



Order F22-06

OFFICE OF THE PREMIER

Celia Francis
Adjudicator

January 18, 2022

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Summary: The BC Liberal Opposition Caucus (applicant) requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to a record called “Expectations – Minister’s Office.” The Office of the Premier (OOP) disclosed the record in severed form, withholding some information under s. 22(1) (unreasonable invasion of third-party privacy). The adjudicator found that the OOP had not demonstrated that the withheld information was about an identifiable individual. The adjudicator found that, as a result, the information in dispute was not personal information. The adjudicator found that s. 22(1) does not, therefore, apply to the withheld information and ordered the OOP to disclose it to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 22(1).

INTRODUCTION

[1] This order arises out of a request for a record called “Expectations – Minister’s Office.”

[2] In mid-2019, the applicant, a representative of the BC Liberal Opposition Caucus, requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to an attachment to an email he had received in response to an earlier FIPPA request. The Office of the Premier (OOP) responded by denying access to the entire record under s. 13(1) of FIPPA (advice or recommendations).¹

[3] The applicant requested a review of the OOP’s decision by the Office of the Information and Privacy Commissioner (OIPC). Mediation by the OIPC did

¹ Notice for this inquiry, para. 2; applicant’s response submission, para. 2.

not resolve the matter and the applicant requested that it proceed to inquiry. The OOP ultimately revised its decision by disclosing some information, dropping s. 13(1) and adding s. 22(1) to the remaining withheld information.²

ISSUE

[4] The issue to be decided in this inquiry is whether s. 22(1) of FIPPA requires the OOP to refuse the applicant access to information.

[5] Under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of the information in dispute would not be an unreasonable invasion of third-party privacy.

DISCUSSION

Information in dispute

[6] The two-page responsive record is entitled “Expectations – Minister’s Office.” It is organized under four headings: Introduction; Support for Minister; Expectations for Work Assignments and Regular Scheduling; and Workload Management. The OOP disclosed most of the record, including the headings. It withheld approximately 10 lines of text under s. 22(1) and this is the information in dispute.

Unreasonable invasion of third-party personal privacy – s. 22(1)

[7] The approach to applying s. 22(1) of FIPPA has long been established. See, for example, Order F15-03, where the adjudicator said this:

Numerous orders have considered the approach to s. 22 of FIPPA, which states that a “public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.” This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party’s personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party’s personal privacy.³

² OOP’s initial submission, paras. 5-6.

³ Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

Is the information personal information?

[8] The first step in any s. 22 analysis is to determine if the information is personal information. The OOP has the burden of proving the information at issue qualifies as personal information.⁴

[9] FIPPA defines “personal information” as recorded information about an identifiable individual, other than contact information.⁵ Information is about an identifiable individual where there is a reasonable expectation that the information could identify an individual, either alone or when combined with other available sources of information.⁶

[10] The applicant said that the disclosed portions of the record do not identify anyone. He argued that the record could apply broadly to all staff in any minister’s office.⁷

[11] The OOP argued that the information in dispute is about identifiable individuals, as it “reveals measures put in place” following an investigation into workplace issues.⁸ The OOP’s Deputy Chief of Staff said she conducted this investigation and briefly described the issues *in camera*.⁹ The OOP also suggested that I give consideration to the “mosaic effect,” that is, “circumstances in which the disputed information, if disclosed, can be linked with other available sources of information to yield additional meaningful information.”¹⁰

[12] The OOP said that a particular attribute, to which it referred *in camera*, could “narrow the possible identifiable individuals” from the perspective of the applicant and, potentially, from that of others who were not involved in the investigation.¹¹ The OOP added that the withheld information, in combination with “information that might already be known to certain individuals,” would further assist in identifying the individual who was the subject of the investigation. The OOP referred, *in camera*, to both withheld and disclosed information in the record in support of this argument.

⁴ Order F21-35, 2021 BCIPC 43 (CanLII), para. 148; Order 03-41, 2003 CanLII 49220 (BCIPC), para. 10.

⁵ “Contact information” is defined in Schedule 1 of FIPPA 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.”

⁶ Order F19-13, 2019 BCIPC 15 (CanLII), at para. 16; Order F18-11, 2018 BCIPC 14, at para. 32.

⁷ Applicant’s response submission, paras. 11-25.

⁸ OOP’s initial submission, para. 31; Affidavit of OOP Deputy Chief of Staff, para. 10.

⁹ Affidavit of OOP Deputy Chief of Staff, paras. 7 and 10; OOP’s reply submission, paras. 2-5.

¹⁰ OOP’s initial submission, para. 34.

¹¹ A portion of this argument was received *in camera*.

Analysis and finding

[13] Past orders have said that cases in which the mosaic effect applies will be the exception, not the norm.¹² They have also said that the “mosaic effect” is a complex concept that requires careful application and that mere speculation will not suffice to establish that it applies.¹³

[14] The individual in question is not named in the responsive record, the original email to which the record was attached or the OOP’s submissions.¹⁴ *In camera* portions of the OOP’s submission and evidence reveal the individual’s position, whether the individual was male or female and the size of the pool of people to which the individual in question belonged.¹⁵ The OOP also referred, *in camera*, to two other attributes (one of which it previously disclosed in the record itself) that, it said, could assist in the identification of the individual who was the subject of the investigation.¹⁶

[15] However, the OOP did not explain how the applicant or others might already have any information about the investigation, which the OOP said it conducted in confidence.¹⁷ The OOP also did not explain how the applicant or others might be able to use the information described in the previous paragraph to “narrow” down the possible identifiable individuals, much less identify the individual in question.

Conclusion on s. 22(1)

[16] The OOP’s mosaic effect arguments are, in my view, vague, cryptic, speculative and hypothetical. The OOP has not, in my view, demonstrated that the information in dispute is about an identifiable individual or individuals and thus qualifies as personal information. Indeed, both the withheld information and the record as a whole read like a generic set of expectations for those working in any minister’s office. It follows that I find that the information in dispute is not personal information. Section 22 does not, therefore, apply to the information in dispute and the OOP must disclose it.

CONCLUSION

[17] For the reasons given above, under s. 58 of FIPPA, I require the OOP to disclose the information in dispute to the applicant.

¹² Order F08-03, 2008 CanLII 13321 (BCIPC), para. 40.

¹³ Order F21-47, 2021 BCIPC 55 (CanLII), para. 17.

¹⁴ The applicant provided a copy of the original email with his submission.

¹⁵ OOP’s initial submission, para. 35; Affidavit of OOP Deputy Chief of Staff, para. 11.

¹⁶ OOP’s initial submission, para. 35; Affidavit of OOP Deputy Chief of Staff, para. 11.

¹⁷ Affidavit of OOP Deputy Chief of Staff, paras. 11-12.

[18] Under s. 59(1), the OOP is required to comply with this order by March 2, 2022. The OOP must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

January 18, 2022

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F19-80953