Order F23-43

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

David S. Adams
Adjudicator

June 6, 2023

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Summary: An applicant requested records related to his dealings with the College of Physicians and Surgeons of BC (the College). The College provided the responsive records, but withheld information in them under ss. 14 (solicitor-client privilege), 19(1) (disclosure harmful to individual or public safety), and 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator determined that the College was authorized to refuse to disclose the information it withheld under s. 14, and required to refuse to disclose some of the information it withheld under s. 22(1). However, the adjudicator determined that the College was not authorized to refuse to disclose information under s. 19(1), and not required to refuse to disclose the balance of the information it withheld under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 14, 19(1)(a), 19(1)(b), 22(1), 22(2), 22(3), and 22(4).

INTRODUCTION

[1] The applicant is an aspiring registrant of the College of Physicians and Surgeons of BC (the College). He requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records related to his requests to register with the College. The College located 4,080 pages of responsive records and provided these to the applicant, but withheld information in 272 of the pages under ss. 14 (solicitor-client privilege), 19(1)(a) and (b) (harm to individual or public safety), and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.[1]

[2] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the College's decision to withhold information. The OIPC's mediation process did not resolve the outstanding issues between the

[1] Investigator's Fact Report.

parties and the matter proceeded to this inquiry. Both parties provided submissions.

Preliminary Matters

Commissioner's jurisdiction

[3] The applicant provided a wide-ranging submission and many pages of attachments. In them, he makes allegations of criminal wrongdoing, human rights violations, corruption, mismanagement, racism, bad faith, and administrative unfairness. It is evident that these issues are very important to the applicant, but I do not have the authority under FIPPA to decide them. As a result, while I have read and considered the applicant's entire submission, I will refer only to the parts of it that relate to the issues in this inquiry.

ISSUES AND BURDEN OF PROOF

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

1. Whether the College may refuse to disclose information under s. 14 of FIPPA;

2. Whether the College may refuse to disclose information under s. 19(1) of FIPPA; and

3. Whether the College must refuse to disclose information under s. 22(1) of FIPPA.

[5] Under s. 57(1) of FIPPA, the College bears the burden of proving that the applicant has no right of access to the information it withheld under ss. 14 and 19(1).

[6] Meanwhile, under s. 57(2) of FIPPA, the applicant bears the burden of proving that the disclosure of personal information withheld under s. 22(1) would not be an unreasonable invasion of third-party personal privacy. However, it is up to the College to establish that the information at issue is personal information.[2]

[2] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

DISCUSSION

Background[3]

[7] Under the *Health Professions Act*,[4] the College is responsible for regulating the practice of medicine in BC. In particular, the College ensures that physicians are qualified, competent, and fit to practice. Physicians must be registered with the College in order to practice in BC.

[8] The applicant has a medical degree and sought to be registered with the College as a provisional registrant. However, the College determined that he did not meet several of the criteria for provisional registration. Between 2012 and 2015, he and the College entered into a series of clinical traineeship agreements. The College advised him what he would need to do to become a registrant. However, for various reasons, the applicant was not successful in this effort. The applicant and the College exchanged much correspondence about his potential registration.

[9] Under FIPPA, the applicant requested materials related to his attempted registration. The College provided the responsive records, but withheld much of the information in them under various sections of FIPPA. The applicant requested that the OIPC review the College's decision to withhold information in the responsive records.

Records at issue

[10] The responsive records total 4,080 pages, of which 272 pages contain the information in dispute. These pages consist largely of emails. There are also the meeting minutes of the College's September 2019 Board meeting (part of which the applicant attended), and an incident report about the applicant's behaviour at the Board meeting, provided by a staff member of the venue where the College's Board met.

Solicitor-client privilege – s. 14

[11] Most of the information in dispute has been withheld under s. 14 of FIPPA. Section 14 allows a public body to refuse to disclose information that is subject to solicitor-client privilege. Section 14 encompasses both legal advice privilege and litigation privilege.[5] The College is relying primarily on legal advice privilege, while withholding a small amount of information under both legal advice privilege

[3] The information in this section is drawn from the parties' submissions and evidence.
[4] RSBC 1996 c 183.
[5] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII) at para 26 [*College*].

and litigation privilege.[6] For the reasons set out below, I found it was necessary only to consider legal advice privilege in this case.

[12] Legal advice privilege, at common law and for the purposes of s. 14, applies to communications that:

1. are between solicitor and client;
2. entail the seeking or giving of legal advice; and
3. are intended by the parties to be confidential.[7]

[13] Not every communication between a solicitor and their client is privileged, but if these conditions are satisfied, legal advice privilege applies.[8]

[14] Legal advice privilege promotes full and frank communication between solicitor and client, thereby promoting "effective legal advice, personal autonomy (the individual's ability to control access to personal information and retain confidences), access to justice and the efficacy of the adversarial process".[9]

[15] Legal advice privilege also applies to the "continuum of communications" related to the seeking and giving of legal advice, including internal client communications that discuss legal advice and its implications.[10]

Evidentiary basis for solicitor-client privilege

[16] The College is relying on s. 14 to withhold 267 pages in their entirety.

[17] The College has not produced the records it withheld under s. 14 for my review. Instead, it relies on an affidavit sworn by its chief in-house legal counsel (the Chief Counsel), who says that he has personally reviewed the records withheld under s. 14.[11]

[18] The College also provided a table describing the information it withheld under s. 14 (the Table). For each withheld communication, the Table sets out the date, participants, and purpose of the communication.

[19] Section 44(1) of FIPPA gives me, as the commissioner's delegate, the power to order production of records so that I can review them for the purposes of an inquiry. Given the importance of solicitor-client privilege to the proper

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[6] College's initial submission at paras 28-29.
[7] *Solosky v. The Queen*, 1979 CanLII 9 (SCC) [1980] 1 SCR 821 at 837.
[8] *Ibid* at 829.
[9] *College*, *supra* note 5 at paras 26 and 30.
[10] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24; Order F22-36, 2022 BCIPC 40 (CanLII) at para 23; see also *Bank of Montreal v. Tortora*, 2010 BCSC 1430 (CanLII) at para 12.
[11] Affidavit of Chief Counsel at paras 2-4.

functioning of the legal system, I would only order production of the records withheld under s. 14 when absolutely necessary to decide the issues.[12] In this case, having reviewed the College's submissions and affidavit evidence (which says that the Chief Counsel has personally examined the records), as well as the Table, I am satisfied that I can decide the issue of solicitor-client privilege without seeing the records themselves, keeping in mind that my task "is not to get to the bottom of the matter and [that] some deference is owed to the lawyer claiming the privilege".[13]

Parties' positions

[20] The College describes the information withheld under s. 14 as follows (and the Chief Counsel deposes that these descriptions "reflect the content of that withheld information"[14]):

- emails between [the Law Firm], external legal counsel, and Chief Legal Counsel and/or other College staff for the purpose of seeking, formulating, or providing legal advice. A small [number] of these email communications also relate to the provision of legal advice with respect to stated attachments. These attachments include draft documents, memorandum from external legal counsel, and an opinion letter from external legal counsel;

- a small amount of information relating to emails between Chief Legal Counsel and/or [the College's] Legal Counsel, and other College staff for the purpose of Chief Legal Counsel and/or Legal Counsel providing legal advice;

- an email communication between external legal counsel and Chief Legal Counsel relating to legal invoices or fees for legal services;

- an excerpt of Board (closed) minutes documenting legal advice provided by external legal counsel; and

- a very small amount of information relating to emails sent within [the Law Firm] relaying legal advice.[15]

[21] The College submits that all of this material "clearly fall[s] within the continuum of communications relating to the seeking, receiving, implementing or providing of legal advice".[16]

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[12] *Goodis v. Ontario (Ministry of Correctional Services)*, 2006 SCC 31 at para 15.
[13] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para 86 [*Minister of Finance*].
[14] Chief Counsel's affidavit at para 3.
[15] College's initial submission at para 19.
[16] *Ibid* at para 20.

[22] The applicant disputes that the College's communications with outside counsel were made for the purpose of seeking legal advice.[17] He also says that the withheld portion of the Board meeting minutes cannot contain legal advice because it consists of a presentation to the College's Board.[18]

[23] In reply, the College says that the withheld portion of the meeting minutes contains "legal advice the Board received orally from external legal counsel".[19]

Analysis

Legal advice privilege

[24] I find that the great majority of the information withheld under legal advice privilege consists of emails between College staff and the Law Firm, and I accept the College's evidence that they are communications made for the purpose of seeking and providing legal advice. I am satisfied by the College's evidence and argument that these were confidential communications between solicitor and client, made for the purposes described. For the same reason, I am also satisfied that the emails between the College's in-house lawyers and other staff are privileged.

[25] Some of the emails are described in the Table as including attachments. The Table describes some of the emails between the College and the Law Firm as including "stated attachments", and others as communications seeking or providing edits or comments on the attachments. The College's submission describes the attachments as including "draft documents, memorandum from external legal counsel, and an opinion letter from external legal counsel".[20] Not all attachments to emails between solicitor and client are necessarily privileged, but they are if they contain or would reveal legal advice. The party claiming privilege over an attachment must provide some basis for its claim of privilege.[21] In this case I am satisfied, based on the College's evidence and the descriptions in the Table, that the withheld attachments contain or would reveal legal advice, and so are privileged.

[26] As for the small number of emails described as relaying legal advice within the Law Firm, I am satisfied that they too are privileged, because if disclosed, they would reveal the substance of the privileged advice.

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[17] Applicant's response submission at para 12.
[18] *Ibid* at para 60.
[19] College's reply submission at para 3.
[20] College's initial submission at para 19.
[21] *Minister of Finance*, *supra* note 13 at paras 110-112. The Court also cautioned at para 112: "I add that it makes no practical sense to parse the contents of attachments in order to sever the parts that are privileged from the parts that are not. If some of the attachment is part of the legal advice then all of it is protected by solicitor-client privilege."

[27] I am also satisfied that the information withheld from the College's Board meeting minutes would reveal privileged advice if disclosed, since the College's submissions and evidence, which I accept, is that the withheld portions "document…legal advice provided by external legal counsel".[22]

[28] Finally, there is one email communication that the College describes as "relating to legal invoices or fees for legal services". It says that the email "relates to a draft invoice which would reveal who the College hired to complete work on certain matters and how much was charged for these services".[23] The Supreme Court of Canada has held that the amount of legal fees is presumptively subject to solicitor-client privilege because it reflects work done for the client and is capable of revealing privileged information about the solicitor-client relationship.[24] I find that such a presumption is raised with respect to this email, and that the applicant has not provided any argument or evidence to rebut it.

[29] Since I have found that legal advice privilege applies to all of the information withheld under s. 14, it is not necessary for me to consider the College's claim of litigation privilege over a small amount of the withheld information.

Crime-fraud exclusion

[30] I understand the applicant to be arguing that solicitor-client privilege cannot apply because the College's purpose in seeking advice from the Law Firm was to engage in what he calls criminal behaviour – namely, the obstruction of his ability to practice medicine. He says that the Law Firm was "well aware of the criminal nature of [its] role" and that there is "overwhelming evidence" that the College hired the Law Firm for "inappropriate purposes".[25]

[31] The College does not specifically address this allegation, except to say that the applicant "has not provided any evidence or law to support the position that the College was not authorized" to withhold the information.[26]

[32] The applicant's allegation raises the question of the application of the well-established doctrine of the crime-fraud exclusion (known variously as the "crime-fraud exception", the "future crimes exception", and the "future crimes and fraud

[22] College's initial submission at para 19; Chief Counsel's affidavit at paras 3-4.
[23] College's initial submission at paras 19 and 27.
[24] *Maranda v. Richer*, 2003 SCC 67 at paras 32-33.
[25] Applicant's response submission at paras 14, 39, and 71-73.
[26] College's reply submission at para 3.

exception").[27] This exclusion holds that communications between solicitor and client made with a view to facilitate the commission of a crime cannot be privileged.[28] The rationale for the exclusion is that facilitating wrongful conduct does not come within the scope of a lawyer's professional duties.[29] It does not matter whether the solicitor was an "unwitting dupe or [a] knowing participant".[30]

[33] In order to invoke the exclusion, an applicant must make out a *prima facie* case.[31] There must be clear and convincing evidence and something to give colour to the charge, in light of all the evidence and surrounding circumstances and "it is insufficient to merely assert that the lawyer's advice was sought in furtherance of an unlawful purpose".[32] Once the applicant establishes a *prima facie* case, the decision maker must then review the documents in question to ascertain whether the exclusion is made out.[33]

[34] I am not persuaded by what the applicant says about the College's criminal purposes for seeking legal advice. He makes many allegations of what he calls criminal activity, but in my view, these are not sufficient to ground a *prima facie* case that the College's communications with the Law Firm were undertaken to serve a criminal or fraudulent purpose. I therefore find that the communications do not come within the crime-fraud exclusion.

Conclusion on s. 14

[35] To summarize, I have found that the College has established that the information it withheld under s. 14 is subject to solicitor-client privilege. The College may therefore refuse to disclose the information.

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[27] Dodek, Adam, *Solicitor-Client Privilege* (Markham, ON: LexisNexis Canada, 2014) at 54 says: "While this rule is often referred to as the crime-fraud 'exception', it is in fact an 'exclusion' from the privilege in the same way that non-legal advice is excluded by or not covered by the privilege…The difference between an exclusion and [an] exception is a distinction with an important consequence. Under the exceptions recognized by the Supreme Court to date…the communications remain privileged except for the limited basis of their disclosure; they cannot be used against the client. However, crime-fraud is no limited exception; it is a complete 'negation' of the privilege. The communications may be disclosed and used for any purpose, including against the client. Indeed, this is the basis for seeking to apply crime-fraud." I agree with this analysis.
[28] *Descoteaux et al. v. Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860 at 893; *R. v. Campbell*, 1999 CanLII 676 (SCC), [1999] 1 SCR 565 at paras 55-63.
[29] *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para 174.
[30] *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at 835-36.
[31] *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 24.
[32] *McDermott v. McDermott*, 2013 BCSC 534 at para 77.
[33] *Ibid* at para 78.

Disclosure harmful to individual or public safety – s. 19(1)

[36] The information withheld under s. 19(1) consists of parts of the minutes of the closed portion of the September 2019 meeting of the College's Board. All of the information the College has withheld under s. 19(1) is withheld under s. 19(1)(a), with one portion also being withheld under s. 19(1)(b). Those provisions say the following:

> **19** (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
>
> (a) threaten anyone else's safety or mental or physical health, or
>
> (b) interfere with public safety.

Parties' positions

[37] The College argues that disclosure of the information withheld under s. 19(1) could reasonably be expected to threaten the safety or mental or physical health of its staff members (s. 19(1)(a)) and/or to interfere with the safety of the public (s. 19(1)(b)).[34]

[38] The applicant disputes that s. 19(1) applies.[35]

Evidentiary standard - reasonable expectation of probable harm

[39] The words "could reasonably be expected to" in s. 19(1) mean that the College must establish a reasonable expectation of probable harm. This standard is a middle ground between what is probable and what is merely possible. In order to establish a reasonable expectation of probable harm, the College must provide evidence "well beyond" or "considerably above" a mere possibility of harm. There must be a direct link between disclosure of the information and the contemplated harm.[36]

[40] In Order F08-09, former Commissioner Loukidelis reiterated the evidentiary standard for harms-based exceptions:

> The quality and cogency of the evidence must be commensurate with a reasonable person's expectation that the disclosure of the requested information could cause the harm specified in the exception. The probability

[34] College's initial submission at paras 47-49.
[35] Applicant's response submission at paras 67-68.
[36] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

> of the harm occurring is relevant to assessing the risk of harm, but mathematical likelihood will not necessarily be decisive where other contextual factors are at work.[37]

Disclosure would threaten anyone else's safety or health – s. 19(1)(a)

Disclosure a threat to mental health

[41] The College argues that disclosure of the withheld information could result in mental distress to its staff members.[38] It says that the applicant has "persistently and unreasonably protested the College's decisions, by taking steps that include incessant correspondence and telephone calls to staff, accusing staff of conspiring against him and committing criminal acts".[39] It also says that the applicant "has a history of reacting with an inappropriate level of frustration towards the College and has fixated on particular staff members whom he blames for many of his perceived troubles".[40] It says the applicant attended the College's Board meeting in September 2019 and had to be removed and banned from the College's meetings for 90 days.[41]

[42] The College says that since that 2019 Board meeting, the applicant has continued his correspondence with the College in the same fashion.[42]

[43] In Order F08-09, the former Commissioner held that s. 19(1)(a) was engaged where the contemplated harm "clearly" went "well beyond the inconvenience, upset or unpleasantness of dealing with a difficult or unreasonable person", so that "a threat to mental health through mental distress" was established.[43]

[44] I can see from the applicant's own evidence that he is a very persistent correspondent. I can also see that his communications are frequently accusatory, hyperbolic, lengthy, and difficult to follow, and that he blames College staff for his troubles. In my view, it is reasonable to expect that if the withheld information upsets him, he will behave as he has done in the past. There is sufficient evidence that this is his pattern of behaviour.

[45] The College says it is possible that its staff members could become targets of the applicant's "hostility and obsessive behaviour" and that this would

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[37] Order F08-09, 2008 CanLII 21701 (BC IPC) at para 7, citing Order 00-10, 2000 CanLII 11042 (BC IPC).
[38] College's initial submission at para 49.
[39] *Ibid* at para 43.
[40] *Ibid* at para 44.
[41] *Ibid* at para 45; Letter from the Law Firm to the applicant dated September 11, 2019.
[42] College's initial submission at para 46; Applicant's letters to the College dated February 20 and April 25, 2022.
[43] Order F08-09, *supra* note 37 at para 16.

cause them "mental distress".[44] While I can see how this is possible, the College has not demonstrated how what it calls "mental distress" amounts to a threat to mental health under s. 19(1)(a). Previous orders have said that inconvenience or the unpleasantness of dealing with a difficult or unreasonable person is not enough to trigger s. 19(1)(a) of FIPPA. The reasonable apprehension of serious mental distress or anguish, approaching a clinical issue, is required.[45] The College's submission and evidence do not adequately explain how the anticipated impact on its staff's mental health meets that bar.

[46] In my view, the harm the College foresees falls short of the serious mental distress or anguish required to engage s. 19(1)(a). I conclude that the College has not met its burden of establishing that disclosing the information in dispute could reasonably be expected to threaten anyone's mental health under s. 19(1)(a).

Disclosure a threat to individual safety or physical health

[47] The College says that the "cumulative effect" of the applicant's behaviour raises a "legitimate concern" that he would pose a "risk to College staff, board members and members of the public" if the withheld information were disclosed.[46] The College also says that disclosure of the information withheld under s. 19(1) that identifies particular College staff members could lead to those staff members "becoming targets of the Applicant's hostility and obsessive behaviour".[47] I understand the College to be arguing that disclosure of the withheld information could reasonably be expected to threaten the safety or physical health of members of its staff or Board.

[48] The College says that it has a "legitimate concern" that if the withheld information is disclosed, the applicant will pose a risk to College staff, College Board members, and members of the public, relying on Order 02-10 for the interpretation of that phrase.[48] However, in that Order, the former Commissioner held that the public body had, in all the circumstances of that case, and partly with *in camera* evidence, established a reasonable expectation that disclosure of the withheld information would threaten the health or safety of third parties.[49] A "legitimate concern", without more, is not enough. I am not persuaded by the College's submission and evidence that disclosure of the withheld information could reasonably be expected to threaten anyone else's safety or physical health.

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[44] College's initial submission at paras 48-49.
[45] Order 01-15, 2001 CanLII 21569 (BC IPC) at para 74.
[46] *Ibid* at para 47.
[47] College's initial submission at para 48.
[48] *Ibid* at para 47.
[49] Order 02-10, 2002 CanLII 42435 (BC IPC) at paras 15-18.

Disclosure would interfere with public safety – s. 19(1)(b)

[49] Section 19(1)(b) of FIPPA allows a public body to refuse to disclose information whose disclosure could reasonably be expected to interfere with public safety. In Order 00-18, the former Commissioner held that "the use of the word 'interfere' in the section indicates that the Legislature intended a different threshold to apply than would be the case if the word 'harm' had been used". The Commissioner went on to say that "the section requires a more direct connection [than the public body was able to establish] between the disclosure of information and interference with public safety itself".[50]

[50] The only submission the College made about the application of s. 19(1)(b) is that it believes "it is reasonable to make a connection between release of the records and an escalation of the Applicant's negative behaviours, which would be a threat to the safety of the public".[51]

[51] In my view, the College has not established any connection, direct or otherwise, between disclosure of the information and interference with public safety. There is insufficient evidence before me to establish how disclosure of the information could result in interference with public safety under s. 19(1)(b).

Conclusion on s. 19(1)

[52] In my view, the College's arguments about s. 19(1) are speculative, lacking the kind of specificity and concreteness that would lead a reasonable person, unconnected with the matter, to conclude that disclosure of the withheld information could reasonably be expected to result in threats to individual safety or mental or physical health (under s. 19(1)(a)), or interference with public safety (under s. 19(1)(b)). The evidence provided by the College similarly would not, in my view, lead a reasonable person to such a conclusion. I therefore conclude that the College may not refuse to disclose the information under s. 19(1).

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

[53] Section 22(1) of FIPPA says that a public body must refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. The analytical framework for s. 22(1), which I will apply, is well established:

> This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is

[50] Order 00-18, 2000 CanLII 7416 (BC IPC) at section 3.3.
[51] College's initial submission at para 49.

> 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.[52]

[54] The College is relying on s. 22(1) to withhold information on a small number of pages of the records in dispute.

Is the information personal information? – s. 22(1)

[55] The first step in the s. 22 analysis is to determine whether the information is personal information. Both "personal information" and "contact information" are defined in Schedule 1 of FIPPA:

> "personal information" means recorded information about an identifiable individual other than contact information;
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> "contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

[56] The information the College is withholding is a cell phone number of a Law Firm employee, as well as the names of two other third parties and the name, job title, and signature of another third party.

[57] The College says that all of the information withheld under s. 22(1) is personal information because "it is information that can be directly linked to identifiable individuals or connected to particular individuals whose identity can be determined from the information alone or in combination with other available information".[53] It submits that the withheld cell phone number is not contact information, but makes no other submission on whether any other information withheld under s. 22(1) is contact information.[54]

[58] The applicant did not make a submission on the application of s. 22(1).

[59] All of the information the College withheld under s. 22(1) is about identifiable individuals. The issue is whether it is contact information. Previous orders have held that whether a particular piece of information is contact information will depend on the context in which the information is sought or disclosed.[55]

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[52] Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.
[53] College's initial submission at para 56.
[54] *Ibid* at para 57.
[55] Order F08-03, 2008 CanLII 13321 (BC IPC) at para 82.

[60] In Order F17-39, the adjudicator held that a personal cell phone number that had been used on an *ad hoc* basis for a business purpose was not contact information.[56] In Order F21-68, the adjudicator, reviewing and summarizing previous orders, concluded that "information is only 'contact information' for the purposes of FIPPA if, in the context of the record, it was used in the ordinary course of conducting the third party's business affairs".[57] In this case, I am satisfied that the Law Firm employee's cell phone number withheld on pages 1307 and 1312 is not contact information, because it is a clearly a personal cell phone number that was not used in the ordinary course of conducting business. As the surrounding context makes clear, while it was used in one instance to allow the Law Firm employee to be contacted for a business purpose, it was only to be used for business after office hours in an urgent situation. I therefore find that this information is personal information and not contact information.[58]

[61] However, in my view, the remaining information withheld under s. 22(1) is contact information. It consists of a hotel employee's name, title, and signature, as well as the first names of two security staff members. This information is contained in an incident report detailing the applicant's removal from the College's Board meeting, as well as a brief email enclosing the report. In the context in which the information appears, it is clear to me that the information is squarely within the definition of "contact information" set out in Schedule 1 of FIPPA, in that the information exists to enable the individuals to be contacted at their places of business, in their business capacities. There is no personal dimension to the information. As the former Commissioner pointed out in Order F08-03, the purpose of the "contact information" exclusion is to "clarify that information relating to the ability to communicate with a person at that person's workplace, in a business capacity, is not personal information…the release of the names of employees acting in an employment or professional capacity does not amount to unreasonable invasion of privacy under s. 22".[59] I will therefore not consider this information any further under s. 22(1).

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[56] Order F17-39, 2017 BCIPC 43 (CanLII) at para 76.
[57] Order F21-68, 2021 BCIPC 79 (CanLII) at para 44.
[58] In Order F22-30, 2022 BCIPC 33 (CanLII) at paras 19-22, the adjudicator held that the cell phone numbers of two public body employees were contact information because the cell phones were provided by the public body so that the employees could be contacted when away from their desks or outside work hours; they were not the employees' personal phones. Meanwhile, in Order F20-52, 2020 BCIPC 61 (CanLII) at paras 22-27, the adjudicator held that a third party's personal cell phone number was contact information because the number appeared in emails whose "main purpose" was to conduct business transactions, and because the number formed part of the third party's business email signature block. Likewise, in Order F13-20, 2013 BCIPC 27 (CanLII) at para 45, the adjudicator held that third parties' personal cell phone numbers were contact information because the third parties had provided them to the public body to allow them to be contacted for business.
[59] Order F08-03, *supra* note 55 at paras 82-83.

[62] Since I have found that the withheld cell phone number is personal information, I will consider whether its disclosure would be an unreasonable invasion of third-party personal privacy.

Not an unreasonable invasion of third-party personal privacy – s. 22(4)

[63] The College does not submit that any s. 22(4) circumstance applies.[60] The applicant did not make a submission specifically about the application of s. 22(4). Reviewing the information in light of the s. 22(4) provisions, I find that none of them apply.

Presumed unreasonable invasion of third-party personal privacy – s. 22(3)

[64] The College does not submit that any s. 22(3) presumption applies.[61] The applicant does not say anything specifically about the application of any s. 22(3) presumption. I likewise find that no s. 22(3) presumption applies.

Relevant circumstances – s. 22(2)

[65] The College does not argue that any s. 22(2) circumstances weigh against disclosure, but also says that no circumstances support disclosure.[62] The applicant does not say anything specifically about the application of any s. 22(2) circumstances.

[66] I do not find that any of the enumerated s. 22(2) circumstances apply and weigh either for or against disclosure. Section 22(2) also requires me to consider all relevant circumstances, and I find that the urgency of the business purpose for providing the cell phone number, as well as the *ad hoc* nature of how the information was provided, are circumstances weighing against disclosure. I also find the fact that the cell phone number is a personal telephone number to be a circumstance weighing against disclosure. Previous orders have held that where information (such as a telephone number) pertains to a third party's private life, this can be a circumstance weighing against disclosure.[63] I do not find that there are any circumstances favouring disclosure. Weighing all this, I find that the applicant has not met his burden of establishing that disclosure of the personal cell phone number would not be an unreasonable invasion of third-party personal privacy.

[60] College's initial submission at para 58.
[61] *Ibid* at para 59.
[62] *Ibid* at paras 59-60.
[63] Order F22-30, *supra* note 58 at para 47.

Conclusion on s. 22(1)

[67] I have found that only the cell phone number is personal information and that the rest of the withheld information is contact information, to which s. 22(1) does not apply. The College is not required or authorized to refuse to disclose the contact information under s. 22(1).

[68] As for the cell phone number, I have found that no provision of s. 22(4) applies to it. I have found that no s. 22(3) presumption applies, and that none of the circumstances enumerated in s. 22(2) apply. Considering all the relevant circumstances, I find that the applicant has not met his burden of establishing that disclosure of the cell phone number would not be an unreasonable invasion of third-party personal privacy. The College must therefore refuse to disclose it.

CONCLUSION

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

1. The College may refuse access to the information it withheld under s. 14;

2. The College may not refuse access to the information it withheld under s. 19(1)(a) or (b);

3. Subject to item 4 below, the College must refuse access to the information it withheld under s. 22(1);

4. The College is required to give the applicant access to the information I have highlighted in the copy of the records which is provided to the public body with this order.

5. The College must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at item 4 above.

[70] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by July 19, 2023.

June 6, 2023

ORIGINAL SIGNED BY

David S. Adams, Adjudicator