Order F23-07

INDEPENDENT INVESTIGATIONS OFFICE

D. Hans Hwang
Adjudicator

February 13, 2023

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Summary: An applicant requested records about an investigation conducted by the Independent Investigations Office (IIO). The IIO refused to disclose some records under s. 3(3)(a) (court record) and some information under ss. 14 (solicitor client privilege), 15(1)(c) (harm to law enforcement), 16(1)(b) (harm to intergovernmental relations) and 22 (harm to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found s. (3)(3)(a) did not apply to the records in dispute. The adjudicator confirmed the IIO's decision regarding s. 14 and found that ss. 16(1)(b) and 22(1) applied to most, but not all, of the information withheld under those sections. However, the adjudicator found that s. 15(1)(c) did not apply to most of the information withheld under s. 15(1)(c). The IIO was required to respond to the applicant's request for access to the records that the IIO withheld under s. 3(3)(a). The IIO was required to disclose the information that the IIO was not authorized or required to refuse to disclose under ss. 15(1)(c), 16(1)(b) and 22(1).

Statutes Considered: *Police Act*, RSBC 1996, c 367, ss. 1.1, 38.02(1), 38.07(1) and 68.1; *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c 165, ss. 3(3)(a), 14, 15(1)(c), 16(1)(b) and 22, Schedule 1 definitions of "public body", "law enforcement", "personal information" and "contact information" and Schedule 2 list of public bodies.

INTRODUCTION

[1] A police officer (applicant) asked the Independent Investigations Office (IIO) for access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records about an investigation the IIO conducted. The applicant was the subject of the investigation.

[2] The IIO refused to disclose some information in the records to the applicant under ss. 14 (solicitor client privilege), 15 (harm to law enforcement), 16 (harm to intergovernmental relations), and 22 (harm to third-party personal

privacy) of FIPPA. The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the IIO's decision.

[3] OIPC's mediation did not resolve the matter and it proceeded to this inquiry.

[4] Prior to filing its initial submission in this inquiry, the IIO requested permission from the OIPC to add s. 3(3)(a) into this inquiry as a new issue and claimed some information is excluded from the scope of FIPPA.[1] The OIPC agreed to add that section into the inquiry and issued a revised notice of inquiry to the parties.[2]

Preliminary Issue

[5] While the applicant does not specifically address s. 6(1), in his submission, he suggests that the IIO did not conduct an adequate search for records that he identifies.[3] Section 6(1) imposes a number of obligations on a public body. It is well-established that s. 6(1) requires a public body to conduct an adequate search for records.[4]

[6] The IIO objects to the adding of s. 6(1) as an issue in this inquiry.

[7] Past OIPC orders and decisions have consistently said parties may not add new issues into the inquiry without the OIPC's prior consent.[5] The OIPC's notice of inquiry and its *Instructions for Written Inquiries*, both of which were provided to the IIO and the applicant at the outset of the inquiry, clearly explains the process for adding new issues to an inquiry. Here, the applicant did not apply to the OIPC for permission to add s. 6(1) into the inquiry, and he does not explain why he is only raising s. 6(1) at this late stage in the process. In addition, I cannot see any exceptional circumstances that warrant adding s. 6(1) at this late point in the inquiry. Therefore, I will not add that issue or consider the applicant's submissions about it any further.

ISSUES AND BURDEN OF PROOF

[8] The issues I must decide in this inquiry are:

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[1] IIO's letter, dated August 3, 2022.
[2] Revised Notice of Inquiry, dated August 5, 2022.
[3] Affidavit #1 of the applicant at para. 40.
[4] Order 02-18, 2002 CanLII 42443 (BCIPC) at para. 7.
[5] For example, see Order F12-07, 2012 BCIPC 10 at para. 6; Order F10-27, 2010 BCIPC 55 at para. 10; Decision F07-03, 2007 CanLII 30393 (BC IPC) at paras. 6-11; and Decision F08-02, 2008 CanLII 1647 (BC IPC).

1. Is the IIO authorized to refuse access to some of the records at issue because they fall outside the scope of FIPPA pursuant to s. 3(3)(a)?

2. Is the IIO authorized to refuse to disclose information to the applicant under ss. 14, 15(1)(c) and 16(1)(b)?

3. Is the IIO required to refuse to disclose information to the applicant under s. 22?

[9] Section 57(1) of FIPPA states the IIO, who is a public body in this case,[6] has the burden of proving that the applicant has no right of access to records or parts of records under ss. 14, 15(1)(c), and 16(1)(b).

[10] However, s. 57(2) places the burden on the applicant to prove disclosing the information at issue would not unreasonably invade a third party's personal privacy under s. 22(1).

[11] Although s. 57 is silent about s. 3, previous orders have established that the public body bears the burden of proving that the records are excluded from the scope of FIPPA.[7]

DISCUSSION

Background[8]

[12] The IIO is a civilian-led agency directed by a Chief Civilian Director (Director). Under the *Police Act*,[9] the IIO is responsible for conducting investigations into incidents of death or serious harm involving police officers in BC.

[13] A typical IIO investigation would include scene analysis, police and witness interviews, video and witness canvassing, reviewing of medical information and pathologist and toxicologist reports.

[14] The IIO gathers evidence and determines whether a matter should be referred to Crown Counsel for consideration of charges. If a matter is not referred to Crown Counsel, the Director may decide to release a public report or media

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[6] Schedule 2 of FIPPA.
[7] For example: Order 170-1997, 1997 CanLII 1485 (BC IPC); Order 03-14, 2003 CanLII 49183 (BC IPC); Order F16-15, 2016 BCIPC 17 (CanLII); Order F17-30, 2017 BCIPC 32.
[8] The information in this background section is based on the evidence, which I accept, in Affidavit #1 of Chief Civilian Director (Director) of the IIO at paras. 2, 5, 7, 9, 10 and 13.
[9] R.S.B.C. 1996, c. 367.

statement outlining the relevant facts gathered from the investigation and the reasons for the decision not to refer the matter.[10]

[15] The applicant was the officer being investigated by the IIO in relation to an IIO investigation into a motor vehicle collision (IIO Investigation) during which an individual sustained serious injury. After reviewing the investigation materials, the Director concluded that the evidence collected did not provide grounds to consider any charges against the applicant and determined the matter would not be referred to Crown Counsel for consideration of criminal charges.

[16] The applicant requested a copy of all records about the IIO Investigation.

Records and information at issue

[17] The IIO provided me with 558 pages of records that contain the information in dispute. I will identify and discuss below the specific information in dispute as it relates to each exception.

Scope of FIPPA, s. 3(3)(a)

[18] Section 3(1) states that FIPPA applies to all records in the custody or under the control of a public body, including court administration records, subject to ss. 3(3) to (5). Section 3(3)(a), which is the provision IIO says applies in this case, says that FIPPA does not apply to "a court record".

[19] The IIO relies on s. 3(3)(a) to refuse access to the following records:

- A search warrant;[11]
- A sealing order that prohibits disclosure of the records pertaining to the search warrant;[12] and
- The materials filed with the court to obtain the search warrant and the sealing order.[13]

[20] The IIO submits as follows:

> The warrant is on a form created by the Provincial Court and is a record which is generated by the Court itself. It is a "court record".[14]

[10] Affidavit #1 of Director of the IIO, Exhibits B and C.
[11] Pages 300 and 541 of the records in dispute.
[12] Pages 301 and 540 of the records in dispute.
[13] Pages 526-539 of the records in dispute.
[14] IIO's initial submission at para. 25.

> The sealing order requires that all records in the custody or control of a Justice relating to the warrant not be accessed or disclosed to any interested party or member of the public until further order of the Provincial Court. The sealing order is also plainly a "court record".[15]
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> [Information to obtain the search warrant and the sealing order] consist of the materials filed in support of the warrant. Those records have also been withheld as they have been filed with the Provincial Court in support of the warrant and, as such, are "court records" not captured by FIPPA.[16]

[21] The applicant submits that:

> I would agree the Information to Obtain supporting a Search Warrant filed in Court with an accompanying Sealing Order be protected as [the Director] suggests. However, I submit that the IIO file material is not protected in the same such manner, especially in a long since concluded investigation.[17]
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> *Findings, s. 3(3)(a)*

[22] FIPPA does not define the term "court record". However, two previous BC orders considered the meaning of "court record" in s. 3(1)(a), which was the former numbering for s. 3(3)(a). In Order 234-1998, former Commissioner Flaherty found that s. 3(1)(a) was limited in its application to records physically located in a court file and it did not apply to copies of such records in the custody or control of a public body.[18] In Order 01-27 former Commissioner Loukidelis agreed and said, "The meaning of the phrase 'a record in a court file' in s. 3(1)(a) is plain – it applies only to records that are actually located in a court file."[19]

[23] I agree with how Orders 234-1998 and 01-27 have interpreted "court record" in s. 3. I find that the records at issue are in the custody and under the control of the IIO, not a court. For that reason, s. 3(3)(a) does not apply to the sealing order, the search warrant, or the information used to obtain the search warrant and sealing order. Therefore, FIPPA applies to those records and the IIO must process them in accordance with Part 2 of FIPPA.

Solicitor-Client Privilege, s. 14

[24] Under s. 14, a public body may refuse to disclose information that is subject to solicitor-client privilege. Solicitor-client privilege encompasses both

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[15] IIO's initial submission at para. 26.
[16] IIO's initial submission at para. 27.
[17] Affidavit #1 of the applicant at para. 10b.
[18] Order 234-1998 Ministry of Health, Re, 1998 CanLII 3535 (BC IPC) at p. 4.
[19] Order 01-27, Ministry of Attorney General, Re, 2001 CanLII 21581 (BC IPC) at para. 12.

legal advice privilege and litigation privilege.[20] The IIO claims legal advice privilege over the information withheld under s. 14.[21]

[25] Legal advice privilege applies to confidential communications between a solicitor and client for the purposes of seeking or providing legal advice, opinion or analysis.[22] Legal advice privilege also applies to information that, if disclosed, would reveal or allow an accurate inference to be made about privileged information. For example, legal advice privilege extends to internal client communications that transmit or comment on privileged communications with lawyers.[23]

[26] The test for legal advice privilege has been expressed in various ways, but the essential elements are that there must be:

- a communication between solicitor and client (or their agent);
- that entails the seeking or providing of legal advice; and
- that is intended by the solicitor and client to be confidential.[24]

[27] The information that the IIO refuses to disclose under s. 14 ranges from small portions to entire pages of the following records:

- Legal counsel's notebook;[25]
- Investigator AW's notebook;[26]
- Investigator DR's notebook;[27] and
- Briefing notes.[28]

[28] The IIO did not provide me with this information for my review. Instead, it provided affidavit evidence from its legal counsel (IIO Lawyer) to support its claim that the information is protected by solicitor-client privilege.[29] Due to the importance of solicitor-client privilege, it is open to the public body to provide only affidavit evidence, in which case the OIPC would only seek to review the records when absolutely necessary to fairly decide the issue. I have determined that it is

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[20] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para. 26.
[21] IIO's initial submission at paras 31-37.
[22] *College* at paras. 26-31.
[23] *Solosky v. The Queen*, [1980] 1 SCR 821 [*Solosky*] at para 12 citing *Mutual Life Assurance Co. of Canada v Canada (Deputy Attorney General)* [1988] OJ No. 1090 (Ont. SCJ).
[24] *Solosky* at p. 837; *R. v. B*., 1995 CanLII 2007 (BCSC) at para. 2.
[25] Pages 150-153 of the records in dispute.
[26] Page 166 of the records in dispute.
[27] Page 261 of the records in dispute.
[28] Pages 279, 287 and 288 of the records in dispute.
[29] IIO's initial submission at para. 35.

not necessary to order production of the records because the IIO Lawyer's affidavit evidence provided sufficient information for me to make an informed decision about whether legal advice privilege applies.

[29] I turn now to the parties' arguments and evidence about whether the records in dispute are subject to solicitor-client privilege.

IIO's submissions

[30] The IIO says that the IIO Lawyer was responsible for providing legal advice to IIO as it relates to the IIO's mandate under the *Police Act*.[30] The lIO also says that "The right to communicate in confidence with one's legal adviser is a substantive right. If communications are for the purpose of obtaining or receiving the legal advice or services, the privilege attaches even if the communication entails no more than the passing of factual information".[31]

[31] The IIO Lawyer testifies in a sworn affidavit that her role in the investigation into the applicant's conduct was exclusively to provide legal advice to the IIO investigators.[32] She says that her notebook recorded the confidential discussions she had with the IIO investigators, in her role as counsel responsible for providing advice to the IIO investigators, about the IIO Investigation.[33]

[32] The IIO Lawyer states that the notebooks of the IIO Investigators AW and DR contain the contents of legal advice she provided to them regarding the IIO Investigation. She also states that Briefing notes reproduce legal advice that was sought by the IIO investigators and provided by her in her role as counsel responsible for providing advice to the investigators.[34]

Applicant's submission

[33] The applicant disputes that legal advice privilege applies to the information at issue. He says, "I would agree that discussions and instructions given between the IIO and their Counsel is protected, however documented investigative strategies and direction borne out of these discussion do not enjoy this same protection".[35] He also says that if the IIO Lawyer was employed by the IIO in an investigational capacity while at the same time providing privileged legal advice to that same organization, it would be a conflict of interest and is likely to

[30] IIO's initial submission at para. 35.
[31] IIO's initial submission at para. 32.
[32] Affidavit #1 of Legal Counsel of the IIO at para. 3.
[33] Affidavit #1 of Legal Counsel of the IIO at para. 4a.
[34] Affidavit #1 of Legal Counsel of the IIO at paras. 4b and 4c.
[35] Affidavit #1 of the applicant at para. 29a.

contravene the policies of the IIO and the Ministry of the Attorney General.[36] The applicant asserts that the discussions at the briefing made prior to consultation with the IIO Lawyer would not constitute privileged legal advice.[37]

IIO's reply submissions

[34] The IIO objects to the applicant's position. It says wherever the IIO Lawyer has provided legal advice and that legal advice is repeated or expressed among the IIO staff in a confidential setting, it remains protected by privilege.[38]

[35] Also, the IIO says that there is no merit to the applicant's suggestion that the IIO Lawyer was in a conflict of interest or contravened the IIO policy because she was employed in an investigational capacity and provided legal advice to the IIO staff. The IIO says that a public body may employ individuals who have multiple roles including that of legal counsel.[39]

Analysis and findings

[36] Legal advice privilege applies to confidential communications between a solicitor and client for the purpose of seeking or giving legal advice. Therefore, I will first consider whether there was a solicitor-client relationship.

Was there a solicitor-client relationship?

[37] For the reasons that follow, I find there was a solicitor-client relationship between the IIO Lawyer and the IIO and its investigators. I accept the following sworn testimony of the IIO Lawyer about her role in the IIO Investigation:

- She worked as a solicitor providing legal advice to the IIO as it relates to the IIO's mandate under the *Police Act*;
- Her role in the IIO Investigation was exclusively to provide legal advice to the IIO investigators; and
- The IIO and its investigators were the "clients" and the records in dispute reveal the content of the communications between the IIO Lawyer and her clients about the IIO Investigation.

[38] The applicant asserts that the IIO Lawyer was in a conflict of interest because she was working in an investigational capacity and was, at the same time, providing legal advice. However, the issue here is not whether there was a conflict of interest. What is relevant is whether, at the time of the communications

[36] Affidavit #1 of the applicant at para. 30b.
[37] Affidavit #1 of the applicant at para. 31b.
[38] IIO's response submission at para. 12.
[39] IIO's response submission at para. 13.

recorded in the records, the IIO Lawyer was acting as legal counsel. Based on the IIO Lawyer's evidence, I am satisfied that she was acting as the IIO's legal counsel with regards to the communications contained in the records.

Nature of the communications

[39] Based on the IIO Lawyer's affidavit evidence, which I accept, my findings about the nature of the communications are as follows:

- The IIO Lawyer was responsible for providing legal advice to the IIO and the IIO investigators;
- The IIO Lawyer had discussions with the IIO investigators regarding the IIO Investigation and provided advice in her role as legal counsel; and
- The information in the three notebooks and the briefing note reveals the content of the communications between the IIO Lawyer and the IIO investigators regarding the IIO Investigation and the legal advice being sought and provided.

[40] I am satisfied that the information in dispute reveals communications between the IIO Lawyer and her clients and that those communications entail the seeking and providing of legal advice.

Confidentiality

[41] The final part of the test requires that the communications were intended to be confidential.

[42] The IIO Lawyer's affidavit evidence provides that in her notebook, she recorded the confidential discussions she had with the IIO investigators when she provided them with legal advice in the IIO Investigation. Further, the affidavit states that the investigators' notebooks also recorded the contents of the confidential legal advice she provided.[40] The IIO Lawyer testifies that the communications she had with the IIO Investigators were intended to be confidential, particularly when the confidential communications entailed the seeking and giving of legal advice.[41]

[43] Based on the materials before me, I find it reasonable that a person would expect their personal notes of what took place at the seeking and giving of legal advice to remain confidential. Also, nothing in the evidence suggests that anyone, other than the IIO Lawyer and the IIO and its investigators, were included in the communications. With all this in mind, I am satisfied that the information that the IIO withheld under s. 14 comprises communication that was

[40] Affidavit #1 of Legal Counsel of the IIO at para. 4.
[41] Affidavit #1 of Legal Counsel of the IIO at para. 3.

intended to remain confidential.

Summary, s14

[44] In conclusion, I find that all of the records and parts of records withheld under s. 14 are communications between the IIO and the IIO Lawyer acting in her role as the IIO's legal advisor. I also find that the communications directly relate to seeking, formulating and providing legal advice and they were intended to remain confidential. In conclusion, the IIO has proven that this information is protected by legal advice privilege and that it may be withheld under s. 14.

Harm to investigative techniques, s. 15(1)(c)

[45] The IIO is refusing to disclose some parts of the records under s. 15(1)(c). The provision says:

> 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
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> ...
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> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
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> …

[46] The standard of proof applicable to harms-based exceptions, like s. 15(1), is "a reasonable expectation of probable harm". The Supreme Court of Canada has described this standard as a middle ground between that which is probable and that which is merely possible. The standard does not require proof that harm will occur on the balance of probabilities, but something well beyond the merely possible or speculative must be shown. In addition, the evidence needs to be detailed and convincing enough to establish a clear and direct connection between disclosure of the specific information and the alleged harm.[42]

[47] The IIO submits that its evidence establishes that disclosure of the severed information would result in a reasonable expectation of harm to the effectiveness of the IIO's investigative techniques and procedures.[43]

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[42] *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras. 197, 199, 206 and 210; and Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 27.

[43] IIO's initial submission at para. 48.

[48] The information that the IIO refused to disclose under s. 15(1)(c) ranges from small portions to entire pages of the following records.[44]

- Decision log;[45]
- Director's notebook;[46]
- Investigators' notebook;[47]
- Briefing minutes and "Item 3";[48]
- Email communications between the RCMP and the IIO;[49] and
- Interview plan.[50]

Do the records relate to a law enforcement?

[49] The meaning of the term "law enforcement" is relevant when considering s. 15(1)(c). Schedule 1 of FIPPA defines the term as follows:

> "law enforcement" means
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> (a) policing, including criminal intelligence operations,
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> (b) investigations that lead or could lead to a penalty or sanction being imposed, or
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> (c) proceedings that lead or could lead to a penalty or sanctions being imposed.

[50] Sections 1.1 (police forces in British Columbia), 38.02(1) (establishment) and 38.07(1) (jurisdiction) of the *Police Act* say as follows:

> 1.1 The following are police forces in British Columbia:
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> …

[44] Affidavit #1 of Chief Civilian Director of the IIO at paras. 26a-26k.
[45] Pages 99 and 270-279 of the records in dispute. IIO withholds the information on page 279 under ss. 14 and 15 and I have already found s. 14 applies to the withheld information on page 279. So, it is not necessary for me to consider whether s. 15 also applies.
[46] Pages 160, 163, 166 and 168 of the records in dispute. IIO withholds the information on page 166 under ss. 14 and 15 and I have already found s. 14 applies to the withheld information in this record. So, it is not necessary for me to consider whether s. 15 also applies.
[47] Pages 173, 183, 206, 210, 212, 217, 218, 231, 258-260, 261, and 266 (duplicate on page 555) of the records in dispute.
[48] Pages 287 and 288 of the records in dispute. IIO withholds the information on pages 287-288 under ss. 14 and 15 and I have already found s. 14 applies to the withheld information in this record. So, it is not necessary for me to consider whether s. 15 also applies. I only consider "Item 3" on page 288 that IIO withholds under only s. 15.
[49] Pages 291-293 of the records in dispute.
[50] Pages 556-558 of the records in dispute.

> (d) the independent investigations office.
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> 38.02 (1) An independent investigations office is established in the Ministry of Attorney General, the purpose of which is to conduct
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> (a) the investigation of an incident under section 38.09 (3) [immediate reporting of critical incidents],
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> (b) the investigation of a matter under section 38.10 (2) [immediate reporting of critical investigations],
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> (c) an investigation that may be directed to the independent investigations office under section 44 [special investigations], and
>
> (d) the investigation of a matter under section 177.1 [duty of police complaint commissioner to notify IIO] on receiving notice from the police complaint commissioner under that section.
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> 38.07 (1) The chief civilian director and each IIO investigator have
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> (a) all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and
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> (b) jurisdiction throughout British Columbia while carrying out those duties and exercising those powers.

[51] I find that under the *Police Act,* the IIO conducts investigations into incidents of death or serious harm that may have been the result of the actions or inactions of a police officer and the IIO may refer its matter to Crown Counsel for consideration of charges. I am satisfied that the IIO's mandate is within the meaning of "law enforcement" under Schedule 1 of FIPPA. I also find the information being withheld under s. 15(1)(c) is related to the IIO Investigation. I conclude, therefore, the information in dispute is about "law enforcement" for the purpose of s. 15(1)(c).

Harm to effectiveness of investigative techniques and procedures

[52] While the information is about law enforcement, that is not the end of the matter. In order to establish that s. 15(1)(c) applies, the IIO must also show that disclosing the information could reasonably be expected to harm the effectiveness of investigative techniques and procedures.

[53] Past orders have said that investigative techniques and procedures for the purposes of s. 15(1)(c) include technologies and technical processes used in law enforcement, including equipment, practices and methods. Other orders have also determined that activities such as covert police surveillance techniques or

coroners' investigative methods constitute "investigative techniques" and that disclosure of information about these activities could harm their effectiveness.[51]

[54] In its submission, the IIO says "The information severed or withheld under s. 15(1)(c) consists largely of notes and briefing documents created by IIO investigators in which they record their investigative strategies, decision-making and theories regarding the investigation".[52]

[55] The IIO argues that the information in dispute consists of "strategic planning", "decision making",[53] "preliminary conclusions the investigators reached regarding certain theories" and "determinations of fact from the information gathered",[54] and it says disclosing that information may reduce and undermine the IIO's ability to effectively conduct its investigation.

[56] The IIO provides affidavit evidence from its Chief Civilian Director (Director). The Director says:

> IIO investigations are carried out to a criminal standard. Both civilian and police witnesses may be impacted by their association with those involved in the investigation. Release of such information could cause such individuals to no longer cooperate with the IIO. Investigative theories and strategies are also an important part of an effective criminal investigation. Disclosing those to an interested party can reduce their effectiveness, and thereby impact the IIO's attempt to obtain the most complete and accurate information possible. It is therefore important that such strategies not be disclosed, even where they may seem to be routine.[55]

[57] The IIO relies on the Director's affidavit to argue that disclosure of the disputed information would result in a reasonable expectation of harm to the effectiveness of the IIO's investigative techniques and procedures. The IIO says that it proactively discloses general information to members of the public and to an officer under investigation so those individuals have a better understanding of the investigative process. However, the IIO submits that certain aspects of investigations must be kept confidential to ensure their continued effectiveness.[56]

[58] The applicant submits that there is nothing sensitive or confidential about the investigation techniques used by the IIO in the IIO Investigation. He argues "there can be no justification how disclosure of these records could be harmful to

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[51] See, for example, Order F15-12, 2015 BCIPC 12 (CanLII); Order F11-13, 2011 BCIPC 18 (CanLII); Order No. 50-1995, [1995] B.C.I.P.C.D. No. 23; Order No. 125-1996, [1996] B.C.I.P.C.D. No. 52.
[52] IIO's initial submission at para. 44.
[53] Affidavit #1 of the Director at paras. 26b, 26c-26f, and 26h-26i.
[54] Affidavit #1 of the Director at para. 26g.
[55] Affidavit #1 of Chief Civilian Director of the IIO at para. 25.
[56] IIO's initial submission at para. 48.

future investigation".[57] He also says "[the Director]'s suggestion that release of information would harm future IIO investigations and reduce the effectiveness of their investigations is baseless and unsubstantiated."[58]

Findings, s. 15(1)(c)

[59] Having reviewed the submissions and evidence, I am satisfied that the IIO has established that disclosing the interview plan[59] could reasonably be expected to cause harm under s. 15(1)(c). I find the interview plan consists of a series of interview questions, an outline of the interview process, and subjects to canvass and follow up on. I accept the IIO's affidavit evidence[60] that this information contains a strategic component that is necessary to ensure all relevant information is gathered. I find that disclosure of this information could reasonably be expected to harm the conduct of future IIO investigations. I find, therefore, that s. 15(1)(c) applies to that information withheld in the interview plan.

[60] However, I am not satisfied that s. 15(1)(c) applies to the rest of the information at issue. I find the IIO's arguments are unsupported by evidence and fail to show the required connection between the disclosure of the information at issue and the alleged harm.

[61] In particular, I find the IIO does not identify what specific "investigative techniques and procedures currently used, or likely to be used", would be harmed if the information is disclosed. The information in dispute consists of facts and evidence the IIO investigators collected as part of the IIO Investigation, preliminary decisions the IIO investigators made and what investigative steps to take next. I find that information does not reveal "investigative techniques and procedures".

[62] The IIO also argues disclosing the information would undermine its ability to effectively conduct its investigation in the future.[61] However, it is not apparent how an officer under investigation or a member of the public could use the withheld information in a way that would create a reasonable expectation of probable harm to the IIO's investigation. The IIO has not adequately explained the connection between having access to the information in dispute and harm under s. 15(1)(c). There is also nothing in the records that sheds light on or corroborates what the IIO says about the anticipated harm.

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[57] Affidavit #1 of the applicant at para. 11b.
[58] Affidavit #1 of the applicant at para. 13b.
[59] Pages 556-558 of the records in dispute.
[60] Affidavit #1 of the Director at para. 26k.
[61] IIO's initial submission at paras. 46b-f and 46h-i.

Summary, s 15(1)(c)

[63] For the reasons given, I find s. 15(1)(c) applies to the information withheld in the interview plan.[62] I find, however, the IIO has not established that disclosing the rest of the information in dispute could reasonably be expected to cause harm under s. 15(1)(c).[63]

Intergovernmental information received in confidence, s. 16(1)(b)

[64] Section 16 of FIPPA authorizes public bodies to refuse access to information if disclosure would be harmful to intergovernmental relations. The parts of s. 16 relevant to this inquiry are as follows:

> 16(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> > (a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
> >
> > > (i) the government of Canada or a province of Canada;
> >
> > …
> >
> > (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies,
> >
> > …

[65] The IIO submits s. 16(1)(b) applies to the following:

- information and evidence provided by the Royal Canadian Mounted Police (RCMP);[64]
- email communications between the RCMP and the IIO;[65]
- information obtained by the IIO accessing the Police Records Information Management Environment (PRIME) system;[66] and

[62] Pages 556-558 of the records in dispute.
[63] For added clarity: pages 99, 160, 163, 168, 173, 183, 206, 210, 212, 217, 218, 231, 258-260, 266 (and duplicate on page 555), 270-279, 288 ("Item 3"), and 291-293 of the records in dispute.
[64] Pages 14, 93, 110-112, 118, 236, 279 (Information sought from Cell phone record) of the records in dispute. I have already found s. 14 applies to the withheld information "Obstruction to application for Provincial Warrant" on page 279. So, it is not necessary for me to consider whether s. 16 also applies.
[65] Pages 291-293, 452-475, 495-507, 516-517 and 524-525 of the records in dispute.
[66] Pages 428-447, 482-494 and 486-511 of the records in dispute.

- an email that the Government of Canada sent to the RCMP.[67]

[66] Section 16(1)(b) requires a public body to establish two things: (1) disclosure would reveal information that it received from a government, council or organization listed in s. 16(1)(a) or one of their agencies; and (2) that this information was received in confidence.[68]

Did IIO receive information from an "agency"?

[67] Based on my review of the submissions and records, the IIO submits that it received the information from the RCMP and Police Records Information Management Environment Incorporated (PRIMECORP), so I must determine whether they qualify as agencies under s. 16(1)(b).

Is the RCMP an agency?

[68] The IIO submits the information in dispute was received from the RCMP, which it argues is an agency of the Canadian Government.[69]

[69] The applicant does not specifically address whether the information was received from an agency within the meaning of s. 16(1)(b).

[70] Past OIPC orders have consistently said the RCMP is a federal government agency for the purpose of s. 16(1)(b).[70] There is nothing in the parties' submissions and evidence that persuades me that I should depart from making a similar conclusion. I am satisfied the RCMP is an agency of the Government of Canada under s. 16(1)(b).

Email that the Government of Canada sent to the RCMP

[71] The IIO withholds an email between Government of Canada and the RCMP. Based on the evidence as a whole, including the content of the email and its context, I find the IIO received it from the RCMP.

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[67] Page 289 of the records in dispute.
[68] Order F17-56, 2017 BCIPC 61 (CanLII) at para. 83; Order 02-19, 2002 CanLII 42444 (BC IPC) at para. 18.
[69] IIO's initial submission at paras. 2 and 58.
[70] Order 02-19, 2002 CanLII 42444 (BC IPC) at paras. 22-58; Order F17-56, 2017 BCIPC 61 at para. 85.

Is the PRIMECORP an "agency"?

[72] The IIO withholds some information that it obtained and retrieved from PRIME which is operated by PRIMECORP. PRIME is an occurrence and record management system that allows users to electronically query data repository systems of law enforcement information.[71] The question that I must address here is whether PRIMECORP is an agency within the meaning of s. 16(1)(b).

[73] PRIMECORP is listed as a public body under FIPPA.[72] It is a "designated service provider" that provides an information management system, i.e., PRIME, to law enforcement services in BC under the *Police Act.*[73]

[74] I conclude that PRIMECORP is an agency of the government of BC and the information that the IIO obtained or retrieved from PRIME was received from an agency of the government within the meaning of s. 16(1)(b).

Information in dispute that was not received from an agency

[75] I find that the IIO received most of the withheld information under s. 16(1)(b) from the RCMP and PRIMECORP. However, I do not find that information in a record titled "Vehicle examination"[74] was received from an agency for the purpose of s. 16(1)(b). While the "Vehicle examination" sheet is a fillable form created by the RCMP, I can see that it was the vehicle examiner of the repair shop who recorded the vehicle examination result on the form and then provided it directly to the IIO. I do not see any evidence that the repair shop was an agency or the vehicle examiner was a member of an agency within the meaning of s. 16(1)(b).

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[71] Affidavit #1 of the Chief Civilian Director of the IIO at para. 28.

[72] Schedule 2. Public Bodies: "PRIMECORP Police Records Information Management Environment Incorporated".

[73] Section 68.1(1) of the *Police Act* states:

"**designated service provider**" means a corporation that

(a) is providing an information management system to a law enforcement service, and

(b) is designated by order of the Lieutenant Governor in Council for the purposes of subsection (7);

"**information management system**" means a system of software and hardware components and related technology that

(a) interact and operate to integrate reception, creation, collection, recording, filing, analysis, reporting, transmission, storing, sending, reproduction and dissemination of information and data within and between policing and law enforcement jurisdictions, and

(b) is approved by the minister under subsection (2);

[74] Pages 306-307 of the records in dispute.

Did IIO receive the information "in confidence"?

[76] The next question in the s. 16(1)(b) analysis is to consider whether the information received from the RCMP and PRIMECORP was received in confidence. Section 16(1)(b) requires public bodies to look at the intentions of both parties, in all the circumstances, in order to determine if the information was "received in confidence."[75] In Order No. 331-1999, former Commissioner Loukidelis identified several non-exhaustive factors that may be considered to determine if the information was "received in confidence," including the nature of the information, explicit statements of confidentiality, evidence of an agreement or understanding of confidentiality and objective evidence of an expectation of or concern for confidentiality.[76] I have considered those circumstances below.

IIO's submission

[77] The IIO submits that the information withheld under s. 16(1)(b) was received in confidence. The Chief Civilian Director says that the IIO has been granted access to PRIME on the understanding that the information and records gathered from it will be kept confidential.[77]. He also says that the IIO and the RCMP provide each other with information on the understanding that it will remain strictly confidential.[78] He also gives details about the confidentiality of each specific instance of s. 16(1)(b) severing.[79]

Applicant's submission

[78] The applicant argues that there must be an implicit or explicit agreement or understanding of confidentiality from both the provider and the recipient of information in order to establish that the information was received in confidence.[80] He also says that the IIO Investigation was about a simple traffic collision that would not meet the standard requiring confidentiality,[81] no information was shared explicitly in confidence with the IIO by the RCMP,[82] and information obtained from the RCMP in its compulsory requirement to cooperate with the IIO cannot be deemed confidential.[83]

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[75] Order No. 331-1999, 1999 CanLII 4253 (BC IPC) at p. 8
[76] *Ibid* at pp. 8-9.
[77] Affidavit #1 of Chief Civilian Director of the IIO at para. 28.
[78] Affidavit #1 of Chief Civilian Director of the IIO at para. 29.
[79] Affidavit #1 of Chief Civilian Director of the IIO at para. 30.
[80] Affidavit #1 of the applicant at para. 33a(i).
[81] Affidavit #1 of the applicant at para. 33a(ii).
[82] Affidavit #1 of the applicant at para. 34b.
[83] Affidavit #1 of the applicant at para. 35b.

Findings on confidentiality

[79] I accept the Civilian Director's evidence and find the IIO has received the disputed information from the RCMP and PRIMECORP "in confidence". The following indicators that the information was received in confidence are present in the evidence:

- the records received from the RCMP and PRIME were about the IIO Investigation;
- the records contain sensitive information and potentially damaging personal information about individuals and a reasonable person would regard such information received from the RCMP and PRIME about an ongoing investigation as being confidential in nature;
- the IIO did not compile the information it received from PRIME and the RCMP for a purpose that would be expected to lead to disclosure to the general public in the ordinary course; and
- there is an understanding that information that the IIO receives from PRIME and the RCMP is received on the understanding that it will remain strictly confidential.

Conclusion on s. 16(1)(b)

[80] I find the RCMP is an agency of the Canadian government and PRIMECORP is an agency of the BC government for the purposes of s. 16(1)(a)(i). Also, I am satisfied that the information the RCMP and PRIMECORP provided to the IIO was received in confidence in accordance with s. 16(1)(b).

[81] I conclude, therefore, the IIO may withhold the disputed information on the following pages of the disputed records under s. 16(1)(b): 14, 93, 110-112, 118, 236, 279 (under the heading "Information sought through Cell phone record")[84], 281-283, 289, 291-293, 428-447, 450, 451, 452-475, 482-494, 486-511, 495-507, 508-509, 516-517 and 524-525. However, the IIO may not withhold the disputed information on pages 306-307 under s. 16(1)(b).

Disclosure harmful to third-party personal privacy, s. 22

[82] Section 22 requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.[85] Past BC orders have considered the application of s. 22,

[84] I have already found that s. 14 applies to the rest of the severed information on p. 279.
[85] Schedule 1 of FIPPA says: "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other

and I will apply those same principles here.[86]

Personal information

[83] Section 22 only applies to personal information, so the first step in a s. 22 analysis is to determine if the information in dispute is personal information.

[84] Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."[87] Previous orders have said that information is about an identifiable individual when it is reasonably capable of identifying an individual, either alone or when combined with other available sources of information.[88]

[85] The IIO withheld a significant amount of information under s. 22 and says that the majority of the information is third-party personal information.[89] I have reviewed the information at issue and find it can be categorized as follows: template information in forms, names and details of several individuals, statements from several individuals, information about the medical care received by the individual injured in the motor vehicle collision (injured person), and the notes and reports of several IIO investigators.

[86] First, I find that the IIO withheld some information that is not personal information. It is template information in fillable forms.[90] It is not personal information because it is not about identifiable individuals. There is also a small amount of information that I find is contact information. For example, there is the IIO investigator's work email, phone and fax numbers, along with their mailing address on a BC Emergency Health Services Application for the Release of Patient Care Records[91] and the IIO investigator's work phone number on Interior Health Client Information/Access Request forms.[92]

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than (a) the person who made the request, or (b) a public body.
[86] See, for example, Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58.
[87] See Schedule 1 of FIPPA for the definitions of personal information and contact information.
[88] Order F19-13, 2019 BCIPC 15 (CanLII) at para. 16, citing Order F18-11, 2018 BCIPC 14 at para. 32.
[89] IIO's initial submission at paras. 63-64.
[90] Pages 298, 512-515 and 522 of the records in dispute.
[91] Page 298 of the records in dispute.
[92] Pages 512-515 of the records in dispute.

[87] It is clear that the IIO investigators put that information on the form so they could be contacted at their place of business. This information does not meet the definition of personal information, so s. 22(1) does not apply to it and I will not consider it any further.

[88] However, I find that the rest of the information withheld under s. 22 is personal information because it is about individuals who are identifiable by name, so it is clear the information is about them.

[89] There are a few instances where I find the several individuals' personal information is simultaneously personal information of the applicant. Those individuals are identifiable by name and were involved in providing the IIO investigators with witness statements. In their statements, the witnesses testified about their relationship to the applicant, what they saw during the motor vehicle collision and any interactions they had with the applicant.[93]

Disclosure not an Unreasonable Invasion of Privacy – s. 22(4)

[90] The second step in the s. 22 analysis is to determine if any of the types of information or circumstances listed in s. 22(4) apply in this case. If s. 22(4) applies, then disclosure of the information at issue would not be an unreasonable invasion of a third-party's personal privacy.

[91] The IIO submits that s. 22(4) does not apply.[94] The applicant makes no submission about this.

[92] I have considered if any of the circumstances under s. 22(4) apply to the personal information at issue. There is, in my view, no basis for finding that s. 22(4) applies here. The personal information at issue does not, for example, relate to compelling circumstances affecting anyone's health or safety under s. 22(4)(b) nor any third party's position, functions or remuneration as an officer, employee or member of a public body under s. 22(4)(e). I, therefore, conclude s. 22(4) does not apply.

Presumptions of Unreasonable Invasion of Privacy – s. 22(3)

[93] The third step in the s. 22 analysis is to determine whether any provision under s. 22(3) applies to the personal information at issue. If so, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

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[93] Pages 7-10, 111-112, 142, 269-272 and 275-278 of the records in dispute.
[94] IIO's initial submission at para. 67.

[94] The IIO submits ss. 22(3)(a) and (b) apply".[95] Those 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
>
> > (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
> >
> > (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
> >
> > …

[95] The applicant does not address ss. 22(3)(a) and (b) in his submissions.

Medical, psychiatric or psychological history, s. 22(3)(a)

[96] Section 22(3)(a) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[97] I find that s. 22(3)(a) applies to some of the personal information because it relates to the injured person's medical history, condition, treatment or evaluation. That information is in ambulance reports, clinical notes, medical imaging reports, hospital progress reports and in an Interior Health Client Information/Access Request form. I also find the IIO investigators' notes repeat this medical information. Therefore, the disclosure of this information is presumed to be an unreasonable invasion of the injured person's personal privacy under s. 22(3)(a).

Part of an investigation into a possible violation of law, s. 22(3)(b)

[98] Section 22(3)(b) applies to personal information that was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[95] IIO's initial submission at para. 68.

[99] For the purposes of s. 22(3)(b), the term "law" refers to: (1) a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction could be imposed for violation of that law.[96]

[100] The IIO submits that personal information was gathered as part of the IIO Investigation and the IIO's mandate is to investigate the circumstances of the motor vehicle collision between the applicant and the injured person.[97]

[101] Having reviewed the IIO's evidence and the records in dispute, I find it is apparent that the IIO initiated an investigation into to the motor vehicle collision that caused the injured person to sustain injuries. The IIO investigated if the applicant was liable for the offence of dangerous driving causing bodily harm under the *Criminal Code* or an offence under the *Motor Vehicle Act*.[98]

[102] I can see that the disputed information consists of statements made by witnesses to the IIO investigators. In the documents, the witnesses provided the IIO investigators with statements about their interactions with the applicant or the injured person in relation to the motor vehicle collision. I find the none of the documents contains the IIO investigators' personal information. I am satisfied that the statements were complied as part of the IIO Investigation and consist of personal information of the witnesses.

[103] Therefore, I conclude that s. 22(3)(b) applies to all of the third-party personal information in dispute. This means that disclosure of this information is presumed to be an unreasonable invasion of the third party's personal privacy.

[104] I have considered the other subsections of s. 22(3) and find none of them applicable here.

Relevant Circumstances, s, 22(2)

[105] As the final step, 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. It is at this stage that the s. 22(3)(a) and (b) presumptions that I found apply may be rebutted.

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[96] Order 01-12, 2001 CanLII 21566 (BC IPC) at para. 17.
[97] IIO's initial submission at para. 69.
[98] Affidavit #1 of Chief Civilian Director of the IIO, Exhibit D.

[106] The applicant argues that he is entitled to the information because it is about "public scrutiny" under s. 22(2)(a).[99] The IIO says that there is no basis upon which to rebut the presumption that disclosure of the personal information gathered would be an unreasonable invasion of privacy.[100] I will also consider the sensitivity of the information and the applicant's personal information.

Public scrutiny, s 22(2)(a)

[107] Section 22(2)(a) considers whether disclosing the personal information at issue is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Section 22(2)(a) recognizes that where disclosure of the information in dispute would foster accountability of a public body, this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.[101]

[108] The applicant submits the IIO found he was not responsible for the collision; however, it still pursued the search warrant. He believes that learning what information the IIO used to obtain the search warrant "may bring the public body under public scrutiny."[102]

[109] The IIO submits the applicant's arguments on s. 22(2)(a) are speculative. It says "The applicant's interest in the records is his own goal of determining whether he considers the IIO's investigation into his conduct was adequate or reasonable." The IIO argues that this does not meet the test required for the application of section 22(2)(a) of [FIPPA].[103]

[110] Having considered the personal information at issue, I do not see how its disclosure would subject the IIO to public scrutiny. I find the information in dispute mostly reveals details about the injured person and witnesses, such as their names, personal phone numbers and addresses, and their observations and actions. None of this information reveals the IIO's activities in the IIO Investigation. I am not persuaded that disclosing any of the third-party personal information is desirable for the purpose of subjecting the IIO's handling of the IIO Investigation to public scrutiny.

[111] I find that s. 22(2)(a) is not a circumstance that weighs in favour of disclosing the personal information in dispute.

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[99] Affidavit #1 of the applicant at para. 39b(ii).
[100] IIO' initial submission at para. 74.
[101] Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.
[102] Affidavit #1 of the applicant at para. 39b(ii).
[103] IIO's reply submission at para. 15c.

Sensitivity

[112] Past orders have treated the sensitivity of the personal information as a relevant circumstance to consider. For example, past orders have found that where information is sensitive (i.e. medical or other intimate information), it is a circumstance weighing in favour of withholding the information.[104] Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.[105]

[113] In its submission, the IIO says the third-party information is sensitive personal information that was gathered during the IIO Investigation and the disclosure of that information would be an unreasonable invasion of the third party's personal privacy.[106]

[114] Having reviewed the information in dispute, I find that some of the withheld information is sensitive. That is the information about the injured person's medical condition and treatment. I am satisfied that this type of information is highly sensitive and this factor weighs against disclosure.

[115] I find, however, that none of the personal information contained in witness statements and police officers' notes is sensitive. That information is about what the witnesses saw and did, and it is factual, neutral statements. I also find that none of the personal information of the police officer witnesses is sensitive. All of their personal information is about their observations and actions while they were acting in their professional roles, performing their work duties as police officers attending an accident. I find this lack of sensitivity is a factor that weighs in favour of disclosure of the personal information of the witnesses and police officers.

Applicant's personal information

[116] Some portions of the information in dispute is simultaneously the applicant's personal information. Past orders have stated that it would only be in rare circumstances that disclosure to an applicant of their own personal information would be an unreasonable invasion of a third party's personal privacy.[107] In my view, this is a factor that weighs in favour of disclosure.

Summary and Conclusion on s. 22

[117] I find most of the information that the IIO withheld under s. 22 is third-party personal information. However, there is some contact information and some

[104] Order F19-15, 2019 BCIPC 17 at para. 99.
[105] Order F16-52, 2016 BCIPC 58 at para. 91.
[106] IIO's initial submission at para. 73.
[107] Order F10-10, 2010 BCIPC 17 at para. 37.

template information in fillable forms[108] that I find is not personal information, so s. 22(1) does not apply to it and it cannot be withheld on that basis. I find some of the third-party personal information is simultaneously the applicant's personal information because it is about the witnesses' and police officer witnesses' interactions with, and observations of, the applicant.

[118] I find the personal information at issue does not fall into any of s. 22(4) circumstances.

[119] I find that disclosing the injured person's personal information is presumed to be an unreasonable invasion of his personal privacy under s. 22(3)(a) because it is about his medical condition and treatment. I also find disclosing the witnesses' and police officer witnesses' personal information on their witness statements and in the investigators' notes is presumed to be an unreasonable invasion of their personal privacy under s. 22(3)(b).

[120] There are several relevant circumstances to consider in assessing whether the ss. 22(3)(a) and (b) presumptions have been rebutted in this case.

[121] I find s. 22(2)(a) is not a factor that weighs in favour of disclosure because there is no evidence that disclosing the disputed information would foster the accountability of a public body. I also find that the injured person's medical information is highly sensitive personal information and that is a circumstance that weighs against disclosure. On the other hand, I find that the other third-party personal information is not sensitive and some of the third-party personal information is simultaneously the applicant's personal information are factors that weigh in favour of disclosure but not in a strong way.

[122] In conclusion, after weighing the relevant circumstances as a whole, I am not satisfied that the ss. 22(3)(a) and (b) presumptions are rebutted. I find it would be an unreasonable invasion of third-party personal privacy to disclose any of the third-party personal information. The IIO is, therefore, required to refuse to disclose that information under s. 22(1).

[123] For added clarity, there is also some third-party personal information on page 307 of the records that I find must be withheld under s. 22(1) although the IIO did not withhold it under that exception.[109] I have highlighted that information on a copy of page 307 which is provided to the IIO along with this order.

[108] Pages 298, 512-515 and 522 of the records in dispute.
[109] IIO only applied s. 16(1)(b) but I found s. 16(1)(b) did not apply.

CONCLUSION

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

1. The IIO is not authorized to refuse to disclose the records at issue under s. 3(1). I require the IIO to respond to the applicant's request for access to the following pages of the records at issue: 300-301 (duplicate on 540-541) and 526-539 in accordance with Part 2 of FIPPA.

2. I confirm the IIO's decision that it is authorized to refuse to disclose the information in dispute under s. 14.

3. Subject to item 4 below, I confirm, in part, the IIO's decision that it is authorized to refuse to disclose the information it withheld under s. 15(1)(c).

4. The IIO is not authorized under s. 15(1)(c) to refuse access to the information on the following pages of the records at issue: 99, 160, 163, 168, 173, 183, 206, 210, 212, 217, 218, 231, 258-260, 266 (duplicate on page 555), 270-279, 288 ("Item 3"), and 291-293. The IIO is required to give the applicant access to this information.

5. Subject to item 6 below, I confirm, in part, the IIO's decision that it is authorized to refuse to disclose the information in dispute under s. 16(1)(b).

6. The IIO is not authorized under s. 16(1)(b) to refuse access to the information on pages 306-307 of the records. Subject to item 7 below, the IIO is required to give the applicant access to this information.

7. Subject to item 8 below, I confirm, in part, the IIO's decision to refuse access to the information withheld in the records under s. 22(1) of FIPPA, including the information that I have highlighted in a copy of pages 298, 307, 512-515 and 522 of the records which are provided to the IIO with this order.

8. The IIO is not required by s. 22(1) to withhold the information that I have <u>not highlighted</u> on pages 298, 512-515 and 522 of the records, and the IIO is required to give the applicant access to this information.

9. The IIO must provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order, along with a copy of the relevant records.

Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by March 28, 2023.

February 13, 2023

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F20-83711