



OFFICE OF THE
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Order F18-03

CITY OF VANCOUVER

Erika Syrotuck
Adjudicator

January 12, 2018

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Summary: The applicant requested records that relate to the City of Vancouver's decision to discipline the applicant at work. The City of Vancouver refused access to portions of the records on the basis that it would reveal advice or recommendations under s. 13 and that it would be an unreasonable invasion of third party personal privacy under s. 22. The adjudicator found that the City is authorized to withhold all of the information it withheld under s.13. The adjudicator also found that s. 22 applies to some of the information but that the City is required to disclose the remaining information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2), 22(1), 22(2), 22(3), 22(4), 22(5).

Authorities Considered: BC: Order 01-07, 2001 CanLII 21561 (BC IPC); Order F15 12, 2015 BCIPC 12 (CanLII); Order F16-28, 2016 BCIPC 30 (CanLII); Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order F16-50, 2016 BCIPC 55 (CanLII); Order F17-05, 2017 BCIPC 6 (CanLII); Order 04-33, 2004 CanLII 43765 (BCIPC); Order F17-22, 2017 BCIPC 23 (CanLII); Order F14-47, 2014 BCIPC 51 (CanLII).

Cases Considered: *John Doe v Ontario (Finance)* 2014 SCC 36 (CanLII), *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)* 2002 BCCA 665 (CanLII).

INTRODUCTION

[1] The applicant requested a copy of records relating to the City of Vancouver's (City) decision to discipline the applicant at work. In response to the request, the City provided 123 pages of responsive records, withholding some

records under ss. 13(1) (advice or recommendations) and 22 (harm to third party privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant requested a review of the City's decision by the Office of the Information and Privacy Commissioner (OIPC). Mediation did not resolve the issues and the matter proceeded to inquiry.

ISSUES

[2] The issues to be decided in this inquiry are:

1. Is the City authorized to refuse to disclose the information in dispute under s.13(1) of FIPPA?
2. Is the City required to refuse to disclose the information in dispute under s. 22 of FIPPA?

[3] Under s. 57(1) of FIPPA, the burden of proof is on the City to establish that the applicant has no right of access under s. 13(1). Section 57(2) of FIPPA states that the burden of proof is on the applicant to establish that disclosure of information would not be an unreasonable invasion of third party personal privacy under s. 22.

DISCUSSION

Background

[4] The applicant is a unionized auxiliary employee of the City of Vancouver. The City investigated complaints about the applicant's conduct and ultimately issued him a written warning. After receiving the written warning, the applicant commenced a grievance on the basis that the City contravened the collective agreement in the course of the investigation. He sought to have the written warning removed from his employment record. This grievance has gone through the first two steps in the grievance process and is scheduled to proceed to arbitration.

[5] In the course of preparing for this Inquiry, the City decided to disclose additional excerpts of the records withheld under s. 13(1).¹ The applicant initiated a second grievance after receiving the additional disclosure.²

Records in Dispute

[6] There are 123 pages of responsive records consisting of:

¹ City of Vancouver's initial submission para. 37.

² He alleged that his manager had violated the collective agreement, a workplace policy and committed a "number of other legal violations." Applicant's response submission para. 8.

- Emailed complaints sent by third parties to the City regarding workplace incidents (Complaints).³
- Notes taken by City employees during investigation meetings with the third parties (Investigation Notes).⁴
- Email exchanges between City staff about discipline (Emails).⁵
- Handwritten notes taken by unidentified parties (Notes).⁶
- A typewritten memo to file (Memo).⁷
- Copies of text messages sent by the applicant to a third party (Text Messages).⁸

Policy Advice or Recommendations – Section 13

[7] The City withheld portions of the Emails, the Notes and the Memo under s. 13 of FIPPA.

[8] Section 13 gives public bodies discretion to refuse to disclose information that would reveal advice or recommendations developed by or for a public body subject to the exceptions listed in s. 13(2). The relevant portions of this section are:

13 (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

(2) The head of a public body must not refuse to disclose under subsection (1)

(a) any factual material,

....

(n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[9] The Supreme Court of Canada acknowledged that the purpose of the exception is to provide for the free, full and frank participation of public servants or consultants in the deliberative process.⁹ Further, the BC Court of Appeal indicated that the deliberative process includes the investigation and gathering of facts and information necessary to the consideration of specific or alternative

³ Pages 10-14, 17-18, and 42-43 of the records.

⁴ Pages 44-48, 50-55, 57-71 and 79-93 of the records.

⁵ Pages 19, 24-37 and 109-110 of the records.

⁶ Pages 15-16, 19-23 and 38-39 of the records.

⁷ Page 121 of the records. See also Affidavit of City Superintendent at para. 19.

⁸ Pages 112-118 of the records.

⁹ *John Doe v Ontario (Finance)* 2014 SCC 36 (CanLII) at para. 51.

courses of action.¹⁰ The BC Court of Appeal also stated that “advice” should be interpreted to include an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.¹¹ Previous orders have held that this section applies to information that would allow an accurate inference to be made about advice or recommendations.¹²

[10] The first step in any s. 13 analysis is to determine whether the information is advice or recommendations developed by or for a public body. The next step is to determine whether the information falls within any of the circumstances described in s. 13(2); if so, the public body must not refuse to disclose the information under s. 13(1).

Positions of the parties

[11] The City submits that the information withheld under s. 13(1) contains or would allow accurate inferences about advice or recommendations regarding the investigation and potential discipline of the applicant.¹³

[12] The applicant submits that City has withheld information that is not advice or recommendations within the meaning of s. 13.¹⁴

Section 13 - Findings

[13] In my view, all of the withheld portions of the Emails are advice or recommendations developed by or for a public body within the meaning of s. 13. The Emails are between City managers and human resource consultants. They discuss how they will respond to the complaints about the applicant. The withheld portions of the Emails constitute City employees using their professional expertise to determine the significance of the applicant’s conduct and to determine an appropriate course of action.

[14] The City’s submissions reveal that the Memo is a typewritten note to file written by the Superintendent of Citywide Services (“Superintendent”). It references a conversation he had with the applicant. The City refused to disclose one sentence under s. 13(1). This sentence reveals a proposed course of action and in my view, this would allow an accurate inference to be made about advice or recommendations developed by or for the City.

¹⁰ *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)* 2002 BCCA 665 (CanLII) at para. 106.

¹¹ *Ibid* at para. 113.

¹² See for example, Order F15-12, 2015 BCIPC 12 (CanLII), Order F16-28, 2016 BCIPC 30 (CanLII).

¹³ City of Vancouver’s initial submission at para. 26.

¹⁴ Applicant’s response submission at para. 26.

[15] While the Notes do not contain the name of the author or any sort of title indicating why they were written, the City submits that they “appear to have been written by the Human Resource Consultants involved in the file.”¹⁵ The Notes mirror parts of the conversations in the Emails between the human resource consultants and City managers. I accept the City’s explanation that they were written by the human resource consultants. In my view, the Notes would allow accurate inferences to be made about advice or recommendations developed by or for the City.

Section 13(2)

[16] The applicant submits that the information withheld under s. 13(1) ought to contain factual material and decisions, including reasons, and therefore cannot be withheld under ss. 13(2) (a) and (n).¹⁶ The applicant says that the decision to issue discipline must have been a reasoned decision based on evidence, as opposed to speculation or suspicion.¹⁷

[17] Previous orders have found that ‘factual material’ under s. 13(2)(a) does not include factual information that is an integral component of the advice or recommendations.¹⁸ None of the records withheld under s. 13(1) contain facts separate from the deliberative process. Any information in these records that could be construed as ‘factual’ is intertwined with advice or recommendations. On this basis, I do not find that s. 13(2)(a) applies.

[18] Similarly, I find that s. 13(2)(n) does not apply because none of the disputed information is a decision. It is reasoning and deliberation about the applicant’s conduct and alternative courses of action. Therefore, none of the withheld information is a decision, including reasons, within the meaning of s. 13(2)(n).

Exercise of Discretion

[19] Section 13 is discretionary; it permits a public body to disclose information that it would be authorized to withhold. It is not my role to determine whether the City should have exercised their discretion to disclose specific information. Rather, I must be satisfied that the public body considered whether to exercise its discretion and that it did not make its decision in bad faith or for an improper purpose or took into account irrelevant considerations or failed to take into account relevant considerations.¹⁹ If I am not satisfied, I can order that a public body reconsider how they exercised their discretion.

¹⁵ City of Vancouver’s initial submission at para. 23.

¹⁶ Applicant’s response submission at para. 23.

¹⁷ Applicant’s response submission at para. 22.

¹⁸ Order F17-22, 2017 BCIPC 23 (CanLII) at para. 32.

¹⁹ *John Doe, supra* at para. 52.

[20] The City states that it considered the following factors when exercising its discretion to withhold information under s. 13(1): the purpose of the legislation; the City's duty to make every reasonable effort to respond without delay to each applicant openly, accurately and completely; the Applicant's interest in the disclosure of the records; the age of the records; the nature and sensitivity of the records; the harm to third parties if the records were released; and the harm to the City if the records were released.²⁰ Further, the City indicates that it reviewed the records again in preparation for this Inquiry, and in light of the passage of time, it exercised its discretion to disclose additional excerpts previously withheld under s. 13(1).²¹

[21] The applicant states that, although the City mentioned factors that it took into account, it does not explain or justify the extent of its consideration.²²

[22] I am satisfied that that the City considered whether to exercise its discretion. It is apparent to me that it undertook a line by line approach to severing when it first responded to the request. Further, the City disclosed information at the beginning of this inquiry process that it had previously withheld under s. 13. This indicates to me that the City considered whether to disclose the information in dispute. Nothing before me indicates that the City decided to exercise its discretion based on irrelevant factors or in bad faith.

Conclusion – Section 13(1)

[23] I find that the City may refuse to disclose all of the information that it withheld under s. 13(1).

Third Party Personal Privacy – Section 22

[24] The City withheld information in the Investigation Notes, Notes, Complaints, Text Messages, Emails and Memo under s. 22.

[25] Section 22 requires that a public body withhold personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. The relevant portions of this section are:

- (1) The head of 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.
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal

²⁰ City of Vancouver's initial submission at para. 36.

²¹ Affidavit of Director, Access to Information for the City of Vancouver at para. 7.

²² Applicant's response submission at para. 34.

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,

....

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

....

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

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

....

(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,

...

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

.....

Personal Information

[26] The first step in any s. 22 analysis is to determine whether the information is personal information.

[27] FIPPA defines personal information as “recorded information about an identifiable individual other than contact information.” FIPPA defines contact information as “information to enable an individual at a place of business to be contacted and includes the name, position or title, business telephone number, business address, business email or business fax number of the individual.”²³

[28] Most of the information in dispute is the third parties' names along with their descriptions and thoughts regarding specific workplace incidents involving the applicant. After telling their supervisors verbally, the third parties wrote the Complaints. The third parties then provided additional information through the investigation meetings; this information is the subject of the Investigation Notes.

²³ *Freedom of Information and Protection of Privacy Act*, Schedule 1.

The withheld information in the Memo reiterates aspects of the third parties' complaints about the applicant. In my view, all of this information is about identifiable third parties and is their personal information. The information is also about the applicant and is his personal information.

[29] Some of the Complaints contain email addresses. One of these email addresses is clearly a business email address because it ends with "vancouver.ca." This email address is the email address of the supervisor to whom one of the complainants submitted their Complaint. In this context, I find that email address is contact information and not personal information. The remaining email addresses end with domain names commonly associated with personal email addresses and I find that these are the third parties' personal information.

[30] The Text Messages were sent by the applicant to a third party and contain the name of that third party. Some of the disputed portions of the Emails are about the Text Messages.²⁴ In my view, this information is the personal information of the third parties and of the applicant. However, there are two portions of the Emails²⁵ that are about the applicant and do not identify a third party. This is only the applicant's personal information, therefore I do not find it would be an unreasonable invasion of a third party's personal privacy to disclose it. I will not consider these two portions any further.

[31] There are four redactions on the Notes²⁶ that the City withheld under s. 22. The City's evidence is that the Superintendent wrote the original comments and that the withheld notes appear to be written at a later date by one of the human resource consultants on the file.²⁷ As this information contains names of the third parties, and is about them, it is their personal information.

Section 22(4)

[32] The next step is to determine whether any of the circumstances in s. 22(4) apply. Section 22(4) describes circumstances where disclosure of personal information is not an unreasonable invasion of personal privacy.

[33] The City and the applicant agree that the personal information does not fall into any circumstances encompassed in s. 22(4). I have reviewed the records and find that s. 22(4) does not apply.

²⁴ First redaction on page 109 of the records and in all three redactions on page 110 of the records.

²⁵ The latter portions of the second and third redactions on page 110 of the records.

²⁶ Pages 38-39 of the records.

²⁷ Superintendent of Citywide Services Affidavit at para. 18.

Section 22(3)

[34] The next step in the analysis is to determine whether s. 22(3) applies to any of the personal information. Section 22(3) describes circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy. If s. 22(3) applies to the information, the presumption can be rebutted.

Section 22(3)(d) – information related to employment history

[35] The City submits that s. 22(3)(d) applies to all of the withheld personal information because it relates to a third party's employment history.²⁸

[36] The applicant says he does not oppose the City's submission that s. 22(3)(d) applies.²⁹

[37] I find that s. 22(3)(d) applies to the personal information in the Complaints, the Investigation Notes, the Notes and the Memo. This is consistent with previous orders where the adjudicator found that witness statements collected in the course of workplace investigations is information relating to employment history to which s. 22(3)(d) applies.³⁰ Therefore, there is a presumption that disclosure of this third party personal information would be an unreasonable invasion of the third parties' personal privacy.

[38] I also find that s. 22(3)(d) applies to the personal information in the Text Messages and the Emails. The applicant sent the Text Messages to a third party and they were part of the City's investigation. The redacted portion of the Emails is about the Text Messages. I find that the presumption applies to this information.

[39] In summary, I find that s. 22(3)(d) applies to all of the third party personal information in dispute.

Section 22(2)

[40] The next step is to consider whether disclosure would be an unreasonable invasion of third party personal privacy with regard to all relevant circumstances, including the circumstances listed under s. 22(2). It is at this step that the s. 22(3) presumptions may be rebutted.

²⁸ City's initial submission at para. 46.

²⁹ Applicant's response submission at para. 48.

³⁰ For example, see Order F15-12 2015 BCIPC 12 (CanLII) and Order 01-53, [2001] B.C.I.P.C.D. No. 56.

22(2)(a) - Public scrutiny

[41] The applicant submits that disclosure is desirable for the purpose of subjecting the activities of the public body to scrutiny. In particular, the applicant alleges that the decision maker investigating the complaints acted in a biased manner. The applicant also states his desire to hold the City accountable for “egregious transgressions on the part of the management team.”³¹

[42] The City submits that the records in this matter concern the conduct of a single employee and are only of interest to the applicant.³²

[43] I do not find that disclosure of this personal information is desirable for the purpose of subjecting the activities of the City to public scrutiny. I have considered the applicant’s submission and I do not find that the information in dispute would reveal meaningful information about how the City conducted the investigation.³³

[44] I do not find that disclosure is desirable for the purposes of public scrutiny.

22(2)(c) – Fair determination of the applicant’s rights

[45] The applicant says that the personal information is relevant to a fair determination of his rights with respect to his two grievances.

[46] In Order 01-07³⁴ former Commissioner Loukidelis adopted a four part test to determine whether s. 22(2)(c) applies:

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

³¹ Applicant’s response submission at paras. 53-56.

³² City of Vancouver’s reply submission at para. 16.

³³ For a similar finding, see Order F16-50 2016 BCIPC 55 (CanLII) at para. 49.

³⁴ Order 01-07, 2001 CanLII 21561 (BC IPC).

[47] If all of the criteria are met, then a fair determination of the applicant's rights is a factor that I must consider in determining whether the applicant has rebutted the presumption.

[48] I will consider the two grievances separately.

The first grievance

[49] The applicant filed a grievance about the written warning. The grievance is awaiting arbitration. On this basis, I am satisfied that there is a legal right in question and that it relates to a proceeding that is underway.

[50] As the third party information relates to the complaints that were the basis of the investigation and discipline, I am satisfied that the personal information would have some bearing on the determination of whether the written record should be removed from the applicant's file.

[51] The City submits that the third party information contained in the records is not relevant to a fair determination of the applicant's rights because the arbitration is an independent legal proceeding with its own document disclosure process.³⁵ Further, the City submits that, once arbitration commences, the arbitrator will be empowered to adjudicate all relevant procedural issues including the timing and contents of document disclosure.³⁶

[52] I have reviewed the applicant's submissions relating to the fourth part of the test, and, in my view the applicant has not provided a specific reason why it is necessary to obtain the personal information in order to prepare for the proceeding or to ensure a fair hearing. He has not explained why the document disclosure process in the arbitration process does not adequately allow him to prepare for and ensure a fair determination of his rights. No reason is apparent from the records themselves. For these reasons, I am not satisfied that the personal information is necessary to prepare for or ensure a fair arbitration proceeding.

[53] I find that the information is not relevant to a fair determination of the applicant's rights in the first grievance.

The second grievance

[54] The applicant has commenced a second grievance on the basis that the City Manager contravened the Collective Agreement, a workplace policy and

³⁵ Affidavit of Labour Relations Consultant at para. 14.

³⁶ Affidavit of Labour Relations Consultant at para. 15.

committed “a number of legal violations.”³⁷ I am satisfied that the first two parts of the test are met.

[55] The applicant states that the determination in this inquiry is inextricably linked to the second grievance.³⁸ The applicant does not explain how the personal information is significant for a determination of his rights. I am not satisfied that the personal information has a bearing on the substance of the issues in the second grievance.

[56] I find that the information is not relevant to a fair determination of the applicant’s rights regarding the second grievance.

Section 22(2)(g) - Information likely inaccurate or unreliable

[57] The applicant submitted that he anticipated that the City would claim that s. 22(2)(g) favours non-disclosure.³⁹ The City’s position is that s. 22(2)(g) does not apply.⁴⁰ Section 22(2)(g) is intended to prevent the harm that can flow from disclosing third party personal information that may be inaccurate or unreliable.⁴¹ The third parties were the source of their own personal information. There is nothing to indicate that the third parties’ personal information is inaccurate or unreliable.

Section 22(2)(f) - Supplied in confidence

[58] Section 22(2)(f) states that whether the personal information has been supplied in confidence is a relevant circumstance in determining if disclosure of personal information is an unreasonable invasion of a third party’s personal privacy.

[59] The Superintendent says the third parties verbally advised their supervisors about the workplace incidents and that the supervisors requested that the third parties submit them in writing. These are the Complaints that are in dispute. The Superintendent states that although he was not privy to the original conversations between supervisors and the complainants, it is the usual practice to keep complaints confidential and that he believes it would have been understood by the third parties that the written complaints would only be circulated among senior management and human resources and not disclosed to the applicant.⁴² The Superintendent further states that none of the statements

³⁷ Applicant’s response submission at para. 8.

³⁸ Applicant’s response submission at para. 59.

³⁹ Applicant’s response submission at para. 76.

⁴⁰ City of Vancouver reply submission at para. 23.

⁴¹ Order F14-47, 2014 BCIPC 51 at para. 34.

⁴² Affidavit of Superintendent of Citywide Services at para. 8.

and records provided by the applicant's co-workers have been disclosed to the applicant.⁴³

[60] The City then investigated the complaints. The Investigation Notes are the records created from the information that was supplied in the investigation meetings. The Superintendent states that the investigation meetings were conducted in confidence and that he included a proviso advising the Applicant and each complainant that the investigation was confidential and that they should not share information with anyone other than their union representative.⁴⁴

[61] The applicant submits that the City's Respectful Workplace Policy explicitly states that "formal resolution" investigations cannot be carried out anonymously.⁴⁵ In its reply submissions, the City says that this policy does not apply because the investigation was not carried out under this policy.⁴⁶

[62] I am satisfied that the personal information contained in the Investigation Notes was supplied in confidence. Consistent with the Superintendent's statement, the records themselves indicate that the third parties were informed at the time they supplied the information that it would be kept confidential.

[63] With regard to the Complaints, I am not satisfied that the information in them was supplied in confidence. There is no direct evidence from the third parties who submitted the Complaints or from the supervisors who instructed the third parties to submit written complaints. The Superintendent does not explain why he thinks the complainants would have understood their complaints would have been supplied in confidence. Further, while the Superintendent states that none of the statements were disclosed to the applicant, the City reproduced portions of the Complaints verbatim and asked the applicant to comment on them during investigation meetings. This demonstrates that the City did not treat the Complaints as if they were supplied in confidence.

[64] The City has not addressed whether the personal information in the balance of the records, namely the Text Messages, the Emails, the Notes or the Memo contain information that was supplied in confidence. There is nothing in those records that indicate that the information was supplied in confidence. I am not satisfied that the information in these records was supplied in confidence.

⁴³ Affidavit of Superintendent of Citywide Services at para. 15.

⁴⁴ Affidavit of Superintendent of Citywide Services at para. 11.

⁴⁵ Applicant's reply submissions at para. 68.

⁴⁶ City of Vancouver's reply submission at paras. 21-22.

Applicant's Knowledge

[65] Previous orders have considered the applicant's knowledge of the information in dispute as a circumstance that favours disclosure.⁴⁷ The disclosed materials show that the City revealed the specific incidents that were the subject of the Complaints. He was present at those incidents so he knows what took place and who was there. Also, the City reproduced portions of some of the Complaints and asked the applicant to comment on them.

[66] Also, the applicant knows the content of the Text Messages because he sent them to a third party. Further, the applicant knows that the Text Messages related to some of the conduct the City investigated because the written warning expressly states that the City obtained and reviewed text messages as part of its investigation.

[67] In my view, the applicant's knowledge of this information is a relevant factor that weighs in favour of its disclosure.

Applicant's Connection

[68] Most of the information that the City withheld under s. 22 is about the applicant. Previous orders have stated that it would only be in rare circumstances that disclosure to an applicant of his own personal information would be an unreasonable invasion of a third party's personal privacy.⁴⁸ Some of the information is an objective description of the incidents involving the applicant, while some of the information is the third parties' thoughts, feelings and opinions about those incidents. The fact that the information is about the applicant is a factor that I have considered.

Section 22 – Findings

[69] I have found that the information the City is refusing to disclose under s. 22 is personal information, with the exception of one "vancouver.ca" email address. I have also found that all of the information relates to the third parties' employment history and is therefore presumed to be an unreasonable invasion of their privacy under s. 22(3)(d).

[70] I found that disclosing the personal information in dispute would not be desirable for the purposed of subjecting the City's activities to public scrutiny nor is the personal information relevant to the applicant's rights regarding his grievances.

⁴⁷ See Order F17-05, 2017 BCIPC 6 (CanLII) at para. 54; Order 04-33, 2004 CanLII 43765 (BCIPC) at paras. 49-50.

⁴⁸ See, for example, Order 14-47, 2014 BCIPC 51 (CanLII) at para. 36; Order F17-05, 2017 BCIPC 6 (CanLII) at para. 70.

[71] In my view, the fact that the information is about the applicant and the applicant's knowledge of the information are circumstances that rebut the presumption with regards to some of the personal information. Portions of the Complaints and the Memo describe what the applicant did and said in relation to the incidents that were the subject of the investigations. Further, the City disclosed some of these portions of the Complaints to the applicant. I do not find that disclosing the portions of the Complaints and the Memo that describe the incidents would be an unreasonable invasion of the third parties' personal privacy. Also, the applicant knows the content of the Text Messages and the fact that the City reviewed them as part of the investigation. In my view, disclosing the Text Messages along with the portion of the Emails about the Text Messages would not be an unreasonable invasion of the third party's personal privacy.

[72] In my view, the presumption has not been rebutted for the personal information in the Investigation Notes. I found that the personal information was supplied in confidence. There is no evidence that the information supplied in the investigation has been disclosed to the applicant. While the personal information in the Investigation Notes is also the applicant's personal information, it is inextricably intertwined with the thoughts and opinions of the third parties. I find that disclosing this information would be an unreasonable invasion of the third parties' personal privacy.

[73] I also find that the presumption has not been rebutted with regards to the personal information in the Notes and the remaining parts of the Memo and the Complaints. Even though these records are about incidents involving the applicant, the remaining portions in dispute are the third parties' names along with their feelings and thoughts about the incidents. In this case, there are no relevant circumstances that weigh in favour of disclosing that kind of information. I find that disclosure of this information would be an unreasonable invasion of the third parties' personal privacy.

Section 22(5)

[74] I have found that some of the information in the Investigation Notes is about the applicant and was supplied in confidence. Section 22(5)(a) requires that the public body give the applicant a summary of information about the applicant that was supplied in confidence unless the summary cannot be prepared without disclosing the identity of the third party who supplied the information.

[75] In my view, the Investigation Notes could not be meaningfully summarized without disclosing the identity of the third parties.

CONCLUSION

[76] Under s. 58 of FIPPA, I order that:

1. The City is authorized to refuse to disclose the information it withheld under s. 13 of FIPPA.
2. Subject to paragraph 3 below, the City of Vancouver is required to refuse to disclose the information it withheld under s. 22.
3. On pages 10-14, 17-18, 42-43, 109-118 and 121 that are being provided to the City along with this order, the City is required to withhold only the highlighted portions.
4. City of Vancouver must give the applicant access to this information by February 26, 2018. The City must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

January 12, 2018

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F16-68082