



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F22-07

UNIVERSITY OF BRITISH COLUMBIA

Jay Fedorak
Adjudicator

February 4, 2022

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Summary: An applicant requested from the University of British Columbia (UBC) a series of human resources records relating to their employment. UBC released some of the information but withheld the rest under s. 13 (advice and recommendations) and s. 22 (unreasonable invasion of privacy). The adjudicator found that UBC had correctly applied s. 13(1). The adjudicator also found that UBC had correctly applied s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2)(a), 13(2)(m), 13(2)(n), 22(1), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(d), 22(3)(h), 22(4)(b).

INTRODUCTION

[1] A former employee (applicant) made a series of requests for human resources records concerning themselves under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the University of British Columbia (UBC). UBC provided access to the records withholding some of the information under s. 13 (advice and recommendations), and s. 22 (unreasonable invasion of privacy).

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review UBC's decision to withhold the information under ss. 13 and 22.

[3] UBC reconsidered its decision and disclosed further information to the applicant.

[4] Mediation by the OIPC did not resolve the outstanding matters and the applicant requested an inquiry.

ISSUES

[5] The issues in this inquiry are:

1. Whether s. 13(1) authorizes UBC to withhold information; and
2. Whether s. 22(1) requires UBC to withhold information.

[6] Under s. 57(1) of FIPPA, UBC has the burden of proving that s. 13(1) applies to the information withheld. 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 personal privacy under s. 22(1) of FIPPA.¹

DISCUSSION

[7] **Background** – The applicant held a temporary non-teaching position at UBC. They² applied unsuccessfully for a permanent appointment. They no longer work at UBC. Three of the requests at issue are for records relating to the appointment process. The other request is for records of a harassment complaint against the applicant, which the applicant believes had an influence on the decision to refuse their request for a permanent appointment. The applicant submits that they are currently unemployed and suffering financial and emotional distress, owing to their loss of employment at UBC.

[8] **Information at Issue** – The information in dispute consists of email correspondence, draft letters and final letters between university officials involved in the appointment process and the harassment complaint resolution process. It includes deliberations relating to the appointment process and the drafting of official correspondence. The personal information at issue relates to information that third parties provided concerning the harassment complaint, as well as information about the personal lives of university officials. UBC applied both ss. 13(1) and 22(1) to records in each of the four requests. The responses to each of these requests have been combined into this inquiry.

[9] **Preliminary Issue** – During the course of reviewing the submissions and the records, it occurred to me that s. 13(2)(k) might be applicable to two documents. This provision excludes from s. 13(1): “a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body.” The records at issue contained two letters that UBC had described as “Final Recommendation

¹ However, the public body has the initial burden to show that the information it is withholding under s. 22(1) is personal information: Order 03-41, 2003 BCIPC 49220 (CanLII), paras. 9-11.

² I am using a gender-neutral pronoun to reduce the risk of a reader identifying the applicant.

Letters.”³ UBC disclosed copies of these letters, while withholding the sections relating to the recommendations. As none of the parties had made submissions with respect to the application of s. 13(2)(k) to the two Final Recommendation Letters, I invited them to make further submissions to me with respect to the application of this provision to those letters.

[10] UBC made a submission arguing against the application of s. 13(2)(k). The applicant made no submission. After I raised a point of clarification with UBC’s submission, it decided to disclose complete copies of the Final Recommendation Letters to the applicant. As these letters were the only documents at issue with respect to s. 13(2)(k), the issue became moot, and I have not considered it here.

Section 13 – advice and recommendations

[11] UBC is withholding comments of officials and draft documents under s. 13(1), which states:

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,

...

(m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or

...

(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.

[12] The courts have described the purpose of protecting advice and recommendations from disclosure as to ensure public servants are able to provide full, free and frank advice, because some degree of deliberative secrecy can increase the effectiveness of the decision-making process.⁴ The term “advice” includes expert opinions on matters of fact on which a public body must make a decision for future action.⁵ The courts have also found it includes policy options prepared in the course of the decision-making process.⁶ Previous orders

³ UBC’s initial submission, paras. 64-67.

⁴ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College of Physicians], para. 105; *John Doe v. Ontario (Finance)*, 2014 SCC 36 [John Doe], paras. 34, 43, 46, 47.

⁵ *College of Physicians*, para. 113.

⁶ *John Doe*, para. 35.

have upheld the application of s. 13(1) both when information reveals advice or recommendations and when it would enable a reader to draw accurate inferences about advice or recommendations.⁷

[13] Order F21-16 sets out the process for determining if s. 13(1) applies:

The s. 13 analysis involves two steps. First, I must determine if disclosure of the information in dispute would reveal advice or recommendations developed by or for the public body. If it would, then I must determine whether the information falls into any of the categories listed in ss. 13(2) or 13(3). If it does, the public body cannot refuse to disclose it. Section 13(2) lists categories of information that public bodies cannot withhold under s. 13(1).⁸

[14] In arriving at my decision on s. 13(1), I have considered the principles for applying s. 13(1) set out in the court decisions and orders cited above.

[15] UBC submits that it has applied s. 13(1) to documents that provided advice to decision makers and working papers and notes that reflected the deliberation process. It argues that the circumstances in this case mirror those with respect to the notes of a tenure committee of Thompson Rivers University that were the subject of Order F14-52. In that Order the adjudicator found that the internal records of the tenure committee were an “integral part of the deliberative process” and, therefore, subject to s. 13(1).⁹ UBC submits that this decision confirms that s. 13(1) “extends to protect the ‘internal dialogue’” within a public body when deliberating on recommendations regarding human resources matters, and that it applies in this case.

[16] UBC notes that the information it withheld under s. 13(1) does not fall within any of the exclusions under s. 13(2). It submits that any “factual” information withheld is intimately linked to the advice and recommendations.

[17] The applicant submits that s. 13(1) does not apply to the records at issue. They say s. 13(1) applies only to internal policy discussions relating to the formulation of public policy. The applicant also argues that some of the information at issue is factual material subject to s. 13(2)(a). They also assert that s. 13(2)(m) applies to the information that they allege UBC stated publicly that it had used to render a decision. Moreover, they submit that the information at issue pertains to a decision of the exercise of a discretionary power or adjudicative function that affects the applicant’s rights, in accordance with

⁷ See, for example, Order F15-60, 2015 BCIPC 64 (CanLII), para. 12. See also Order F16-32, 2016 BCIPC 35 (CanLII). Order F15-52, 2015 BCIPC 55 (CanLII), also discusses the scope and purpose of s. 13(1).

⁸ Order F21-16, 2021 BCIPC 21 (CanLII), paras. 14 and 15.

⁹ UBC’s initial submission, para. 38; Order 14-52, 2014 BCIPC 56 (CanLII), paras. 38-39.

s. 13(2)(n). The applicant does not provide any argument or explanation as to how these provisions apply to the information at issue.¹⁰

[18] UBC responds that any of the factual evidence to which it had applied s. 13(1) was intertwined with the advice and disclosure would reveal the nature of the advice. UBC also denies that s. 13(2)(m) applies because UBC has not made public any of the decisions at issue.¹¹

[19] With respect to the application of s. 13(2)(n), UBC submits that it did not render a decision while exercising a discretionary power or an adjudicative function. The authority to render hiring decisions lies with the board of governors, according to UBC, not the committees at issue in these requests. While it could be argued that the ultimate recommendation of the president with respect to the applicant's request for permanent employment is also a decision, UBC has already disclosed that decision to the applicant, including reasons.¹²

[20] The applicant highlights that s. 13(1) is a discretionary exception. They argue further that there were conflicts of interests with respect to the hiring decision at issue and that shielding these conflicts from exposure would be an improper exercise of discretion. They cite alleged connections between individuals on the two committees involved, as well as other examples of alleged conflict. Finally, they submit that UBC has disclosed some of the information to third parties. They argue that this has, in effect, nullified any confidentiality that may have applied to the advice at issue. The applicant believes that UBC cannot deny them access to records disclosed to other third parties.

[21] UBC refutes the applicant's contention that there were any conflicts of interests or improper conduct and asserts that there is no evidence of such in any of the information at issue. It submits that the applicant has failed to provide any evidence to support these allegations. UBC argues that it explained its exercise of discretion in an affidavit in support of its initial submission. In that affidavit, the freedom of information specialist, who processed the records at issue, set out all their considerations with respect to the exercise of discretion with respect to the application of s. 13(1). These included: the purpose of s. 13(1); previous orders of the OIPC; general expectations of confidentiality involving deliberations on human resources matters; the impact that disclosure could have on future deliberations; the passage of time; consultations with the UBC faculty association; and the lack of any apparent public interest in the disclosure.¹³

¹⁰ Applicant's response submission, pp. 2-3.

¹¹ UBC's reply submission, paras. 12-15.

¹² UBC's reply submission, paras. 17-23.

¹³ UBC's initial submission, affidavit of Freedom of Information Specialist, para. 30.

Analysis

[22] I see no evidence or reason to suggest that s. 13(1) should be restricted solely to high level public policy discussions. Neither the courts nor previous BC orders have interpreted this provision in this way. The applicant notes that the courts have used examples to illustrate the purposes of exceptions in FIPPA. However, this does not mean that those exceptions are limited in application only to the circumstances of those examples. A plain reading of s. 13(1) indicates that it applies to any advice or recommendations by or for a public body. UBC is a public body. If UBC officials provided advice and recommendations to other UBC officials, that information would be subject to s. 13(1).

[23] I have reviewed all the information to which UBC applied s. 13(1). I can confirm that this information meets the definition of advice and recommendations. UBC describes the information at issue as contained in: Planning Notes and Working Papers; Management-Union Communications; Internal Deliberations; Internal Complaint Communications; Draft Recommendation Letters; Final Recommendation Letters; and Human Resources advice. I can confirm that this is an accurate description of the records at issue.

[24] The substance of the information in these records relates to the applicant's request for a permanent appointment and another employee's complaint of alleged harassment. These are weighty human resources issues that require careful deliberation of facts, evidence and opinions. They both involve officials providing other officials with advice and recommendations as to an appropriate resolution. These issues required officials to engage in discussions where they analysed the evidence and came to certain conclusions. The information at issue includes handwritten notes of in-person discussions, as well as email communications. There are many duplicate copies of records, as various members of the committees provided their copies.

[25] I find that UBC correctly applied s. 13(1) to information that constitutes advice or recommendations. In some passages, it was recommendations as to whether the applicant should receive a permanent appointment. In other passages, it was advice with respect to the wording of Final Recommendation Letters. In the matter of the harassment complaint, the advice related to how best to resolve the complaint.

[26] With respect to the application of s. 13(2)(a), I find there is nothing in the information in dispute that would constitute "factual material" that is independent of the advice proffered. I find that s. 13(2)(m) does not apply because I see no evidence UBC has cited publicly the information at issue as the reason for its decisions. I also find that the information at issue does not include a decision including reasons in accordance with s. 13(2)(n).

[27] Moreover, I note that UBC applied s. 13(1) line by line over the course of 1500 pages of records. In most cases, it disclosed all information in particular records except for the portions that contain explicit advice. It has disclosed most of the factual and background information. It has provided a reasonable explanation of its exercise of discretion. My assessment is that UBC has correctly applied s. 13(1).

Conclusion on s. 13(1)

[28] For the reasons above, I find that UBC correctly applied s. 13(1) to advice and recommendations.

Section 22 – harm to third-party personal privacy

[29] The proper approach to the application of s. 22(1) of FIPPA has been the subject of analysis in previous orders. A clear and concise description of this approach is available in Order F15-03, where the adjudicator stated the following:

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.¹⁴

[30] I have taken the same approach in considering the application of s. 22(1) here.

Step 1: Is the information “personal information”?

[31] Under FIPPA, “personal information” is recorded information about an identifiable individual, other than contact information. “Contact information” is “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.”¹⁵

¹⁴ Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

¹⁵ FIPPA provides definitions of key terms in Schedule 1.

[32] The information at issue includes the names and other identifying information about multiple third parties.¹⁶ I find that the information at issue is personal information for the purposes of s. 22(1).

Step 2: Does s. 22(4) apply?

[33] The applicant cites the application of s. 22(4)(b) in this case. The relevant provision reads as follows:

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

(b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party

[34] The applicant submits that disclosure is necessary owing to compelling circumstances affecting their own health and safety. They submit that the harassment complaint combined with “the numerous procedural irregularities, incompetence and outright subjective biases by the Public Body” has harmed their health in various ways.¹⁷ They submit in camera extensive documentation relating to treatments they received for health conditions.

[35] UBC raises two objections. The first is that previous BC orders have found that s. 22(4)(b) can only apply in cases where the public body has given notice to the third party. As UBC has not provided such notice to anyone, s. 22(4)(b) cannot apply.¹⁸

[36] The second objection is that this provision requires there to be some kind of health or safety emergency, which is absent in this case. UBC argues that the applicant appears to be seeking the information at issue for the purpose of applying for a judicial review of UBC’s appointment decision, which it submits is not related to the purposes of s. 22(4)(b).¹⁹

[37] In my view, the applicant has not demonstrated how the disclosure of the information at issue would address compelling circumstances affecting anyone’s health or safety. In addition, as UBC has noted, previous BC Orders have found

¹⁶ FIPPA defines a third party as any person, group of persons or organization other than the person who made the request or a public body. This can include employees of a public body when acting in their personal capacity, such as in relation to human resources matters. See Schedule 1.

¹⁷ Applicant’s response submission, p. 4.

¹⁸ UBC’s reply submission, para 27; Order F19-02, 2019 BCIPC 2 (CanLII), paras 18-29; Order F20-36, 2020 BCIPC 42 (CanLII) paras 63-64.

¹⁹ UBC’s reply submission, paras. 28-29; Order 04-12, 2004 BCIPC 34268, (CanLII) paras 20-22; Order 01-37, 2001 BCIPC 21591 CanLII).

that this provision can only apply in cases where a public body has provided notice to the affected third party and then disclosed the information. Therefore, I find that s. 22(4)(b) does not apply in this case.

[38] There is no evidence before me that any other provision of s. 22(4) applies in this case, and none of them appear to me to apply. Therefore, I find that none of the information falls within s. 22(4).

Step 3: Does s. 22(3) apply?

[39] The relevant provisions read as follows:

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

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

...

(h) the disclosure could reasonably be expected to reveal the content of a personal recommendation or evaluation, a character reference or a personnel evaluation supplied by the third party in confidence and the applicant could reasonably be expected to know the identity of the third party.²⁰

[40] **Section 22(3)(d)** – UBC submits that the personal information of third-party employees that it collected with respect to the harassment complaint consists of their employment history in accordance with s. 22(3)(d). UBC collected this information from the complainant and other employees as part of resolving the complaint.²¹ It cites several BC orders that found information collected as part of a workplace investigation to be subject to s. 22(3)(d).²² The applicant made no submissions with respect to s. 22(3)(d).

[41] I note that during the course of employment of public body employees, information about those employees appears in records. Some of that information constitutes information about the position and functions of those employees, in accordance with s. 22(4)(e). Other information constitutes their employment history in accordance with s. 22(3)(d).

²⁰ The Legislative Assembly has amended the wording of s. 22(3)(h) since the time UBC processed this request. However, I must apply FIPPA as it was at the time of request.

²¹ UBC's initial submission, paras. 80-85. In any event, the change in the wording does not affect how the provision applies in this case.

²² Order F17-43, 2017 BCIPC 47 (CanLII), para 61; Order F10-36, 2010 BCIPC 54 (CanLII), para. 22; Order F07-02, 2007 BCIPC 2 (CanLII); Order F14-18, 2014 BCIPCD 21 (CanLII), paras. 20-21; Order 01-53, 2001 BCIPC 21607(CanLII), para 35; Order F06-11, 2006 BCIPC 25571 (CanLII); Order F10-10, 2010 BCIPC 17 (CanLII); Order F14-4,7 2014 BCIPC 51 (CanLII) para. 14.

[42] Personal information of employees created during the normal course of business relating to their functions would normally constitute information about position and the functions they perform on behalf of the public body. This information is distinct from personal information collected during the course of workplace investigations or annual performance reviews, which is more personal in nature and reflect the employees' actions as individuals. The records at issue here relate to the processing of a workplace complaint relating to harassment. I note that, while UBC received a complaint, it submits that it did not proceed to a formal investigation. UBC officials resolved the complaint informally without implementing its approved process of complaint investigations and rendering a formal finding as to culpability. Therefore, there was no workplace investigation, as occurred in the cases UBC cited.

[43] Nevertheless, whether the process was formal or informal does not change the nature of the personal information UBC collected. The personal information in the letter of complaint and the correspondence of officials about the complaint constitutes employment history.

[44] Therefore, I find that s. 22(3)(d) applies to the personal information of the complainant and the witnesses contained in the responsive records relating to the complaint, and that disclosure of the information at issue would be presumed to be an unreasonable invasion of the third parties' personal privacy.

[45] **Section 22(3)(h)** – UBC submits that this provision applies to the identities of the referees who provided letters of appraisal of the applicant. It notes that in accordance with the collective agreement, it must treat in confidence all letters of appraisal. While applicants are entitled to a summary of the appraisal, UBC must ensure that the summary does not identify the referee.²³

[46] UBC argues that previous BC orders have found that s. 22(3)(h) applies to protect the identity of third parties who supply in confidence evaluations of individuals, such as letters of appraisal.²⁴ It also clarifies that in its application of s. 22(1) to the letters of appraisal, it has sought only to withhold the minimum amount of information necessary to protect the identity of the referee.

[47] The applicant does not dispute the application of s. 22(3)(h).

[48] From my perspective, it is clear on the face of the letters of appraisal that they are personal evaluations of the applicant, in accordance with s. 22(3)(h). Therefore, I find that s. 22(3)(h) applies to the identities of the third parties who provided appraisals of the applicant.

²³ UBC's initial submission, para. 92.

²⁴ UBC's initial submission, para. 93. Order F11-05, 2011 BCIPC 5 (CanLII).

Step 4: Do the relevant circumstances in s. 22(2) rebut the presumption of invasion of privacy?

[49] The relevant provisions are these:

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

...

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

...

(e) the third party will be exposed unfairly to financial or other harm,

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

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant

[50] **Section 22(2)(c) relevant to a fair determination of the applicant's rights** – The applicant does not mention this specifically. UBC raises it because it believes that the applicant's assertion that they require the information for the purpose of pursuing a judicial review is another way of invoking s. 22(2)(c). It does not appear to me that the applicant has raised this provision directly. Nevertheless, their assertion that they require the information for the purpose of a judicial review of UBC's decision not to hire them relates to the rights of the applicant. Therefore, I will consider it here.

[51] Past orders establish that the following four criteria must be met for s. 22(2)(c) to apply:

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.²⁵

²⁵ Order F20-37, 2020 BCIPC 43 (CanLII) at para. 116, citing Order 01-07, 2001 BCIPC 21561 (CanLII) at para. 31.

[52] UBC does not contest that the right at issue is a legal right, in accordance with the first part of the test. It does suggest, however, that, given the passage of time since the decision to deny them the permanent position in 2017, it is questionable whether a judicial review could reasonably be in contemplation, in accordance with the second part. UBC also questions whether the information at issue truly would be relevant for a judicial review, in accordance with the third part. It submits that the only personal information that would be relevant would be the applicant's own personal information, in accordance with the fourth part. Moreover, it asserts that previous BC orders have determined that s. 22(2)(c) does not apply in cases where an applicant is able to commence legal proceedings and obtain documents through that process. UBC adds that, in this case, it would be preferable for a court to determine what information would be relevant and necessary prior to ordering disclosure.²⁶

[53] UBC also submits that if s. 22(2)(c) applies, it does not outweigh the necessity of protecting the privacy of the third parties.²⁷

[54] I find that the first part of the test applies, as there is a legal right at issue. Nevertheless, the applicant has failed to persuade me that a judicial review is reasonably in contemplation, as the second part of the test requires. They have provided no evidence to support their bald assertion about applying for judicial review, and they have not explained why, in this case, despite the passage of time, it would be reasonable to conclude that they genuinely contemplated a judicial review application. Finally, I do not see how the personal information of third parties would be relevant and necessary for a judicial review that might be in contemplation. Therefore, the third and fourth parts of the test do not apply.

[55] In summary, I find that s. 22(2)(c) is not a relevant consideration in this case.

[56] **Sections 22(2)(e) financial or other harm and 22(2)(h) harm to reputation** – UBC submits that in the records concerning the complaint of harassment, there is information about the complainant and other third parties that, if disclosed, could cause embarrassment, stigma and harm to reputation. UBC describes the information at issue as follows:

In particular, the withheld information includes unproven allegations about third parties that have not been subjected to formal investigation and may cause unfair harm to such individuals. The details of the Complaint and the Complainant's opinions as expressed in the Complaint, is also information that could be used to unfairly stigmatize the Complainant or third-party

²⁶ UBC's reply submission, paras. 35-40; Order F21-199, 2021 BCIPC 24 (CanLII), at paras 25-28.

²⁷ UBC's reply submission, para. 41.

participants, or to unravel progress that was made in resolving the Harassment Complaint.²⁸

[57] UBC indicates that it has not shared any of this information with the applicant previously because it resolved the complaint informally.

[58] UBC's arguments above persuade me that there is a risk that disclosure of the information at issue could cause third parties embarrassment, stigma or harm to reputation. The applicant did not contest these arguments. Therefore, I find that ss. 22(2)(e) and 22(2)(h) are relevant circumstances in this case that argue in favour of withholding the personal information.

[59] **Section 22(2)(f) supplied in confidence** – UBC submits that s. 22(2)(f) is a relevant factor, as some personal information was submitted in confidence. With respect to the harassment complaint, it asserts that it always treats in confidence personal information collected during workplace investigations because such information is sensitive and private.²⁹

[60] With respect to the personal evaluations, UBC submits that the referees explicitly submitted their evaluations in confidence and that the collective agreement requires UBC to maintain this information in confidence.³⁰

[61] The applicant submits that UBC has already breached the confidentiality of that document by disclosing a copy of the harassment complaint to a third party.³¹ They submit further that, as, in their view, UBC dismissed the complaint as being without merit, they are entitled to know what the complainant said about them.³²

[62] UBC responds that the submission of the applicant that UBC disclosed a copy of the complaint to a third party lacks evidentiary support and the applicant does not indicate what precisely it is alleged to have shared. UBC says it did not share a copy of the complaint with anyone. In the alternative, UBC submits:

However, the possibility that the contents of the Harassment Complaint materials may have been shared with someone who was the Applicant's supervisor and allegedly also a respondent to that complaint, does not alter the fundamentally confidential nature of these documents for the purposes of section 22(2)(f) or the expectations of [the complainant] and other third party participants that they would be maintained in confidence.³³

²⁸ UBC's initial submission, para. 89.

²⁹ UBC's initial submission, para. 87

³⁰ UBC's initial submission, para 93, Affidavit Exhibit A, para. (d).

³¹ Applicant's response submission, para. 28.

³² Applicant's response submission, para. 32.

³³ UBC's reply submission, para. 31.

[63] I find that there is insufficient evidence of disclosure of a copy of the harassment complaint. Moreover, even if disclosure did occur, a single disclosure does not negate the fact that individuals supplied the personal information in confidence. In summary, the fact that UBC might have disclosed the information to a third party is not an argument in favour of it disclosing the personal information to the applicant. Even in the case where a public body incorrectly or inadvertently discloses personal information, s. 22(1) may still apply to prevent further disclosures that would constitute an unreasonable invasion of privacy.

[64] The substance of UBC's submissions noted above has persuaded me that the personal information that it collected during the resolution of the harassment complaint was submitted in confidence. UBC has a standard practice of treating this information as supplied in confidence. That the nature of the information is sensitive and private suggests a need to ensure its confidentiality. The referees explicitly provided their evaluations of the applicant in confidence. Therefore, I am satisfied that this information was supplied in confidence. I find that s. 22(2)(f) is a relevant factor in this case supporting the withholding of the information.

[65] **Other relevant circumstances** – As they argue above in the context of UBC's exercise of discretion in applying s. 13(1),³⁴ the applicant alleges that the harassment complainant had a role in adversely influencing the members of the review committee and the appointments committee that assessed their request for a permanent position.³⁵ The applicant submits that this constitutes a conflict of interest in the employment process that damaged the adjudication of their application and asserts that this argues in favour of disclosing the information to them.³⁶

[66] UBC denies any allegation of conflict of interest or other impropriety during the evaluation of the applicant's request for a permanent position. It submits that the information at issue does not provide any evidence of impropriety. It argues that the proper venue for the applicant to raise concerns about the process was the formal grievance proceedings, and they have taken advantage of that opportunity and been heard.³⁷

[67] Again, I see no evidence of conflict of interest or any other impropriety in the process in the submissions or the personal information at issue. I find this not to be a relevant circumstance.

[68] The parties do not argue the application of any other relevant circumstances in this case, and I find that none apply here.

³⁴ See above, para. 20.

³⁵ Applicant's response submission, paras. 31-33.

³⁶ Applicant's response submission, para. 43.

³⁷ UBC's reply submission, para. 7.

Conclusion on s. 22(1)

[69] I found above that the information in dispute constitutes personal information. I have found that neither s. 22(4)(b) nor any other of the provisions in s. 22(4) apply that would have excluded the application of s. 22(1).

[70] I find that some of the personal information constitutes the employment history of third parties, in accordance with s. 22(3)(b), and that its disclosure is presumed to be an unreasonable invasion of third-party personal privacy. I also find that other information constitutes personal evaluations of the applicant that third parties have supplied in confidence, in accordance with s. 22(3)(h), and that its disclosure is presumed to be an unreasonable invasion of third-party personal privacy.

[71] I find that none of the relevant factors in s. 22(2) apply to rebut the presumptions that disclosure would be an unreasonable invasion of privacy.

[72] I find that the third parties provided in confidence their personal information at issue, in accordance with s. 22(2)(f). This argues in favour of withholding the information. I also find that disclosure of some information would cause third parties to suffer harm including damage to reputation, in accordance with ss. 22(3)(e) and 22(3)(f). This argues in favour of withholding the information.

[73] I also find that the applicant did not make a case that disclosure of this personal information would not be an unreasonable invasion of privacy of the third parties. The burden of proof lies with the applicant on this issue, and they have not met their burden of proof.

[74] In conclusion, I find that s. 22(1) applies to the personal information at issue and UBC must withhold it.

CONCLUSION

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

1. I confirm the decision of UBC to withhold information under s. 13(1).
2. I require UBC to refuse access, under s. 22(1), to the personal information it withheld under s. 22(1).

February 4, 2022.

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

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