



Order F21-70

## MINISTRY OF FINANCE

Erika Syrotuck  
Adjudicator

December 22, 2021

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**Summary:** The applicant made a request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of Finance for the cabinet briefing note and candidate profile and declaration form for a named individual within a specified date range. In response, the Ministry of Finance disclosed some information in the responsive records, but withheld other information under ss. 12(1) (Cabinet confidences) and 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator found that the Ministry of Finance was required to withhold the information in dispute under s. 12(1) and that s. 22(1) applied to some but not all of the information in dispute.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 12(1), 12(2)(c), 22(1), 22(2)(a), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), 22(3)(f), 22(4)(e), Schedule 1.

## INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Finance (Ministry) for the Board Resourcing Development Office cabinet briefing note and candidate profile and declaration for a named individual within a specified date range.

[2] The Ministry provided a cabinet briefing note and a candidate profile and declaration form in response to the applicant's access request, but withheld some information under ss. 12(1) (Cabinet confidences) and 22(1) (unreasonable invasion of a third party's personal privacy).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation did not resolve the parties' dispute and the matter proceeded to inquiry.

[4] The registrar of inquiries invited the named individual to make inquiry submissions but the individual did not do so.

[5] During the inquiry, the Ministry reconsidered its application of s. 22(1). As a result, the Ministry disclosed additional information to the applicant.

[6] This inquiry is part of a set of five orders about similar requests made by the applicant. Although the facts of each case vary, in one instance I have referred to my reasons in Order F21-67. The companion orders are F21-66, F21-67, F21-68, and F21-69.

## **ISSUE**

[7] At this inquiry, I must decide whether the Ministry is required to withhold the information in dispute under ss. 12(1) and 22. Section 57(1) says that the burden is on the public body to show that s. 12(1) applies. Under s. 57(2) of FIPPA, the burden is on the applicant to prove that disclosure of the information in dispute is not an unreasonable invasion of a third party's personal privacy. However, the public body has the initial burden of proving that the information is personal information.<sup>1</sup>

## **DISCUSSION**

### **Background<sup>2</sup>**

[8] The Board Resourcing and Development Office was created in 2001. At the time, it was housed in the Office of the Premier.

[9] After moving through various ministries and program areas,<sup>3</sup> the Board Resourcing and Development Office was moved to the Ministry of Finance and renamed the Crown Agencies and Board Resourcing Office in 2017 (I will refer to both iterations as the Office). The Office remains in the Ministry of Finance, but is now under the Crown Agency Secretariat.

[10] The Office oversees recruitment and recommendation of candidates for appointments to public sector organizations such as public post secondary institutions, health authorities, advisory boards, tribunals and certain types of Crown Corporations. In a similar vein, the Office assists public sector organizations in identifying the size, composition and key areas of skill and experience required for board and tribunal membership.

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<sup>1</sup> Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9-11.

<sup>2</sup> Ministry's initial submissions at paras. 16-25.

<sup>3</sup> The Office was part of Government Communications and Public Engagement in the Ministry of Advanced Education, for example. See Ministry's initial submissions at paras. 19 and 20.

[11] Applicants for appointment to a public sector organization must complete a candidate profile and declaration form and submit it to the Office for consideration. The general practice is that all appointees to public sector boards and tribunals are individuals who are independent of management and have no material interest in the organization.<sup>4</sup> Board and tribunal members must have the appropriate combination of skills, experience and personal attributes to support a public sector organization's mission.

[12] All board and tribunal appointments are officially approved, via an Order in Council, Minister's Order or Premier's letter, for example.

[13] Once appointed, the name, appointment term and biographical information of each director is published on the organization's website.

[14] Based on the applicant's access request and submissions, and the Ministry's submissions<sup>5</sup>, I am satisfied that the named individual was appointed to a public sector organization (Organization).

### **Records in dispute**

[15] There are two records containing information in dispute.

[16] The first record at issue is a completed candidate profile and declaration form (Profile), submitted by the individual named in the applicant's access request (Candidate). The Profile includes the following sections:

- contact information;
- background;
- conflict of interest – disclosure statement;
- integrity and public accountability; and
- references.

[17] The Ministry has disclosed the headings, questions, and some of the template language on the Profile. The information in dispute is some of the information provided by the Candidate, which I have described in further detail below.

[18] The second record is a Cabinet briefing note (briefing note). Under s. 22(1), the Ministry withheld the home address of the Candidate and of other individuals recommended for appointment to the Organization. The Ministry also withheld a small amount of information under s.12(1).

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<sup>4</sup> Unless the governing legislation specifies otherwise.

<sup>5</sup> Ministry's initial submissions, at para. 55.

**Section 12 – cabinet confidences**

[19] Section 12(1) of FIPPA requires a public body to refuse to disclose information that would reveal the substance of deliberations of the Executive Council (commonly known as Cabinet) or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

[20] Section 12(2) states that subsection (1) does not apply to:

(a) information in a record that has been in existence for 15 or more years,

(b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or

(c) information in a record the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if

(i) the decision has been made public,

ii) the decision has been implemented, or

(iii) 5 or more years have passed since the decision was made or considered.

[21] The purpose of s. 12(1) is to widely protect the confidence of Cabinet communications.<sup>6</sup> Explaining the rationale for protecting cabinet confidences, the Supreme Court of Canada has said that “[t]hose charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny”.<sup>7</sup>

[22] I will first decide if the requirements of s. 12(1) are met before turning to whether any circumstances in s. 12(2) apply.

*Section 12(1) – substance of deliberations*

[23] In the context of s. 12(1), the phrase “substance of deliberations” refers to the body of information that the Cabinet or any of its committees considered (or

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<sup>6</sup> *Aquasource Ltd. v. British Columbia (Freedom of Information and Protection of Privacy Commissioner)* 1998 CanLII 6444 (BC CA) [*Aquasource*] at para 41.

<sup>7</sup> *Babcock v Canada (Attorney General)*, 2002 SCC 57 at para. 18.

would consider in the case of submissions not yet presented) in making a decision.<sup>8</sup>

[24] The Ministry says that the information at issue in the briefing note contains recommended speaking points for the Deputy Minister responsible for the Office, which she relied on to provide oral advice to members of Cabinet regarding appointments to the Organization.<sup>9</sup>

[25] The Ministry submits that Cabinet deliberated upon the appointment of the Candidate at a Cabinet meeting.<sup>10</sup> The Ministry provided supporting documents *in camera* such as an “Orders in Council BRDO Summary” and Cabinet minutes, which the Ministry says record Cabinet approving orders in council for appointments, including the Candidate’s.<sup>11</sup>

[26] Based on the evidence and submissions provided by the Ministry, I am satisfied that the information at issue in the briefing note would reveal the body of information that Cabinet considered regarding appointments to the Organization. Therefore, I find that the information at issue would reveal the substance of deliberations within the meaning of s. 12(1).

*Section 12(2) – background analysis or explanations*

[27] Section 12(2) sets out circumstances where s. 12(1) does not apply.

[28] The only factor under s. 12(2) that is potentially relevant is s. 12(2)(c). Section 12(2)(c) says that 12(1) does not apply where the purpose of the information is to provide background explanations or analysis to the Executive Council or its committees, and one of the criteria (i) through (iii) are met.

[29] “Background explanations” include everything factual that Cabinet used to make a decision, and “analysis” includes discussion about the background explanations but not analysis of policy options presented to Cabinet.<sup>12</sup> Section 12(2)(c) does not apply to background explanations or analysis interwoven with the substance of deliberations.<sup>13</sup>

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<sup>8</sup> *Aquasource*, *supra* note 6 at para. 39.

<sup>9</sup> Ministry’s initial submissions, at paras. 50 and 53.

<sup>10</sup> *Ibid* at para. 52.

<sup>11</sup> *Ibid* at para. 55 and Exhibits A and B of the Affidavit of the Records Management Officer of Cabinet Operations, Office of the Premier, submitted *in camera*.

<sup>12</sup> Order 48-1995, BCIPD No. 21 at para. 13. This approach was confirmed by the BC Court of Appeal in *Aquasource* *supra* note 6.

<sup>13</sup> *Aquasource* *supra* note 6 at para. 50.

[30] The Ministry says that the information in dispute is not background explanations or analysis as the information in dispute relates to advice about the suitability of the recommended appointees.<sup>14</sup>

[31] In my view, s. 12(2)(c) plainly does not apply. The information in dispute is about the qualifications of the Candidate and other individuals. It is squarely the substance of deliberations and is not background explanations or analysis.

[32] As a result, I find s. 12(1) applies to the information in dispute.

***Section 22 – unreasonable invasion of a third party’s personal privacy***

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

[34] The Ministry withheld the following information from the Profile under s. 22(1):

- The Candidate’s home and cellular telephone numbers, home address and birth date;
- A “term of service” regarding a past employment endeavour;
- Information about the Candidate’s membership in a professional organization;
- The Candidate’s response to a question asking the Candidate to rate their ability to read and understand financial statements (self-assessed score);
- All responses, but one, to the questions under the conflict of interest section; and
- All of the answers to the questions in the integrity and public accountability section.

[35] The Ministry says it disclosed all information that is publicly available in the Candidate’s biography.<sup>15</sup>

*Personal information*

[36] Since s. 22(1) only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information.

[37] Schedule 1 of FIPPA provides the following definitions of “personal information” as well as “contact information”:

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<sup>14</sup> Ministry’s initial submissions para. 57.

<sup>15</sup> Ministry’s initial submissions at para. 79.

"personal information" means recorded information about an identifiable individual other than contact information;

"contact information" means 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] Under these definitions, if information is contact information, it is not considered to be personal information under FIPPA. Whether information is contact information depends on the context in which it appears.<sup>16</sup>

[39] I find that additional template language that the Ministry has withheld under s. 22(1) is not personal information because it is not about an identifiable individual. For example, the template language asking for details is not about anyone. Since this information is not personal information, s. 22(1) does not apply.

[40] In my view, all of the remaining information in dispute under s. 22(1) is personal information. It is identifiable information about the Candidate that is not contact information. The Candidate is a third party under the definition in FIPPA.<sup>17</sup>

[41] I now turn to whether disclosure of personal information is an unreasonable invasion of the Candidate's personal privacy.

*Section 22(4)*

[42] Section 22(4) sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If any of the circumstances in s. 22(4) apply to the personal information in dispute, the public body is required to give the applicant access to that information.

Section 22(4)(e) – positions, functions and remuneration of an officer, employee or member of a public body

[43] The applicant submits that s. 22(4)(e) applies. Section 22(4)(e) states that disclosure is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, function or remuneration as an officer, employee or member of a public body or as a member of the minister's staff.

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<sup>16</sup> Order F20-13, 2020 BCIPC 15 at para. 42.

<sup>17</sup> Schedule 1 of FIPPA says that a third party, in relation to a request for access to a record means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body."

[44] The applicant submits that it is self-evident that the Profile is about the Candidate's positions, functions or remuneration as a member of a public body.<sup>18</sup>

[45] The Ministry submits that it was careful to disclose any information about a third party's position, function or remuneration as an officer, employee or member of the public body or as a member of a minister's staff.<sup>19</sup> The Ministry says that the withheld information does not include information about the functions or responsibilities of the position with the Organization.<sup>20</sup>

[46] The applicant's argument appears to be about the nature of the Profile as a whole. However, s. 22 is about information, not records. While the Profile as a whole is related to the Candidate's suitability for a position with a public body, the specific information dispute is not about the Candidate's position, functions or remuneration as an officer, employee or member of a public body. As previously mentioned, the Ministry disclosed all information about the Candidate's past employment except for one "term of service". This is not about the Candidate's position with a public body, rather it appears to be a private sector organization.

[47] As a result, I accept the Ministry's position that s. 22(4)(e) does not apply to the information in dispute.

#### *Section 22(3)*

[48] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The next step in the analysis is to consider whether any of the circumstances apply. The Ministry submits that ss. 22(3)(a), (d), and (f) apply and I will consider each in turn.

#### Section 22(3)(a) – medical, psychiatric or psychological history

[49] Section 22(3)(a) creates a presumption that disclosure of personal information relating to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is an unreasonable invasion of a third party's personal privacy.

[50] The Ministry submits that s. 22(3)(a) applies to the response to a question that asks whether a candidate has a disability that may affect the candidate's ability to serve as a board member and if so, whether the candidate requires an accommodation.<sup>21</sup>

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<sup>18</sup> Applicant's response submissions at para. 30.

<sup>19</sup> Ministry's initial submissions at para. 72.

<sup>20</sup> Ministry's reply submissions at para. 10.

<sup>21</sup> Ministry's initial submissions at para. 76.

[51] In my view, s. 22(3)(a) plainly applies to information revealing whether or not a candidate has a disability. Therefore, disclosure of this information is presumed to be an unreasonable invasion of the Candidate's personal privacy.

Section 22(3)(d) – employment, occupational or educational history

[52] Under s. 22(3)(d), disclosure of a third party's employment, occupational or educational history is presumed to be an unreasonable invasion of that third party's personal privacy.

[53] The Ministry submits that s. 22(3)(d) applies to the "term of service", the Candidate's membership in a professional organization and the Candidate's response regarding their ability to read financial statements.<sup>22</sup> The Ministry says that it was careful to disclose information that is already publicly available through the Candidate's biographies.<sup>23</sup>

[54] In my view, the information about the "term of service" plainly relates to the Candidate's employment history. It is the timeframe during which the Candidate held a certain position as an employee.

[55] However, I find that s. 22(3)(d) does not apply to the information about the Candidate's membership in a professional organization. The Ministry did not provide additional information or argument detailing why it believes this information is subject to s. 22(3)(d). This information is clearly not the Candidate's educational or employment history. Without further explanation, I am not satisfied that this information is their occupational history. For example, there is nothing to suggest that the Candidate was involved in this organization beyond just their membership. Therefore, based on the information before me, I am not persuaded that this information is the Candidate's occupational history.

[56] Finally, I do not see, and the Ministry has not explained how the Candidate's response regarding the self-assessed score relates to their employment, occupational or educational history under s. 22(3)(d). For example, this information in the context of the Profile does not relate to a particular past employment or educational endeavour. The question simply asks the Candidate to rate their ability on a scale of one to ten.

[57] For these reasons, I find that s. 22(3)(d) only applies to the "term of service". As a result, disclosure of this information is presumed to be an unreasonable invasion of the Candidate's personal privacy.

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<sup>22</sup> *Ibid* at para. 78.

<sup>23</sup> *Ibid* at para. 79.

Section 22(3)(f) – third party’s finances

[58] The Ministry says that s. 22(3)(f) applies to the Candidate’s responses to questions under the conflict of interest section of the Profile.<sup>24</sup> These questions ask a candidate to identify interests that may conflict with their duty as an appointee to a public sector organization. Some of the questions are financial in nature. For example, candidates are asked to identify any of their interests (i.e. shares, businesses or properties) and sources of financial remuneration they receive that may conflict with their duties. The Ministry says that since the answers are interrelated, disclosure of one response could indirectly lead to disclosure of another.<sup>25</sup>

[59] I accept that information identifying a Candidate’s interests and sources of remuneration would describe their assets and income respectively within the meaning of s. 22(3)(f). However, I cannot say anything that would confirm or deny whether the Candidate did provide this kind of information, and therefore would disclose the personal information in dispute. For this reason, all I can say is that I have determined whether the presumption applies and weighed it accordingly.

[60] The Ministry also submits that some of the Candidate’s responses to questions under the integrity and public accountability section may describe the Candidate’s finances.<sup>26</sup> For example, one question asks whether the candidate has been charged with or convicted of an offence under a “federal statute including the *Income Tax Act*, the *Controlled Drugs and Substances Act*, or others.” While the question mentions the *Income Tax Act* as an example, the question is about a charge or conviction under any federal statute. Therefore, I am not satisfied that the response would reveal anything about the Candidate’s financial history or activities.

[61] The Ministry also withheld the space below the set of questions. Without confirming or denying whether the Candidate provided details, I conclude that there is no personal information in this space that describes the Candidate’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness within the meaning of s. 22(3)(f).

*Section 22(2)*

[62] Section 22(2) says that when a public body decides whether disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some

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<sup>24</sup> *Ibid*, at paras. 81-82.

<sup>25</sup> *Ibid* at para. 83.

<sup>26</sup> *Ibid* at para. 84.

against. Relevant circumstances that weigh in favour of disclosure may rebut any applicable presumptions under s. 22(3).

Section 22(2)(a) – public scrutiny of a public body

[63] In Order F21-67 I extensively discussed whether the candidate's responses to the conflict of interest and integrity and public accountability questions were desirable for public scrutiny of the Office and of the public sector organization.

[64] My analysis in Order F21-67 applies equally here.

[65] As a result, I make the same finding that disclosure of the Candidate's responses to the conflict of interest questions are desirable for public scrutiny of the Organization. Therefore, I find that s. 22(2)(a) is a circumstance weighing in favour of disclosure of this information.

Section 22(2)(f) – supplied in confidence and expectation of public disclosure

[66] Under s. 22(2)(f), the public body must consider whether the personal information in dispute has been supplied in confidence. If it applies, this circumstance weighs in favour of withholding the information.

[67] The Ministry says that the information in dispute was supplied in confidence. In support of its argument, the Ministry points to template language on the Profile that "all information provided to us will be considered as supplied in confidence."<sup>27</sup> In addition, the Ministry points to several statements that indicate that the purpose of any disclosure of the Candidate's personal information is to assess their suitability for a position. For example, the Profile states that the Office may disclose information to references or "such persons or organizations when such disclosure is necessary to evaluate my suitability for appointment".<sup>28</sup>

[68] I do not think that the template language, on its own, is a strong indicator of the Candidate's subjective expectations of confidentiality. However, combined with the types of information the Candidate was required to provide on the Profile, I agree that the Candidate would have had some expectation that the information would not be shared other than for the specified purpose of assessing the Candidate's suitability for a position. Therefore, subject to one exception which I detail below, I find that the information in dispute was supplied in confidence in accordance with s. 22(2)(f) and that it is a relevant circumstance weighing in favour of withholding the information.

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<sup>27</sup> *Ibid* at para. 96.

<sup>28</sup> *Ibid* at para. 94.

[69] I am not satisfied, however, that the Candidate supplied the “term of service” in confidence. As the Ministry also points out, the Profile also states that the Office may publish a biography that contains some or all of the information in certain sections of the Profile including the Candidate’s professional and employment background.<sup>29</sup> Therefore, the Candidate would have expected that the information in dispute about the “term of service” could have been shared publicly. Therefore, I find that s. 22(2)(f) is not a relevant circumstance with regards to this information. Further, I find that the fact that the Candidate supplied the “term of service” with the expectation that it could be shared publicly is its own relevant circumstance, weighing in favour of disclosure.

#### Section 22(2)(h) – unfair damage to reputation

[70] Under s. 22(2)(h) the public body is required to consider whether disclosure of the personal information would unfairly damage the reputation of any person referred to in the record requested by the applicant. Where s. 22(2)(h) applies, it weighs in favour of withholding that information.

[71] The Ministry argues that the Candidate’s responses to some of the integrity and public accountability questions could, depending on the answers, unfairly damage the Candidate’s reputation.<sup>30</sup> These questions ask whether the Candidate has been charged or convicted of a crime, disciplined by a professional association, had any improper dealings with government or promoted hate, for example.

[72] I accept that, depending on the information in dispute, the Candidate’s answers to these questions may damage their reputation, given the serious nature of the matters. However, for s. 22(2)(h) to apply, any damage to reputation must also be unfair. Whether any damage is unfair depends on the specific information in dispute and any relevant factual circumstances.

[73] Based on the information before me, I conclude that there is no information in dispute that would, if disclosed, unfairly damage the reputation of any person referred to in the records requested by the applicant. I cannot provide more details without revealing the information in dispute. Therefore, I conclude that s. 22(2)(h) is not a relevant circumstance.

#### Sensitivity

[74] Sensitivity is not an enumerated factor under s. 22(2), however, many past orders have considered it as a relevant circumstance. Where information is sensitive, it is a circumstance weighing in favour of withholding the information.<sup>31</sup>

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<sup>29</sup> *Ibid* at para. 95.

<sup>30</sup> *Ibid* at para. 98.

<sup>31</sup> Order F19-15, 2019 BCIPC 17 at para. 99, for example.

Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.<sup>32</sup>

[75] The Ministry submits that some of the information is highly sensitive. For example, the Ministry says that personal information about potential conflicts of interest, whether an individual has been charged or convicted of an offence, or exercised unethical behaviour is highly sensitive personal information.<sup>33</sup>

[76] I understand the Ministry to be arguing that the information in dispute under the conflict of interest and the integrity and public accountability sections of the Profile are sensitive, and therefore that this should weigh in favour of withholding the information. I will consider each section separately, starting with the integrity and public accountability section.

[77] In my view, the questions in the integrity and public accountability section of the Profile clearly ask about sensitive matters, such as whether a candidate has been charged or convicted of an offence under the *Criminal Code*, promoted hate or has had any improper dealings with government.<sup>34</sup>

[78] While I think that the degree of sensitivity depends on the specific information provided, I find that the information is at least somewhat sensitive regardless of the response provided. For example, an affirmative answer along with extensive details would almost certainly be more sensitive than a negative answer with no details. However, a negative answer is still somewhat sensitive because of the nature of the questions.

[79] Therefore, I find this is a factor weighing in favour of withholding the information in the integrity and public accountability section of the Profile, but explaining the exact degree to which I find the information to be sensitive could disclose the information in dispute, so I decline to do so.

[80] I turn now to the conflict of interest section. I acknowledge that the Ministry says that information about conflicts of interests are sensitive but it has not provided adequate explanation about why these particular responses are sensitive. In my view, this information is not sensitive. I find this is a relevant circumstance weighing in favour of disclosure.

[81] With regards to the other information in dispute, I find that some of it is not sensitive. For example, I do not think that the Candidate's self-assessed score is sensitive. I also do not see how information about the Candidate's membership in a professional organization is sensitive as it is the type of information that an individual would share freely. This weighs in favour of disclosure.

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<sup>32</sup> Order F16-52, 2016 BCIPC 58 at para. 91, for example.

<sup>33</sup> Ministry's reply submissions at para. 14.

<sup>34</sup> The question does not specify which level or type of government.

[82] Finally, I find that an individual's date of birth is sensitive because it is often used to verify a person's identity.<sup>35</sup>

[83] As a result, I find that the sensitivity of the information is a relevant factor for some of the information in dispute, in some cases weighing for, and in some cases weighing against disclosure.

#### Effect on future candidates

[84] The Ministry argues that the potential for the information in the conflict of interest and integrity and public accountability sections of the Profile to be publicized may deter potential qualified and deserving applicants from applying.<sup>36</sup> This kind of argument is often referred to as a "chilling effect."

[85] I do not think the effect on future candidates is a relevant circumstance in the present case. My task in this inquiry is to determine whether disclosure of the specific information in dispute would be an unreasonable invasion of the Candidate's personal privacy. I do not think what a hypothetical future candidate may or may not do is relevant to this determination.

[86] In addition, the provisions of s. 22 itself should assuage this concern. This section only allows disclosure of information that is not an unreasonable invasion of a third party's personal privacy. My decision is based on the specific information in dispute in this case. Future cases about information on different profiles will be decided on their own merits.

[87] As a result, I find that the effect on future candidates is not a relevant circumstance.

#### *Conclusion – s. 22*

[88] I find that s. 22(1) applies to some but not all of it. I will explain my findings with regard to the specific personal information below in light of any relevant circumstances and presumptions that apply.

[89] First, I find that s. 22(1) applies to the Candidate's home and cellular telephone numbers, home address, and birth date, as well as the home addresses of the other candidates in the briefing note. No presumptions apply, and I found this information was supplied in confidence. I found that the Candidate's birth date is sensitive. There are no circumstances weighing in favour of disclosure.

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<sup>35</sup> For similar findings see Order P09-01, 2009 CanLII 38705 (BCIPC) at para 117 and Order F19-37, 2019 BCIPC 41 at para. 59.

<sup>36</sup> Ministry's reply submissions at para. 20.

[90] In addition, I find that disclosing the answers to the questions in the integrity and public accountability section of the Profile would unreasonably invade the Candidate's personal privacy. The information was supplied in confidence and is sensitive. In addition, s. 22(3)(a) applies to information about whether or not a candidate has a disability that may affect their ability to serve as a board member.

[91] I do not find that it is an unreasonable invasion of the Candidate's personal privacy to disclose the "term of service" because the Candidate submitted the information with the knowledge that it could be shared publicly. In addition, I find that the information about the Candidate's membership in a professional organization and self-assessed score are not sensitive and therefore disclosure would not unreasonably invade the Candidate's privacy, despite the fact that these responses were provided in confidence under s. 22(2)(f).

[92] Regarding the Candidate's responses to the conflict of interest questions, I find that disclosure would not be an unreasonable invasion of the Candidate's personal privacy. I found that, depending on the responses, s. 22(3)(f) may apply but that I cannot state my conclusion without revealing the information in dispute. I did conclude that this information was supplied in confidence in accordance with s. 22(2)(f). However, I found that this information is desirable for public scrutiny of the Organization and that it is not sensitive, which in my view outweigh the other factor(s).

## **CONCLUSION**

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

1. I require the Ministry of Finance to refuse to disclose the part of the records in dispute under s. 12(1).
2. Subject to item 3, I require the Ministry of Finance to refuse to disclose parts of the records in dispute under s. 22(1).
3. The Ministry of Finance is required to give the applicant access to the parts of the records in dispute that I have highlighted in a copy of the records provided to the Ministry along with this order.
4. The Ministry of Finance must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant when it provides the applicant access to the parts of the records described in item 3.

[94] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by February 2, 2022.

December 22, 2021

**ORIGINAL SIGNED BY**

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Erika Syrotuck, Adjudicator

OIPC File No.: F17-69320