Order F23-16

VANCOUVER COASTAL HEALTH AUTHORITY

Jay Fedorak
Adjudicator

March 20, 2023

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Summary: A journalist requested reviews, reports, audits and analyses concerning COVID-19 outbreaks at two health care facilities of the Vancouver Coastal Health Authority (VCHA). VCHA disclosed some records but withheld information under s. 13(1) (advice and recommendations), s. 15(1)(l) (harm to the security of a system), s. 17(1) (financial harm to the public body) and s. 22(1) (unreasonable invasion of third-party personal privacy). The adjudicator found that ss. 13(1) and 22(1) applied to some of the information but ordered VCHA to disclose the remainder. He found that ss. 15(1)(l) and 17(1) did not apply to any of the information and ordered VCHA to disclose it.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 13(1), 15(1)(l), 17(1)(e), 17(1)(f), 22(1), 22(3)(a), 22(3)(d), 22(4)(e).

INTRODUCTION

[1] A journalist (applicant) requested reviews, reports, audits and analyses concerning COVID-19 outbreaks at two health care facilities of the Vancouver Coastal Health Authority (VCHA). VCHA withheld all of the records in their entirety under s. 19 (harm to personal or public safety), s. 22 (unreasonable invasion of privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and s. 91(1) of the *Public Health Act*.[1]

[2] The applicant requested a review by the Office of the Information and Privacy Commissioner. The applicant also asserted that disclosure of the information at issue was in the public interest in accordance with s. 25 of FIPPA. Mediation failed to resolve the matter and it proceeded to an inquiry.

[3] A week prior to the due date for its initial submission to the inquiry, VCHA changed its decision. It withdrew its reliance on s. 19 of FIPPA and s. 91(1) of the

[1] SBC 2008, c. 28.

Public Health Act and disclosed records to the applicant. It withheld some information under s. 13(1) (policy advice and recommendations), s. 15(1)(l) (harm to the security of a system), s. 17(1) (harm to the financial interests of the public body) and s. 22(1). As it was introducing new exceptions to disclosure, VCHA suggested that the OIPC resume mediation with respect to the application of ss. 13(1), 15(1)(l) and 17(1), as these issues had not been included in the notice of inquiry. The OIPC decided to permit VCHA to raise the new exceptions but insisted that the inquiry proceed. VCHA made submissions with respect to the application of ss. 13(1), 15(1)(l), 17(1), 22(1) and 25. As part of its reply submission, VCHA disclosed additional information to the applicant.

ISSUES

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

1. Whether s. 25 requires VCHA to disclose the information at issue.
2. Whether s. 13(1) authorizes VCHA to withhold the information at issue.
3. Whether s. 15(1)(l) authorizes VCHA to withhold the information at issue.
4. Whether s. 17(1) authorizes VCHA to withhold the information at issue.
5. Whether s. 22(1) requires VCHA to withhold the information at issue.

[5] Under s. 57(1), VCHA has the burden of proving that the applicant has no right of access to the information it withheld under ss. 13, 15 and 17. Section 57(2) stipulates that the applicant has the burden to prove that disclosure would not be an unreasonable invasion of the personal privacy of a third party under s. 22(1).[2] There is no statutory burden of proof with respect to the application of s. 25. Previous orders have indicated that it is in the interests of both parties to provide the adjudicator with whatever evidence and argument they have regarding s. 25.[3]

DISCUSSION

[6] **Background –** The parties do not provide any additional background information about the request or the circumstances relating to the creation of the records in their submissions to the inquiry.

[7] **Records at issue –** The records responsive to the two requests include memoranda, FAQs, outbreak reports, outbreak protocols, staffing reports, communications documents, notices to families, lists of affected residents, email correspondence, notes of telephone calls, and an action plan. There are a total of 226 pages of records. Information has been withheld on 122 pages.

[2] 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.
[3] For example, see: Order 02-38, 2002 BCIPC 42472 (CanLII) and Order F07-23, 2007 BCIPC 52748 (CanLII).

Public interest disclosure – section 25

[8] Section 25 requires a public body to disclose information in certain circumstances without delay despite any other provision of FIPPA. This section overrides all FIPPA's discretionary and mandatory exceptions to disclosure. The relevant parts of s. 25 state:

> **25** (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
>
> (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
>
> (b) the disclosure of which is, for any other reason, clearly in the public interest.
>
> (2) Subsection (1) applies despite any other provision of this Act.

[9] Because s. 25 overrides all other provisions in FIPPA, previous orders have found that it applies in only the clearest and most serious situations. Section 25 sets a high threshold, which is intended to apply only in significant circumstances.

[10] The applicant does not raise the application of s. 25(1)(a). Therefore, I do not need to consider it here.

Clearly in the public interest – section 25(1)(b)

[11] Disclosure under s. 25(1)(b) requires that the information at issue be clearly in the public interest. Former Commissioner Denham outlined the proper approach to applying s. 25(1)(b) in Investigation Report F16-02 as follows:

> Analyzing the application of s. 25(1)(b) in a specific situation begins by considering whether the information at issue concerns a subject, circumstance, matter or event justifying mandatory disclosure. The list of these things cannot be exhaustively enumerated. However, the following factors should be considered in determining whether they meet the test for further consideration under s. 25(1)(b):
>
> - is the matter the subject of widespread debate in the media, the Legislature, or by other Officers of the Legislature or oversight bodies; or
>
> - does the matter relate to a systemic problem rather than to an isolated situation?
>
> In addition, would its disclosure:

> - contribute to educating the public about the matter;
>
> - contribute in a substantive way to the body of information that is already available about the matter;
>
> - enable or facilitate the expression of public opinion or enable the public to make informed political decisions; or
>
> - contribute in a meaningful way to holding a public body accountable for its actions or decisions?
>
> This is not to say that in order for information to be disclosed under s. 25(1)(b) it must be the subject of public debate; there may well be situations where there is a clear public interest in disclosure of information about a topic that is not currently the object of public concern or is not known to the public.
>
> Once it is determined that the information is about a matter that may engage s. 25(1)(b), a public body should consider the nature of the information itself to determine whether it meets the threshold for disclosure. However, this threshold is not static. In any given set of circumstances there may be competing public interests, weighing for and against disclosure, and the threshold will vary according to those interests.[4]

[12] Previous orders have determined that the duty to disclose under s. 25(1)(b) "only exists in the clearest and most serious of situations where the disclosure is *clearly* (i.e., unmistakably) in the public interest."[5]

[13] While the public might find certain information interesting, this does not mean disclosure of that information would be in the "public interest". It is not a question of whether the information is entertaining or would satisfy a curiosity.[6] Furthermore, the public's interest in scrutinizing the work of public bodies, while important, does not in and of itself trigger the application of s. 25. As former Commissioner Loukidelis stated, s. 25(1)(b) "is not an investigative tool for those who seek to look into the affairs of a public body. It is an imperative requirement for disclosure which is triggered by specific information the disclosure of which is clearly in the public interest."[7]

[14] The applicant argues that:

> it is definitely in the public interest to know what kind of policy advice was being given during the earliest days of the COVID-19 pandemic in B.C. - a situation of overwhelming importance to public health. Policy advice given

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[4] Investigation Report IR16-02, 2016 BCIPC 36 (CanLII), pp. 26-27.

[5] Order 02-38, paras. 45-46, citing Order 165-1997, 1997 BCIPC 22 (CanLII), p. 3. Emphasis in original. See also Order F18-26, 2018 BCIPC 29 (CanLII), para. 14.

[6] *Clubb v. Saanich (Corporation of The District)*, 1996 CanLII 8417 (BCSC), para. 30.

[7] Order 00-16, 2000 BCIPC 7714 (CanLII), p. 14.

> about COVID-19 outbreaks has been a source of considerable public debate. It would be especially relevant in hindsight - two and a half years after the events - to be able to assess whether the advice was sound or not.[8]

[15] VCHA responds that the passages in the records remaining at issue do not include information that would contribute substantively to the body of information already available to the public or assist in holding it accountable. It disagrees that disclosure would inform public debate or "enable the public to make informed political decisions".[9]

[16] VCHA submits that it already has met any s. 25(1) obligations by disclosing all of the information that it already has disclosed to the applicant. It is not necessary to disclose records in their entirety to meet this obligation, as long as it discloses the "pertinent and relevant information".[10]

Analysis

[17] The first step in my analysis is to determine whether the matter may engage s. 25(1)(b). If I find that it does, I will then proceed to examine the nature of the information itself to determine whether it meets the threshold for disclosure.

[18] The subject matter of the records relates indirectly to the topic of the management of health services during the COVID-19 pandemic. I find that this is a matter of public interest that may engage 25(1)(b).

[19] Nevertheless, this is not sufficient on its own to engage s. 25(1)(b). In this case, the information at issue relates to individual staff and patients, categories of employee pay, telephone numbers for conference calls, and information in outbreak response protocols. This information concerns the administration of the facilities, rather than measures that relate directly to the management of the health authority's response to the challenges that the pandemic posed.

[20] The content of the records before me does not support the contention that the disclosure of the information at issue is clearly in the public interest. It appears to me doubtful that the information would inform the public on any matters of current debate or address an important issue of accountability with respect to VCHA in any meaningful way. Nor would it inform members of the public with respect to their future political decisions. There is no evidence before me to indicate that disclosure would add significantly to the body of public knowledge on the subject matter. The applicant has raised the issue of the response to the pandemic generally being a subject of considerable public

[8] Applicant's response submission, first page.
[9] VCHA's reply submission, first page.
[10] VCHA's reply submission, second page.

debate. I cannot identify any other relevant considerations that argue in favour of disclosure being in the public interest. In summary, disclosure would not meet the standard threshold for further consideration under s. 25(1)(b).

[21] Therefore, I find that s. 25(1)(b) does not apply to the information at issue.

Section 13(1) – advice or recommendations

[22] Section 13(1) allows a public body to refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister to protect its deliberative processes.[11] The relevant provision reads as follows:

> **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,
>
> …
>
> (3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

[23] The first step in the analysis is to determine whether disclosing the information at issue would reveal advice or recommendations under s. 13(1). If it would, the next step is to decide whether the information falls into any of the provisions in s. 13(2) or whether it has been in existence for more than 10 years in accordance with s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, it cannot be withheld under s. 13(1).

Advice or Recommendations

[24] The term "advice" is broader than "recommendations" and includes "an opinion that involves exercising judgment and skill to weigh the significance of matters of fact" and "expert opinion on matters of fact on which a public body must make a decision for future action".[12] "Recommendations" include suggested courses of action that will ultimately be accepted or rejected by the person being advised.[13] Section 13(1) would also apply when disclosure would allow an individual to make accurate inferences about any advice or recommendations.

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[11] Insurance Corporation of British Columbia v. Automotive Retailers Association 2013 BCSC 2025, para 52.
[12] John Doe v Ontario (Finance) 2014 SCC 36 [John Doe], para 24. *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665, para. 113.
[13] John Doe supra, para 23

[25] After presenting a lengthy description of the case law regarding s. 13(1), the submission of VCHA with respect to how that provision applies is surprisingly brief. It consists solely of the following statement: "VCH(A) submits that s. 13(1) applies to the withheld information because disclosing this information would reveal advice or recommendations developed by VCH(A) staff for the benefit of VCH(A)."[14] The applicant does not make any submissions specifically with respect to s. 13(1).

Analysis

[26] To meet its burden of proof, VCHA must go further than merely claiming that s. 13(1) applies. It must demonstrate how the exception applies to the specific information at issue. It must explain why the information at issue meets the definition of advice or recommendations. It has not done so. VCHA has merely claimed that the information consists of advice or recommendations.

[27] I have reviewed the information at issue to determine whether it is obvious on the face of the record that it consists of advice or recommendations. There is a marginal note in a draft memorandum that suggests wording changes to the draft that I find is a recommendation.[15] There is a statement that informs of an alternative course of action that I find is advice.[16]

[28] There are other passages, however, to which VCHA has applied s. 13(1), that do not reveal advice or recommendations. For s. 13 to apply, there must be a deliberative process for which someone is providing advice or recommendations. The following is a list describing severed information for which there is no evidence of anyone having to deliberate on anything or anyone providing advice or recommendations:

- a passage indicating that a department would be implementing a change in practice.[17]
- a column in a table that reflects a human resources issue, with a description. This is factual information about something that was in place at a certain time.[18]
- passages in an outbreak protocol that indicate what steps VCHA would take in the event of an outbreak. This is a procedure document, not a list of recommended actions.[19]

[14] VCHA's initial submission, para. 11.
[15] Responsive records, p. one.
[16] p. two.
[17] pp. 175, 178, 181.
[18] pp. three to six.
[19] p. seven.

- tables regarding staffing on three particular days. They include mitigation measures implemented for staff shortages in certain areas.[20]
- passages in an outbreak report under the headings of Action Plans and New Action Plans that describes a policy about what can happen in particular circumstances and an existing problem and who would address it.[21]
- passages indicating that a certain department was taking a certain action.[22]
- passages in outbreak reports under the heading of Summary and New Action Plans that describe a policy about what can happen in particular circumstances.[23]
- passage in an outbreak report under the heading of Summary and New Action Plans that describes an existing problem and who would address it and states a certain department was taking a certain action.[24]
- passages in an outbreak report under the headings of Action Plans and New Action Plans that describe a problem and who would address it and state another requirement.[25]
- passages in an outbreak report under the heading of Summary and New Action Plans that describe something that was about to happen and a policy about something that might happen.[26]
- notes of a telephone call that include factual statements about things that had happened or would happen. There are also factual statements about why things may have happened and what some people wanted.[27] It is not evident that the disclosure of this information would enable anyone to infer any advice or recommendations.

[29] Therefore, I find that, with the exception of the passages indicated immediately above, the information to which VCHA has applied s. 13(1) consists of advice or recommendations.

Section 13(2)

[30] None of the information that I find reveals advice or recommendations consists of purely factual material in accordance with s. 13(2)(a). I also find that none of the other provisions in s. 13(2) apply. Therefore, I find that s. 13(2) does not apply to any of the information.

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[20] pp. 10-12
[21] p. 76.
[22] pp. 65, 97
[23] pp. 71, 73.
[24] pp. 78-79.
[25] p. 82.
[26] p. 118.
[27] pp. 120-121.

Section 13(3) *Information in existence for more than 10 years*

[31] Finally, it is clear from the face of the records that none of the information has been in existence for more than 10 years, so I find that s. 13(3) does not apply.

Conclusion, s. 13

[32] In conclusion, I confirm the decision of VCHA to withhold some information under s. 13(1) on pages one and two. I find, however, that VCHA is not authorized under s. 13(1) to withhold information on pages: three to seven, 10-12, 65, 71, 73, 76, 78-79, 82, 85, 88, 97, 118, 120-121, 175, 178, 181.

Section 15(1) – harm to law enforcement

[33] The relevant provision of s. 15(1) is as follows:

> **15** (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
> **…**
> (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[34] To rely on s. 15(1)(l), VCHA must establish that disclosure of the information could reasonably be expected to harm security of any property or system, including a building, a vehicle, a computer system or a communications system. The "reasonable expectation of harm" standard is "a middle ground between that which is probable and that which is merely possible."[28] There is no need to show on a balance of probabilities that the harm will occur if the information is disclosed, but the public body must show that the risk of harm is well beyond the merely possible or speculative.[29]

[35] VCHA indicates that the information at issue under s. 15(1)(l) consists of teleconference phone numbers, teleconference ID numbers and teleconference PIN numbers. It submits that previous orders have found that disclosure of these types of numbers could assist unauthorized individuals having access to teleconferences.[30] The applicant makes no comment with respect to the application of s. 15(1)(l).

Analysis

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[28] *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3, para. 201.
[29] *Ibid*, para. 206. See also *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, paras. 52-54.
[30] VCHA's initial submission, para. 13; Order F15-32, 2015 BCIPC 35 (CanLII); Order F17-23, 2017 BCIPC 24 (CanLII).

[36] It is not sufficient for VCHA merely to claim that s. 15(1)(l) applies. It must demonstrate how the exception applies to the specific information at issue. It must establish a direct connection between the disclosure of that information and the harm it envisages. VCHA must provide sufficient explanation and evidence (including, but not limited to, examples) to demonstrate that the risk of harm does indeed meet the required standard.

[37] In the two orders VCHA cited, the public bodies provided affidavits from information technology experts that explained how the information at issue could enable an unauthorized third party to infiltrate the systems. The adjudicators found that they had sufficient evidence before them to find that s. 15(1)(l) applied.

[38] In this case, VCHA has merely claimed that there is a risk of harm, without substantiating that claim. It has provided no affidavit support nor any explanation as to how third parties could infiltrate the teleconference call system. VCHA has not demonstrated whether its teleconference system operates in the same way as those in the previous orders. It is not enough for VCHA to make a bald statement about the application of an exception and make a brief reference to other orders, without offering evidence or explanation as to how the security concerns apply in this case.

[39] Therefore, I find that VCHA has failed to meet its burden of proof with respect to the application of s. 15(1)(l).

Section 17(1) – harm to the financial or economic interests of the public body

[40] VCHA is refusing to disclose some information under s. 17(1), which states:

> **17**(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
>
> …
>
> (e) information about negotiations carried on by or for a public body;
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> (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[41] The "reasonable expectation of harm" standard for s. 17(1) is the same that I have cited above with respect to s. 15(1)(l): "a middle ground between that which is probable and that which is merely possible."[31]

[42] VCHA submits that disclosure of some of the information at issue would harm the negotiating position of a public body or the government of British Columbia. It asserts that disclosure of other information would harm VCHA's economic interests and its ability to negotiate with each facility. It states that some of the information would reveal staffing strategies, how VCHA had supported each site and its ability to manage its workforce and funding of each site.[32]

[43] The applicant makes no submission with respect to the application of s. 17(1) other than to state that there is a public interest to know if VCHA made public health decisions for financial reasons.

Analysis

[44] It is not sufficient for VCHA merely to claim that s. 17(1) applies. It must demonstrate how the exception applies to the specific information at issue. It must establish a direct connection between the disclosure of that information and the harm it envisages. VCHA must provide sufficient explanation and evidence (including, but not limited to, examples) to demonstrate that the risk of harm does indeed meet the required standard.

[45] In this case, VCHA has made vague assertions of harm to negotiations without identifying any particular negotiations at issue or what the affects of disclosing the information might be. VCHA has merely claimed that there is a risk of harm, without substantiating that claim with evidence or explanation. It has not demonstrated how the disclosure of the information relating to staffing could reasonably be expected to harm its ability to manage its workforce. It is not evident on the face of the records. VCHA's submissions do not meet the standard threshold of harm for the application of s. 17(1).

[46] Therefore, I find that s. 17(1) does not apply to the information at issue.

Section 22(1) – unreasonable invasion of third-party privacy

[47] The proper approach to the application of s. 22(1) of FIPPA is described 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

[31] para. 34.
[32] VCHA's initial submission, paras. 15-16.

> 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.[33]

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

Step 1: Is the information "personal information"?

[49] 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."[34]

[50] VCHA submits that the information it has withheld under s. 22(1) consists of the personal information of individuals other than the applicant.

[60] The applicant does not contest VCHA's assertion that this information constitutes personal information.

[70] I can confirm that the information about named individuals to which VCHA has applied s. 22(1) constitutes recorded information about identifiable individuals other than contact information. Therefore, I find that it meets the definition of personal information.

[80] VCHA submits that it also has applied s. 22(1) to information about unidentified patients and family members that could be identifiable through the "mosaic effect". This occurs where the disclosure of unidentifiable information could lead to identification by someone with access to additional information. VCHA refers to a previous order where the Commissioner found that residents and employees in a small facility could, from information in the records, identify the individuals involved.[35]

[81] With respect to the information about unidentified patients and family members, it is not clear that this information could enable the individuals to be identified. These passages include:

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[33] Order F15-03, 2015 BCIPC 3 (CanLII), para. 58.
[34] FIPPA provides definitions of key terms in Schedule 1.
[35] VCHA's initial submission, paras. 18-19; Order 03-41, 2003 BCIPC 41 (CanLII).

- a statement about patients generally who might need a certain treatment.[36]
- unnamed residents, family members with tests results received or pending.[37]
- a statement with respect to certain types of patients generally.[38]
- a request for a certain type of equipment.[39]
- a description of what happened to unnamed patients.[40]
- information about two unnamed residents who arrived on a particular day.[41]
- the number of patients in a certain place. [42]
- statistics on outbreaks in different areas.[43]

[82] There are also passages relating to unidentified staff:

- staffing assignments and test results.[44]
- the type of uniform an unidentified staff member was wearing.[45]

[83] While it may be true in some cases that disclosures about a small number of unidentified individuals could lead to someone reidentifying them, such cases are circumstance specific. It is necessary to demonstrate why in a particular case the disclosure of information about unidentified individuals could subsequently lead them to be identified. Merely citing another case where the Commissioner found that information could be used to identify an individual is insufficient.

[84] VCHA has not explained why disclosure of the information at issue about unidentified individuals could lead to them being identified. While the applicant has the burden to prove that disclosure of personal information would be an unreasonable invasion of privacy, VCHA has the burden of proof with respect to whether the information is personal information.

[85] I find that VCHA has not met its burden of proof with respect to establishing that that certain information about unidentified individuals constitutes personal information. Therefore, this information is not personal information and s. 22(1) does not apply. This information appears on pages: 45, 48, 50, 55-56, 59, 65, 76, 82, 85, 94,

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[36] pp. 65, 82, 85, 97, 118
[37] pp. 120, 135, 190, 194, 196, 198, 199-202, 204-208, 210, 212, 214, 216
[38] pp. 76.
[39] p. 121
[40] pp. 159, 162, 165, 168, 171, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222-226
[41] p. 168
[42] pp. 175, 178, 181, 183, 184, 186, 187
[43] pp. 45, 48, 50, 55-56, 59, 94, 105, 107, 108, 110, 113.
[44] pp., 120, 122, 162, 165, 168, 171, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 215, 216, 222.
[45] p. 121.

97, 105-108, 110, 112-114, 118, 120-122, 135, 159, 162, 165, 168, 171, 175, 178, 181, 183-184, 186-187, 190, 194, 196, 198, 199-202, 204-208, 210, 212, 214-216, 218, 220, 222-226. VCHA is not authorized to refuse to disclose this information under s. 22(1).

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

[86] VCHA submits that s. 22(4) does not apply to any of the personal information at issue. The applicant does not contest this point.

[87] In my analysis below concerning the application of s. 22(3)(d), I note the difference between information that constitutes employment history from information about the position and functions of an employee of a public body. Previous orders have found that the routine work of public body employees does not constitute employment history, except when that information was collected as part of a workplace investigation.[46] I find some of the information to which VCHA applied s. 22(3)(d) is not the employment history of those employees. Therefore, this information falls within s. 22(4)(e), which stipulates that it is not an unreasonable invasion of privacy to disclose information about the third party's position, functions or remuneration as an employee of a public body

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

[88] 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:
>
> (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> …
>
> (d) the personal information relates to employment, occupational or educational history.

[89] **Section 22(3)(a) (medical history) –** VCHA submits that some of the information at issue consists of personal health numbers and medical conditions of named individuals. The applicant makes no submission with respect to the application of s. 22.

[90] It is obvious from the face of the record that some of the information clearly constitutes the personal health numbers and medical information of patients who are identified by name. I find that s. 22(3)(a) applies to this

[46] See for example, Order F21-08, 2021 BCIPC 12 (CanLII), para. 129; Order F17-01, 2017 BCIPC 1 (CanLII), para. 53; Order 00-53, 2000 BCIPC 14418 (CanLII); Order 01-53, 2001 BCIPC 21607 (CanLII); and Order F05-32, 2005 BCIPC 39586 (CanLII).

information and disclosure is presumed to be an unreasonable invasion of privacy.

[91] **Section 22(3)(d) (employment history) –** VCHA submits that some of the information to which it applied s. 22(1) constitutes staff employment history.[47] The applicant does not contest the application of s. 22(3)(d).

[92] It is evident on the face of the record that some of the information about VCHA employees constitutes their employment history. This includes records showing their work assignment history with the locations, dates and times of their shifts. I find that s. 22(3)(d) applies to this information and disclosure is presumed to be an unreasonable invasion of privacy.

[93] As I noted above, it is necessary to distinguish between information that constitutes employment history from information about the position and functions of an employee of a public body. There is other information to which VCHA applied s. 22(3)(d) where there was no workplace investigation or any other circumstance that would warrant a finding that this information constitutes employment history. This information is as follows:

- a list of employees, where they worked and who their manager was.[48]
- the names of staff members in work documents that they created or references in documents to named staff members performing their routine work activities.[49]

[94] I find that s. 22(3)(d) does not apply to this information and that s. 22(4)(e) does apply to it. This information appears on pages 60, 65, 67, 69, 71, 74, 77, 97, 99, 119, 225, 226.

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

[95] The parties have not raised any of relevant circumstances that favour either withholding or disclosing the personal information. The applicant raised concerns about the accountability of VCHA but only with respect to the application of ss. 13 and 17.

[96] I am not able to identify any relevant circumstances that apply.

Conclusion on s. 22(1)

[47] VCHA's initial submission, para. 18.
[48] p. 60
[49] pp. 65, 67, 69, 71, 74, 77, 97, 99, 119, 225, 226.

[97] I have found that some of the information is dispute is not identifiable and, therefore, it does not constitute personal information.

[98] I found above that some of the information in dispute is personal information. I have found that in s. 22(4)(e) applies to information about VCHA employees that does not constitute their employment history. Therefore, s. 22(1) does not apply to that information.

[99] I have found that the records at issue contain information relating to the medical history of patients and other individuals and that disclosure is presumed to be an unreasonable invasion of their personal privacy under s. 22(3)(a). I have found that some of the information about VCHA employees constitutes their employment history under s. 22(3)(d).

[100] I find that there are no relevant circumstances that support disclosing the information subject to ss. 22(3)(a) and (d). Therefore, there are no relevant circumstances in this case that rebut the presumptions that disclosure would be an unreasonable invasion of the third parties' personal privacy.

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

[102] In conclusion, I find that s. 22(1) applies to the personal information at issue except for the information that I have found to be subject to s. 22(4).

CONCLUSION

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

1. Subject to item 2 below, I confirm in part the decision of VCHA to withhold information under s. 13(1).
2. VCHA is not authorized under s. 13(1) to withhold the information on pages three to seven, 10-12, 65, 71, 73, 76, 78-79, 82, 85, 88, 97, 118, 120-121, 175, 178, 181.
3. VCHA must give the applicant access to the information described in item 2 above.
4. Section 15(1)(l) does not authorize VCHA to withhold the information at issue.
5. Section 17(1) does not authorize VCHA to withhold the information at issue.

6. VCHA must give the applicant access to the information described in item 4 and item 5 above.
7. Subject to item 8 below I require VCHA to refuse access, under s. 22(1), to personal information it withheld under s. 22(1).
8. VCHA is not required under s. 22(1) to withhold any of the information on pages 60, 65, 67, 69, 71, 74, 76-77, 82, 85, 94, 97, 99, 105-108, 110, 112-114, 118-122, 135, 159, 162, 165, 168, 171, 175, 178, 181, 183-184, 186-187, 190, 194, 196, 198, 199-202, 204-208, 210, 212, 214-216, 218, 220, 222-226. VCHA also is not required to withhold the purely statistical information on pages 45, 48, 50, 55, 56, 59.
9. VCHA must give the applicant access to the information described in items 8 above.
10. VCHA must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the pages described at item 2, item 4, item 5, and item 8.

[104] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by May 3, 2023.

March 20, 2023

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

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