information in dispute in this case is withheld under s. 22. Section 22 requires public bodies to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.³⁶ Numerous orders have considered the application of s. 22, and I will apply those same principles here.

³⁴ Part 1, p. 307, Part 2, pp. 103 and 297.

³⁵ Order F07-17, 2007 CanLII 35478 (BC IPC), para 18.

³⁶ Schedule 1 of FIPPA says: "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

[39] The applicant only disputes the s. 22 severing where the *entire* page is withheld under s. 22.³⁷ Therefore, from this point forward I will only consider the pages that have been completely withheld under s. 22.

Personal information

[40] Information that is not personal information may not be withheld under s. 22. Therefore, the first step in the s. 22 analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA 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.”³⁸

[41] Some of the information being withheld under s. 22 is about identifiable individuals so it is personal information. It is teachers’ names, home addresses, their TRB file numbers and details of their employment with Venture and/or Kleos. It is also the names and work and home contact information of the people who responded to questions posed by the investigators. There is also personal information in the form of what third parties said to investigators about their feelings, thoughts and actions.

[42] However, in many instances the Ministry is withholding an entire record under s.22 when only a small part contains personal information. For example, the Ministry refuses to disclose any part of what are obviously form letters sent to provide the investigator’s new work contact information or to describe processes and the statutory authority in general terms.³⁹ Further, there are several letters and emails to third parties where the investigator’s name and work contact details have been withheld in the header, footer and/or signature block. That kind of information is either not about identifiable individuals or it meets the definition of “contact information”, and for those reasons it does not meet the definition of personal information. The only personal information in this grouping or type of emails and letters is the recipient teacher’s name, mailing address, email address and TRB file number.

[43] The Ministry is also refusing to disclose all of an investigation report under s. 22, although parts of it are not personal information.⁴⁰ The information that is not personal information includes an index of organizations and terms,

³⁷ As per the applicant’s submission and an October 30, 2017 email to the OIPC confirming that this is her position.

³⁸ See Schedule 1 of FIPPA for these definitions.

³⁹ In multiple instances, the Ministry concurrently sent the applicant a parallel letter with the very same general process information.

⁴⁰ Part 3, pp. 163-243.

information about the TRB's jurisdiction and statutory authority to investigate, and details about how Venture and KLEOS operate.

[44] Finally, a fair bit of the information in dispute is only about the applicant and her daughter, so it is their personal information. As I will explain below, disclosing their own personal information to them would not be an unreasonable invasion of a third party's personal privacy, and the Ministry may not refuse to disclose it under s. 22. There are, however, instances where the applicant and her daughter's personal information is intermingled with third party personal information because it is about the applicant and her daughter's interactions and communications with the third parties. I will also consider that intermingled personal information below.

Section 22(4)

[45] The next step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If it does, then disclosure would not be an unreasonable invasion of personal privacy. The Ministry submits that none of the subsections in s. 22(4) apply to the personal information in this case. The applicant makes no submission on this point.

[46] Sections 22(4)(e) and (i) are relevant in this case:

22 (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,

...

(i) the disclosure, in respect of

...

(ii) a degree, a diploma or a certificate,

reveals any of the following with respect to the applicable item in subparagraph (i) or (ii):

(iii) the name of the third party to whom the item applies;

(iv) what the item grants or confers on the third party or authorizes the third party to do;

(v) the status of the item;

(vi) the date the item was conferred or granted;

(vii) the period of time the item is valid;

(viii) the date the item expires, or

(v) the date the benefit ceases.

[47] I find that s. 22(4)(e) applies to a significant part of the third party personal information.⁴¹ Specifically, it applies to parts of records where the Ministry is refusing to disclose the identity of Ministry employees and what they did in the context of discharging their job functions. All of this information is objective, factual information about what these individuals said and did in the normal course of carrying out their work functions. It is about them because it reveals what they said and did at work, but it contains no evaluation or qualitative assessment about them as individuals or how they performed their work functions.⁴²

[48] In addition, I find that s. 22(4)(i) applies to some of the third party personal information.⁴³ For instance, the Ministry is refusing to disclose information from TRB “Certificate Holder Form printouts” that is about teaching certificates, specifically the name the individual the certificate belongs to, what it confers, the certificate’s status, the date it was conferred, the period of time it is valid, and the date it expires. The Ministry is also withholding the same type of teaching certificate information from investigation plans. It is also refusing to disclose a photocopy of an official teaching certificate. Section 22(4)(i) applies to all of this information.

[49] Disclosure of the ss. 22(4)(e) and (i) information referred to above would not be an unreasonable invasion of third party personal privacy so the Ministry may not refuse to disclose it under s. 22.

Presumptions, s. 22(3)

[50] The third step in the s. 22 analysis is to determine whether any of the presumptions in s. 22(3) apply, in which case disclosure is presumed to be an unreasonable invasion of third party privacy. The Ministry submits that s. 22(3)(d) applies to all of the personal information and that s. 22(3)(a) also applies to some of it. The applicant makes no submission on this point.

[51] Sections 22(3)(a) and (d) state:

22(3) 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,

...

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

...

⁴¹ For example, Part 3, pp. 258-260.

⁴² For a similar finding, see Order 01-53, 2001 CanLII 21607 (BC IPC) at para 40.

⁴³ Part 3, pp. 132, 134, 139-140, 145, 155-162, 165, 316-317.

[52] There is a small amount of personal information that is about the medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation of an identifiable third party, so I find that s. 22(3)(a) applies to it.

[53] I also find that s. 22(3)(d) applies to some of the third party personal information because it relates to third parties' employment and occupational history. It is about the investigation of the teachers by their professional regulatory body, specifically the TRB and prior to that, the BC College of Teachers and in some instances the OISI. The investigations involved the applicant's complaints about how the five teachers complied with professional standards and conducted themselves at work. Previous orders have found that personal information arising from a regulatory body's investigation of its member relates to that individual's occupational history and when the investigation deals with the individual's actual employment, it also relates to employment history.⁴⁴

[54] Section 22(3)(d) also applies to some third party personal information because it relates to the educational history of students other than the applicant's daughter. It is student names, personal education numbers and course details.

Relevant circumstances, s. 22(2)

[55] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step, after considering all relevant circumstances, that the presumptions may be rebutted. The parts of s. 22(2) that are relevant in this case are as follows:

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,

...

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

...

(g) the personal information is likely to be inaccurate or unreliable,

Findings, s. 22

[56] I considered and weighed several circumstances when deciding whether it would be an unreasonable invasion of third party personal privacy to disclose the personal information in the records. Perhaps the most significant factor in this

⁴⁴ Order 02-01, 2002 CanLII 42426 (BC IPC) at para 121.

case is that much of the information that the Ministry is refusing to disclose is solely the applicant and her daughter's personal information. It is not intermingled with third party personal information, and I can see no basis for them not to be given access to it.

[57] Also highly relevant is fact that the applicant and her daughter already know much of the third party personal information because it originates with them. The complaints, which were the impetus for the investigations, came from them.⁴⁵ The applicant and her daughter know the names of the five teachers and what each is alleged to have done. In addition, the Ministry informed the applicant and her daughter that the teachers were under investigation, the process followed during the investigations, the TRB file number associated with each teacher, that the Ministry had decided that no further action was warranted in each case and the statutory provisions underpinning the decisions. The fact that the applicant and her daughter know this type of third party personal information is evident from the records, as well as the Ministry's evidence and submissions.

[58] The Ministry's submissions also raise the issue of s. 22(2)(a). In my view, disclosing the third party personal information in this case would serve no useful or desirable purpose in terms of subjecting the activities of the Ministry to public scrutiny. The disclosed records and the Ministry's submissions and evidence reveal the steps taken under the *Teachers Act* to investigate the matters and the teachers the applicant complained about, as well as the outcome of those investigations. I can see nothing of any value to be added, in terms of furthering public scrutiny of the Ministry's activities, by disclosing the particulars of the third parties' personal information.

[59] The Ministry submits that s. 22(2)(f) is a relevant circumstance to consider because the third party personal information was "supplied in confidence." The Ministry says that it treats its investigation records as confidential. I see that some of the correspondence the Ministry sent during the investigation has the word "confidential" at the top. There are no similar notations of confidentiality on the communications from third parties to the Ministry to indicate under what conditions they supplied their personal information. The TRB's Director of Professional Conduct deposes: "The confidentiality of these investigations is something which individuals being investigated are aware of and rely on, given the sensitivity of the information involved."⁴⁶ However, he does not explain what led him to conclude that this is what the third parties were thinking when they supplied their personal information. In my view, the Ministry's evidence and submissions do not establish that the third parties supplied their personal information to the Ministry in confidence with the expectation that what they said

⁴⁵ There was no suggestion that the applicants seeing the information about each other would be an unreasonable invasion of their personal privacy.

⁴⁶ TRB's Director of Professional Conduct, Affidavit #1, para 17.

or the outcome of the Ministry's investigation would be kept confidential from the applicant who initiated the complaints.

[60] The only exception is the third party medical information to which the s. 22(3)(a) presumption applies. Given the context and content of this information, I am satisfied that it was supplied to the Ministry in confidence during the investigation with the implied understanding that it would not be shared with others, in particular the applicant and her daughter.

[61] I have also considered the fact that some of the third party information is of a sensitive nature because it reveals the teachers' feelings about the matters under investigation and the impact on them personally. The information about the third party's medical care mentioned just above is also sensitive. There is also some third party personal information about a sensitive, but not medical, nature.⁴⁷ The sensitivity of all of this information is a circumstance that weighs against disclosure.

[62] In my view, the antagonistic nature of the applicant's interactions with some of the third parties whose personal information is at issue is also a relevant factor that weighs against disclosure. It is clear from the records that the applicant and her daughter feel and express animosity towards some of the third parties.

[63] Also relevant in this case is the fact that the applicant does not provide any information about circumstances that she thinks are relevant to consider when weighing whether disclosure would be an unreasonable invasion of third party personal information.

[64] I will now examine the different types of records at issue under s. 22 in light of the above relevant circumstances. These records have all been withheld in their entirety under s. 22.

Ministry letters to teachers

[65] The Ministry is withholding investigators' letters to teachers that are solely about Ministry administrative and process matters. Most of the information in these letters is not personal information. Also, as discussed above, s. 22(4)(e) applies to the investigators' names and what the letters reveal about their activities because it is factual, objective information about their usual work functions. The only other personal information is the teachers' names, addresses and file numbers.

[66] It is evident that the applicant and her daughter know the names and file numbers of the teachers and the fact that they were investigated. There is

⁴⁷ Part 2, pp. 29, 63, 64.

nothing sensitive about the content of these letters as they are purely about factual process matters. Therefore, I find that disclosing the teachers' names and file numbers where they appear in these types of administrative and process letters would not be an unreasonable invasion of third party personal privacy. The s. 22(3)(d) presumption, where it applies to that information, has been rebutted, and disclosing this information would not be an unreasonable invasion of third party personal privacy.

[67] However, the teachers' addresses also appear in these letters and there is no evidence that the applicant and her daughter know those. I have considered the fact that the interactions between the applicant, her daughter and these teachers have been antagonistic and the applicant has said nothing that would shed light on why she might want this type of third party personal information. I find that the s. 22(3)(d) presumption has not been rebutted for the teachers' addresses and disclosing them would be an unreasonable invasion of their personal privacy.

List of questions

[68] The Ministry is refusing to disclose a list of questions the investigator provided to three teachers in advance of the teachers' interviews.⁴⁸ The identical list was sent to each teacher and it contains no third party personal information. The questions are about the daughter, not about the teachers, so the only personal information in them is the daughter's. In my view, no s. 22(3) presumptions apply to this list as it contains no third party personal information. I find that disclosing this list of questions to the applicant and her daughter would not be an unreasonable invasion of third party personal privacy under s. 22.

Ministry email exchanges with a teacher

[69] There are also email exchanges between Ministry staff and the first teacher the applicant complained about. The content of these emails are about Ministry processes generally and most of it is not personal information or is the type of personal information about Ministry employees' job functions that I have found s. 22(4)(e) applies to. The rest of the personal information is the teacher's home email address, what he says to the Ministry and references to other individuals. The name of the teacher and the fact that he is under investigation is already known to the applicant and her daughter, so I find that disclosing his name in the context of these emails would not be an unreasonable invasion of his personal privacy. However, I find that disclosing the balance of the third party personal information, in particular what the teacher said to the investigators and his email address, would be an unreasonable invasion of third party personal privacy. Given the context is an investigation of the teacher's professional

⁴⁸ Part 1, pp. 125-26, 128-29; Part 2, pp. 304-05.

conduct at work, the s. 22(3)(d) presumption applies, and I can see no circumstances that rebut it regarding that information.

Ministry memos to file and Ministry internal emails

[70] There are also several memos to file and internal Ministry employee emails recording the investigation file status and the investigator's phone calls and phone messages. A significant part of these records is not personal information, so s. 22 does not apply for that reason. It is information about Ministry administrative and process matters generally. Also, some of it is information about Ministry employees carrying out their work functions and s. 22(4)(e) applies, so disclosure would not be an unreasonable invasion of their personal privacy.

[71] However, there is some third party personal information in these emails, specifically the name of the first teacher under investigation, his phone number and the file number associated with him. The presumption has been rebutted regarding the teacher's name and file number as the Ministry has previously disclosed that information to the applicant so she already knows it. However, the balance of this information is what the teacher and another person said to the investigator about the substantive matters under investigation. I can see no circumstances that rebut the s. 22(3)(d) presumption that applies to that information. In summary, I find that it would be an unreasonable invasion of third party personal privacy to disclose the teacher's phone number, the name of the other person and what that person and the teacher said to the investigator. Only the teacher's name and file number may be disclosed in these records.

Ministry correspondence to Venture, KLEOS and School Districts

[72] The Ministry is also withholding correspondence it sent to officials of Venture, KLEOS and public school districts. The correspondence is evidently addressed to officials in their capacity as representatives of public bodies/organizations and it is sent to their work addresses. The letters ask for factual, objective administrative details about the daughter's schooling (i.e., enrolment dates, courses completed). The only third party personal information is the officials' names and work addresses and the names and file numbers of the teachers under investigation where they appear in the "Re" line.

[73] I find that disclosing the third party personal information in this correspondence would not be an unreasonable invasion of third party personal privacy. The letters are about the daughter and her parents, not about the teachers or the officials. There is nothing in the letters about the officials' personal interactions with the daughter and the teachers, nor are they about the officials' views about such matters. In addition, as I have noted above, the applicant already knows that the teachers were under investigation and what their file numbers are.

Correspondence to the Ministry

[74] There are several letters, emails and some handwritten notes to the Ministry investigators from the teachers under investigation and from the officials at Venture, KLEOS and school districts. Those communications contain responses to questions and some personal thoughts, opinions and feelings about the investigations.

[75] I find that it would not be an unreasonable invasion of personal privacy to disclose who sent the emails and letters and what they say about general process matters, in particular where that type of process information is about the applicant's request for changes to the process. However, I find that the s. 22(3)(d) presumption has not been rebutted for the balance of the third party personal information in the emails and letters or any part of the handwritten notes. There are no circumstances that weigh in favour of disclosing that third party personal information.

Tabs/divider pages from report

[76] The Ministry is withholding tabs/divider pages from a TRB investigation report.⁴⁹ The only information on these pages is the name and file number of the first teacher who was investigated and the name of the investigator. As previously noted, the records, inquiry submissions and evidence satisfy me that the applicant and her daughter already know the identity of the investigator and the teacher, the fact that the teacher was investigated, his file number and the outcome of the investigation. Disclosing the information on these tabs and dividers would not be an unreasonable invasion of third party personal privacy.

TRB case chronologies

[77] The Ministry is withholding case chronologies about two of the teachers under investigation. Each chronology contains a teacher's name, date of birth, details of alleged misconduct and the College or Commissioner's decision about the allegation. The s. 22(3)(d) presumption applies to this third party personal information as it relates to the teacher's employment and occupational history. One of the chronologies does not relate in any way to the applicant and her daughter's complaints, and I can see no relevant circumstances that rebut the s. 22(3)(d) presumption that applies to it so it must not be disclosed.⁵⁰ However, the other chronology is about the applicant's complaint against the first teacher she complained about.⁵¹ The records and the Ministry's submissions and evidence demonstrate that, with the exception of the teacher's date of birth, the applicant already knows the information in this chronology. I find that disclosing it, minus

⁴⁹ Part 3, pp. 46-104.

⁵⁰ Part 3, pp. 126-128.

⁵¹ Part 3, p. 149.

the teacher's date of birth, would not be an unreasonable invasion of third party personal privacy.

Certificate Holder Forms

[78] These records, titled "Certificate Holder Form Printouts," appear to be printouts from a TRB computer program.⁵² Each form contains information about a teacher and their teaching certificate. The Ministry has withheld them in their entirety although only a small portion is third party personal information. Above, I found that s. 22(4)(i) applies to much of this personal information, so its disclosure would not be an unreasonable invasion of third party personal privacy.

[79] However, the balance of the information is driver's license numbers, places of birth, former names, home phone numbers and addresses, employment status and details about what the certificate holder said and did regarding their certificate. I can see no circumstances that weigh in favour of disclosing any of that information and find that disclosing it would be an unreasonable invasion of the third parties' personal privacy.

Investigation plans

[80] Section 22(4)(i) applies to much of the information in these investigation plans⁵³ because it is factual information about teaching certificates, so disclosing it would not be an unreasonable invasion of third party personal privacy. Disclosing the information in these plans that the applicant and her daughter clearly already know also would not be an unreasonable invasion of third party personal privacy, specifically the teachers' names, what the applicant alleged they did and the fact the allegations are under investigation. However, there are no circumstances that weigh in favour of disclosing the teachers' dates of birth and home contact details and I find that disclosing them would be an unreasonable invasion of the teachers' personal privacy.

Investigation report

[81] Much of the third party personal information in this investigation report⁵⁴ is about the third parties' interactions and communications with the applicant and her daughter. Thus, it is an intermingling of their personal information. It is also evident from the records and the Ministry's submissions and evidence that the applicant and her daughter already know much of the third party personal information in this report. In fact, a fair bit of it originates with the applicant and her daughter in the first place, including direct quotes and information taken from the applicant's own correspondence and her lawsuit. In the context of this case,

⁵² Part 3, pp. 132, 134, 139-140, 145, 316-317.

⁵³ Part 3, pp. 155-162.

⁵⁴ Part 3, pp. 163-243.

the fact that the applicant and her daughter so clearly know specific third party personal information in the report rebuts the s. 22(3)(d) presumption that applies to that specific information.

[82] However, there is no evidence that the applicant knows other third party personal information in the report. For instance, details about where the first teacher she complained about was at a time relevant to the investigation.⁵⁵ Although this information is not sensitive, it is the type of personal detail that is generally only shared between those who are on friendly terms. The records reveal that this is not the nature of the relationship between this teacher and the applicant. I can see no circumstances that weigh in favour of its disclosure to the applicant. I find that disclosing this personal detail would be an unreasonable invasion of the teacher's personal privacy.

[83] The report also summarizes what the teacher and another individual told the investigator about the teacher's conduct. There is also information about the teacher's employment status at various periods. The s. 22(3)(d) presumption applies to all of that information because it is in the context of an investigation into complaints about the teacher's work and professional conduct. I can see no relevant circumstances that rebut the presumption regarding this information. I find that disclosing that information would be an unreasonable invasion of third party personal privacy.

[84] There is also a reference in the report to medical information.⁵⁶ I can see no circumstances that rebut the s. 22(3)(a) presumption that disclosing this information would be an unreasonable invasion of third party personal privacy.

Memo from TRB investigator

[85] The Ministry is withholding a memorandum from the TRB investigator to the Commissioner.⁵⁷ Some information in this memo is not personal information so it may not be withheld under s. 22. Also, s. 22(4)(e) applies to parts of this memo where it references what TRB employees did in the usual course of carrying out their job functions. In addition, most of this memo is the applicant and her daughter's personal information. That is because it is a summary of what the applicant said and did, with direct quotes from her own correspondence. Disclosing the s. 22(4)(e) information and the personal information of the applicant and her daughter would not be an unreasonable invasion of third party personal privacy.

[86] The memo also contains the name of the first teacher the applicant complained about, the date and duration of his interview and a quote from the

⁵⁵ Part 3, p. 175.

⁵⁶ Part 3, p. 217.

⁵⁷ Part 3, pp. 258-260.

investigator's letter to him relaying the details of the applicant's complaint.⁵⁸ The memo also contains the name of three other teachers the applicant complained about and the status of their teaching certificates. The applicant clearly knows the identity of the teachers, what she alleged they did and the fact there was an investigation into her allegations. None of the third party personal information is sensitive and it dates back several years. Also, the teaching certificate information is factual, non-evaluative information about the teachers' public and professional lives. In conclusion, I find that disclosing the third party personal information in this memo would not be an unreasonable invasion of third party personal privacy.

Printouts from Venture's website

[87] The Ministry is refusing to disclose staff biographies printed from Venture's website.⁵⁹ It is also withholding printouts from searches of a teacher's name in Google and Facebook.⁶⁰ The Ministry does not explain how disclosing third party personal information that is already publicly available online to the applicant would be an unreasonable invasion of personal privacy. In my view, it would not be.

[88] There are some handwritten notes on these printouts. Most of them are not personal information as they are about Venture and KLEOS. Where they are personal information, they are about the job title, certificate status and where the teachers worked. I find that disclosing these notes would not be an unreasonable invasion of third party personal privacy as they relate to the teachers' public and professional lives.

Handwritten notes

[89] This is a blank page with two handwritten notations.⁶¹ There is no personal information on this page so s. 22 does not apply.

Meeting minutes

[90] The Ministry has withheld one page from the minutes of the former College of Teachers' preliminary investigation sub-committee.⁶² Most of the personal information on this page is the applicant's and her daughter's. A teacher's name appears twice in the context of what the applicant alleges he did and then again in the sub-committee's decision about what process to follow. The evidence in this inquiry is that the applicant already knows all of the

⁵⁸ The letter is at Part 1, pp. 36-37.

⁵⁹ Part 3, pp. 302-303, and 363-367.

⁶⁰ Part 3, p. 319-322.

⁶¹ Part 3, p. 295.

⁶² Part 3, p. 330.

teacher's personal information on this page. I find that disclosing it would not be an unreasonable invasion of third party personal privacy.

Summary of findings, s. 22

[91] I have considered the pages that the Ministry completely withheld under s.22 as that is the only s. 22 severing the applicant disputed. I find that a fair bit of the information being withheld from those pages is not personal information, so s. 22 does not apply.

[92] I also find that much of the information that the Ministry is refusing to disclose is the applicant and her daughter's personal information and it is not intermingled with third party personal information. It may not be withheld under s. 22.

[93] Sections 22(4)(e) and (i) apply to some of the third party personal information. Therefore, disclosing it would not be an unreasonable invasion of third party personal privacy and the Ministry may not refuse access to it under s. 22.

[94] The ss. 22(3)(a) and (d) presumptions apply to much of the third party personal information. I find that the presumptions have been rebutted in several instances, so that information may not be withheld under s. 22. However, the Ministry must continue to refuse to disclose the balance of the third party personal information because the presumptions that apply to it have not been rebutted.

[95] The Ministry is being provided a copy of the pages that it withheld completely under s. 22 and which I find were incorrectly severed. I highlighted the only information on those pages that the Ministry is authorized and required to refuse to disclose under s. 22.

CONCLUSION

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

1. Section 61(2)(a) of the *Administrative Tribunals Act* applies to Part 3 pages 154, 257 and 279-91, so FIPPA does not apply. The applicant has no right under FIPPA to access that information.
2. I confirm the Ministry's decision to refuse access to information under ss. 13 and 14 of FIPPA.
3. I confirm, in part, the Ministry's decision to refuse access to information under s. 22 of FIPPA subject to paragraph 4 below.

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4. On the pages of the records that are being sent to the Ministry with this decision, the Ministry is only required to refuse access under s. 22 to the information that I have highlighted. The Ministry must give the applicant access to the non-highlighted information on those pages.
 5. I require the Ministry to comply with this order and give the applicant access to the information as directed in paragraph 4 by February 26, 2018. The Ministry must concurrently provide the OIPC Registrar of Inquiries with a copy of its cover letter and the records sent to the applicant.

January 12, 2018

ORIGINAL SIGNED BY

Elizabeth Barker, Senior Adjudicator

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