



Order F23-97

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

Alexander Corley
Adjudicator

November 16, 2023

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Summary: An applicant made a request to the College for records related to a complaint the applicant filed with the College in 2018. The College provided most of its records related to the complaint to the applicant but withheld some information under ss. 13 (advice or recommendations) and 22 (unreasonable invasion of privacy) of FIPPA. The adjudicator found that the College could not withhold some of the information under s. 22 because it was either not personal information, or it fell within the scope of s. 22(4). The adjudicator confirmed that the College was required to withhold the balance of the information in dispute under s. 22 and was authorized to withhold a small amount of additional information under s. 13.

Statutes Considered: *Freedom of Information and Protection of Privacy Act* [RSBC 1996] c. 165, ss. 13(1), 13(2), 13(3), 22(1), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(b), 22(3)(d), 22(3)(g), 22(3)(h), 22(4)(e), 54(b) and Schedule "1"; *Health Professions Act* [RSBC 1996] c. 183, s. 26.2.

INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the College of Physicians and Surgeons of British Columbia (College) for all documents related to a complaint the applicant made to the College in 2018 (complaint).¹ The College identified 1592 pages of responsive records (records) and provided some of these to the applicant while withholding others either in part or in their entirety under ss. 13 (advice or recommendations) and 22 (unreasonable invasion of privacy) of FIPPA.²

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the College's decision.³ During mediation, the

¹ Access Request dated November 18, 2020.

² College's Response Letter dated February 17, 2021.

³ Request for Review dated March 5, 2021.

College reconsidered its severing decisions and released additional information to the applicant while continuing to withhold certain information under ss. 13 and 22 of FIPPA.⁴ Mediation did not resolve the matter and the applicant requested that it proceed to an inquiry.⁵

[3] Based on the content of the records, the OIPC notified a third party of this inquiry and invited that third party to participate as an appropriate person under s. 54(b) of FIPPA (appropriate person).⁶

[4] The College, the applicant, and the appropriate person each provided a submission in this inquiry.

Preliminary Issues

New Issue – Section 26.2 of the *Health Professions Act* (HPA)⁷

[5] In their submission, the appropriate person implies that s. 26.2 of the HPA may apply to some of the information in dispute.⁸ Section 26.2 of the HPA is not included as an issue in the Investigator's Fact Report or the Notice of Inquiry and is not mentioned in the College's or applicant's submissions.

[6] Past OIPC orders have consistently held that parties may only add new issues at the inquiry stage with the permission of the OIPC.⁹ Further, the Notice of Inquiry clearly explains the process for adding new issues to an inquiry and the appropriate person received a copy of the Notice of Inquiry as an enclosure to the letter from the OIPC inviting them to participate in this inquiry.¹⁰ There is no indication in the record that the appropriate person sought the OIPC's permission to add s. 26.2 of the HPA as an issue in this inquiry. As such, I am not persuaded that it would be fair for me to add this new issue or that there are any exceptional circumstances which warrant me doing so. Therefore, I decline to consider the application of s. 26.2 of the HPA to the records.

Applicant's Submission – Matters Unrelated to FIPPA

[7] The applicant's submission makes allegations about various matters unrelated to FIPPA, including breaches of "multiple codes of medical ethics and

⁴ College's Submission at para. 4.

⁵ Investigator's Fact Report at para. 4.

⁶ OIPC Letter to Appropriate Person dated February 28, 2023.

⁷ RSBC 1996, c. 183.

⁸ Appropriate Person's Submission at para. 29.

⁹ See, for example, Order F12-07, 2012 BCIPC 10 at para. 6 and Order F10-37, [2010] B.C.I.P.C.D. No. 55.

¹⁰ OIPC Letter to Appropriate Person.

professionalism”, collusion between physicians and the College, the College’s corruption, and certain individuals’ questionable character.¹¹

[8] The purpose of this inquiry under s. 56 of FIPPA is to decide the specific FIPPA issues in dispute between the parties, not to decide the outcome of matters unrelated to FIPPA. On this basis, while I have reviewed all parties’ submissions and cited authorities, I decline to consider the applicant’s additional complaints and allegations except insofar as they are directly related to the FIPPA issues in dispute.

ISSUES

[9] In this inquiry, I must decide:

1. Whether s. 13(1) authorizes the College to withhold the information in dispute; and
2. Whether s. 22(1) requires the College to withhold the information in dispute.

[10] Section 57(1) of FIPPA says the College has the burden of proving that the College is authorized to withhold the information it has severed under s. 13(1). Meanwhile, s. 57(2) of FIPPA says the applicant has the burden of proving that release of the information the College has withheld under s. 22(1) would not be an unreasonable invasion of third-party personal privacy.¹²

DISCUSSION

Background

[11] Under the HPA, the College is responsible for regulating the practice of medicine in British Columbia, including by hearing, investigating, and disposing of complaints against physicians.¹³

[12] In 2018 the applicant made a complaint to the College about a number of physicians. Broadly, the complaint concerned what the applicant felt was improper behaviour by those physicians relating to supervision of the applicant while the applicant worked under a provisional licence as a psychiatrist.¹⁴ It is clear from the records that late in 2018 the complaint was transferred to the

¹¹ Applicant’s Submission at pp. 1-2.

¹² However, the College bears the initial burden of demonstrating that the information it is withholding under s. 22(1) meets the definition of “personal information” under FIPPA: Order F23-49, 2023 BCIPC 57 at para. 5 and note 1, citing Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

¹³ College’s Submission at para. 6.

¹⁴ Records at pp. 4-17.

College of Physicians and Surgeons of Alberta (Alberta College) to complete the investigation.¹⁵

[13] Parallel to the applicant's access request moving through the OIPC's processes, the investigation finished and the complaint was closed by the College.¹⁶ The applicant then appealed the College's disposition of the complaint to the British Columbia Health Professions Review Board (HPRB) which issued a ruling in favour of the College on March 1, 2022.¹⁷

Information in Dispute

[14] The responsive records are contained in the College's 1592-page investigation file related to the complaint. The investigation file is comprised of numerous classes of documents including internal and external College communications, evidence submitted by the applicant and the subjects of the complaint, and assessments of the applicant's conduct while working under supervision. Many pages in the records are duplicates. The College has disclosed most of the information to the applicant, but certain information remains severed on 65 pages of the records.¹⁸

[15] The College submits that, "[a]s part of the HPRB process ... the [a]pplicant received an unredacted copy of the majority of the information at [sic] dispute in this inquiry".¹⁹ Specifically, the College says that only a small amount of information it has withheld on three pages of the records²⁰ was not provided to the applicant during the HPRB review process.²¹

[16] The applicant is clearly seeking the release under FIPPA of information that the College submits was provided to the applicant during the HPRB review process.²² And, the applicant is entitled to exercise their information rights under FIPPA independent of their involvement in the HPRB process. Furthermore, the HPRB's *Rules of Practice and Procedure for Reviews under the [HPA]*²³

¹⁵ See, for example, pp. 2 and 1581-1592 of the records. The reasons for the transfer to the Alberta College are not relevant to the issues I must decide and I make no finding regarding it.

¹⁶ College's Submission at para. 8.

¹⁷ *Ibid.*

¹⁸ See pp. 2, 19, 42, 45, 68, 71-72, 87, 107-108, 176, 195, 201, 231, 251-252, 320, 339, 345, 369, 374, 389, 391, 394-395, 406, 426-427, 495, 514, 520, 541, 545, 558, 563, 577, 619, 636, 879, 950-951, 987, 1269-1274, 1301, 1342-1343, 1352, 1363, 1369, 1380, 1384, 1396, 1408, 1427, 1447-1448, 1516, 1535, 1541, and 1567 of the records.

¹⁹ College's Submission at para. 8.

²⁰ Records at pp. 2 and 950-951.

²¹ College's Submission at para. 8.

²² Access Request; see also Applicant's Submission at p. 1.

²³ As updated December 2022, available at <https://www.bchprb.ca/app/uploads/sites/791/2020/12/HPRB-Rules-Dec.-2021-1.pdf>.

indicates that the information the applicant received under the HPRB process may be subject to strict confidentiality requirements.²⁴

[17] FIPPA itself places no restrictions on the ability of an applicant to publicly disclose information obtained under FIPPA.²⁵ Therefore, even if the applicant already possesses the bulk of the information at issue by virtue of the HPRB process, the applicant may have good reason to seek the release of that same information under FIPPA, unencumbered by the HPRB confidentiality requirements.²⁶

[18] Given all of this, I find that it is appropriate to assess all the information which remains severed from the records before me.

Section 13(1) Advice or Recommendations

[19] Section 13(1) authorizes a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister. However, s. 13(1) does not apply to certain types of records and information listed in s. 13(2), and s. 13(3) says it does not apply to information in a record that has been in existence for more than 10 years.

[20] Numerous prior orders and court cases have considered the scope and application of s. 13(1). In Order F22-39,²⁷ the adjudicator canvassed the relevant case law and distilled the following interpretive principles for applying s. 13(1), which I adopt [emphasis in original]:

- Section 13(1) applies to information that *would reveal* advice or recommendations and not only to information that *is* advice or recommendations.²⁸
- The terms “advice” and “recommendations” are distinct, so they must have distinct meanings.²⁹
- “Recommendations” relate to a suggested course of action that will ultimately be accepted or rejected by the person being advised.³⁰

²⁴ *Ibid* at R. 20(1) and (2).

²⁵ See, for example, Order F22-31, 2022 BCIPC 34 at para. 80, citing Order 03-35, 2003 CanLII 49214 (BC IPC) at para. 31.

²⁶ I also note that the bulk of the information at issue has been severed under s. 22(1) which is a mandatory exception to disclosure. Therefore, FIPPA may require the College to withhold information already possessed by the applicant in any event.

²⁷ 2022 BCIPC 44 at para. 67. See also Order F23-29, 2023 BCIPC 33 at para. 27.

²⁸ Citing Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 135.

²⁹ Citing *John Doe v. Ontario (Finance)*, 2014 SCC 36 [*John Doe*] at para. 24.

³⁰ Citing *John Doe*, *ibid* at paras. 23-24.

- “Advice” has a broader meaning than “recommendations”.³¹ It includes setting out relevant considerations and options, and providing analysis and opinions, including expert opinions on matters of fact.³² “Advice” can be an opinion about an existing set of circumstances and does not have to be a communication about future action.³³
- “Advice” also includes factual information “compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body”.³⁴ This is because the compilation of factual information and weighing of significance of matters of fact is an integral component of an expert’s advice and informs the decision-making process.

[21] The first step in the s. 13 analysis is to determine whether the information in dispute would reveal advice or recommendations developed by or for a public body or a minister. If it would, the next step is to determine whether ss. 13(2) or 13(3) applies.

Analysis

[22] The College applies s. 13(1) to a small amount of information on two pages of the records.³⁵ None of the parties provided submissions on the application of s. 13(1) to the information in dispute.

[23] Having reviewed the information in question, I find that revealing it would reveal advice developed for the College. As noted above, “advice” under s. 13(1) can include an opinion or prediction that involves exercising judgment and skill to weigh the significance of matters of fact. The severed information points out potential next steps for the College in the face of certain actions taken by the applicant³⁶ and provides an evidence-based assessment of the strengths of the complaint and the circumstances underlying the applicant’s conduct.³⁷ The people who provided these assessments to the College were acting in a professional capacity at the time and I find that the assessments clearly involved an exercise of judgment and skill and the application of expertise.

³¹ Citing *John Doe*, *ibid* at para. 24.

³² Citing *John Doe*, *ibid* at paras. 26-27 and 46-47; *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2001 BCSC 726 [College] at paras. 103 and 113.

³³ Citing *College*, *ibid* at para. 103.

³⁴ Citing *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para. 94; *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at paras. 52-53.

³⁵ Records at pp. 619 and 636.

³⁶ *Ibid*.

³⁷ Records at p. 619.

[24] I have also reviewed s. 13(2) and find that the information in question does not fall within any of the categories listed in that section. Further, the information in question is contained in e-mails dated from 2020 and s. 13(3) also does not apply to it.

[25] Based on all the above, I find that the College is authorized to withhold the information it has severed from the records under s. 13(1).

Section 22(1) Unreasonable Invasion of Privacy

[26] Section 22(1) requires a public body to refuse to disclose information if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[27] The College has withheld several kinds of information from the records under s. 22(1) including:

- College identification numbers assigned to individual registrants (CPSIDs);
- Registrant addresses and telephone numbers;
- A third party's assessment of the applicant's conduct while working under supervision;
- Information regarding supervision arrangements for registrants other than the applicant; and,
- Investigation file reference numbers assigned by the College and the Alberta College and status updates regarding those same files.

[28] I found above that s. 13(1) authorizes the College to withhold a small amount of the information it has also withheld under s. 22(1).³⁸ Therefore, I will not consider that same information again here.

Personal Information

[29] Since s. 22(1) only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information.

[30] Schedule 1 of FIPPA provides the following definitions of "personal information" and "contact information",

"personal information" means recorded information about an identifiable individual other than contact information; [and]

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title,

³⁸ *Ibid.*

business telephone number, business address, business email or business fax number of the individual[.]

[31] Based on these definitions, information that is “contact information” is not “personal information” for the purposes of FIPPA. Whether information is contact information depends on the context in which it appears.³⁹

[32] The College submits that the information at issue under s. 22(1) is not “contact information” but is “personal information” on the basis that the information “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”.⁴⁰ The appropriate person agrees with the College’s position.⁴¹ The applicant does not make submissions regarding whether the information in dispute is “personal information”.

[33] I find that most of the information the College has withheld under s. 22(1) is personal information. Although the College has not provided specific arguments regarding much of this information, it is clear to me from the face of the records that this information relates to identifiable individuals.⁴²

[34] A record that is clearly important to all parties is a letter from one of the subjects of the complaint to the College which contains opinions regarding the complaint and the applicant’s conduct while working under supervision (letter).⁴³ It is well established that a person’s opinion is their personal information and I find that the opinions about the applicant’s conduct and the substance of the complaint expressed in the letter are the personal information of the third party who wrote the letter.⁴⁴ However, I also accept that A’s opinion about B can be B’s personal information in some cases and I find that to be the case here.⁴⁵ Therefore, I find that the severed portions of the letter contain the applicant’s personal information as well as the personal information of a third party.

[35] Finally, while the College has in places withheld the addresses and telephone numbers of third parties, I find that this information was provided to the College in the context of the College’s investigation of the complaint, not to allow those third parties to be contacted as part of conducting their business affairs. On that basis, I find that this information is not “contact information” but is personal information under FIPPA.

³⁹ Order F20-13, 2020 BCIPC 15 at para. 42.

⁴⁰ College’s Submission at para. 15, citing Order F09-21, 2009 CanLII 63565 (BC IPC) at para. 27.

⁴¹ Appropriate Person’s Submission at para. 28.

⁴² This includes CPSIDs and investigation file numbers as these are linked to specific individuals.

⁴³ See pp. 68, 71-72, 394-395, and 1342-1343 of the records.

⁴⁴ See, for example, Order F14-47, 2014 BCIPC 51 at para. 14.

⁴⁵ See, for example, Order F17-01, 2017 BCIPC 1 at para. 48.

[36] However, I find that the following information is not personal information:

- a URL address;⁴⁶
- parts of the name of a document attached to an e-mail;⁴⁷
- information related to the Alberta College’s ordering of investigation files it took on at the request of the College⁴⁸ (as distinct from College-assigned file numbers associated with those investigations);
- the date a document was forwarded;⁴⁹ and,
- information which has been scratched out and is not decipherable.⁵⁰

[37] The College does not explain how this information relates to any identifiable individuals and I do not see how it does.⁵¹ Section 22(1) does not apply to this information and I will not consider it further.

Section 22(4)

[38] Section 22(4) sets out circumstances where disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy. If any of the circumstances in s. 22(4) applies to the personal information in dispute, the public body is required to give the applicant access to that information.

[39] The College submits that none of the circumstances set out in s. 22(4) applies to the information in dispute.⁵² The applicant and appropriate person do not address s. 22(4) in their submissions. I have reviewed the information in dispute with an eye to s. 22(4) and contrary to the College’s position I find that s. 22(4)(e) applies to a small amount of information in the records.

[40] Section 22(4)(e) says that disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if the information is about the third party’s position, functions or remuneration as an officer, employee, or member of a public body or as a member of a minister’s staff.

⁴⁶ Records at p. 563.

⁴⁷ Records at p. 1274.

⁴⁸ Records at pp. 391, 1269-1274, 1352, 1369, 1384, 1408, and 1567. The College has also already revealed this information elsewhere in the records.

⁴⁹ Records at p. 391.

⁵⁰ Records at p. 1384.

⁵¹ If the College’s position regarding some of this information (namely the URL and file ordering information) is that it is the personal information of the Alberta College itself, I do not accept this. While the Alberta College is not a “public body” under FIPPA and is therefore a “third party” in this inquiry, it is well established that corporations and organizations do not have personal privacy rights under s. 22(1) of FIPPA and I find it appropriate to apply this same reasoning to extra-provincial regulators like the Alberta College: see Order F17-39, 2017 BCIPC 43 at para. 75, citing Order No. 175-1997, 1997 CanLII 3724 (BC IPC).

⁵² College’s Submission at para. 17.

[41] Numerous prior orders have considered the meaning and scope of s. 22(4)(e). Key principles are that s. 22(4)(e) applies to information that reveals a public body employee's name, job title, duties, functions, remuneration (including salary and benefits) or position⁵³ and to objective, factual information about what the public body employee did or said in the normal course of discharging their job duties.⁵⁴

[42] On page 1274 of the records, the College has withheld the full title of a document attached to an e-mail. I found above that much of the information in the title is not personal information and must be disclosed to the applicant on that basis. The remainder of the information in the title is the name of the third party to whom the document is addressed. I can see from the records that the third party was an employee of the College at the relevant time and I find that revealing the fact that the document was addressed to them would only reveal their name and minor elements of the functions they undertook in the normal course of their work for the College. Therefore, I find that s. 22(4)(e) applies to this information and its disclosure would not be an unreasonable invasion of the third party's personal privacy.

Section 22(3)

[43] Section 22(3) lists circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. The next step in the analysis is to consider whether any of those circumstances applies to the personal information in dispute.

[44] The College submits that s. 22(3)(b) applies to all the information in dispute.⁵⁵ The appropriate person submits that ss. 22(3)(g) and (h) apply to the information in the letter.⁵⁶ The applicant does not make any submissions regarding s. 22(3).

[45] In addition to the sub-sections of s. 22(3) cited by the College and the appropriate person, I also find that s. 22(3)(d) may apply to some of the information in dispute. Therefore, I will consider ss. 22(3)(b), (d), (g), and (h) in turn.

Section 22(3)(b) – Compiled and identifiable as part of an investigation

[46] Under s. 22(3)(b), disclosure of personal information is presumed to be an unreasonable invasion of personal privacy where the information was compiled and is identifiable as part of an investigation into a possible violation of law,

⁵³ See Order F20-54, 2020 BCIPC 63 at para. 56 and note 45.

⁵⁴ See Order F18-38, 2018 BCIPC 41 at para. 70.

⁵⁵ College's Submission at para. 18.

⁵⁶ Appropriate Person's Submission at item II and para. 34.

except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[47] The College submits that disclosing the information in dispute would be presumptively unreasonable under s. 22(3)(b) as this information was “gathered by the College in the context of its investigation of [the complaint]”.⁵⁷ The College also points to several past orders which the College says hold that the College’s complaint process is an “investigation into a possible violation of law” for purposes of s. 22(3)(b).⁵⁸ The applicant and the appropriate person do not address s. 22(3)(b) in their submissions.

[48] I accept that the College’s complaints process is an investigative procedure which can lead to disciplinary action under the HPA and therefore constitutes an “investigation into a possible violation of law” for purposes of s. 22(3)(b).⁵⁹ However, for s. 22(3)(b) to apply, I must also find that the personal information at issue was “compiled” during investigation of the complaint. In Order F19-02, the adjudicator found that information will have been “compiled” if the information “was gathered or assembled using judgment, knowledge or skill”.⁶⁰

[49] I find with minimal exceptions that all the personal information at issue falls within the scope of s. 22(3)(b) because it was clearly gathered or assembled by persons exercising their professional judgment and skill in the context of investigating the complaint. Further, past orders accept that a response from the subject of a complaint provided during an investigation falls within s. 22(3)(b).⁶¹ On that basis, I specifically find that the information in the letter is covered by s. 22(3)(b).⁶²

[50] I also find that release of the information is not necessary for purposes of further investigation or prosecution regarding the complaint, for two reasons. First, the College’s unchallenged evidence is that the investigation and disposition of the complaint and the appeal to the HPRB have concluded.⁶³ Second, there is no indication in the record that the applicant has petitioned for judicial review of the HPRB decision.

[51] On the other hand, I find that s. 22(3)(b) does not apply in those instances where it appears on the face of the records that information, such as an address, was not compiled for the purpose of the complaint investigation because it was in

⁵⁷ College’s Submission at para. 18.

⁵⁸ College’s Submission at para. 19, citing Order F19-02, 2019 BCIPC 2 at para. 35; Order F12-10, 2012 BCIPC 14 at para. 28; and, Order F11-10, 2011 BCIPC 13 at para. 39.

⁵⁹ See, for example, Order F19-02, *ibid* and Order F23-78, 2023 BCIPC 94 at para. 95.

⁶⁰ Order F19-02, *ibid* at para. 39.

⁶¹ Order F23-78, *supra* note 59 at para. 97, citing Order F19-02, *ibid* at para. 40.

⁶² See pp. 68, 71-72, 394-395, and 1342-1343 of the records.

⁶³ College’s Submission at para. 8.

the College's custody before the complaint investigation was even contemplated.⁶⁴ The College does not explain how this information was "compiled" for purposes of s. 22(3)(b) and I do not find that it was.

Section 22(3)(d) – Employment, occupational, or educational history

[52] Under s. 22(3)(d), disclosure of a third party's employment, occupational or educational history is presumed to be an unreasonable invasion of that third party's personal privacy.

[53] None of the parties made submissions regarding the application of s. 22(3)(d) to the information in dispute. However, based on my review of the records I find that much of the personal information in issue falls within the scope of that section.

[54] In the first place, I find that disclosing registrants' CPSIDs is presumptively unreasonable under s. 22(3)(d).⁶⁵ The College's submissions make clear that a CPSID is a unique identifier assigned to a registrant and that a CPSID is required for a registrant to "access their College account, complete their annual license renewal and [is] linked to their communication[s] with the College".⁶⁶ Further, I adopt the conclusion in prior orders that CPSIDs are "unique personal identifiers that pertain to [a] physician[s] registration with the regulatory body that governs their profession" and therefore relate to physicians' "occupational history" for purposes of s. 22(3)(d).⁶⁷

[55] I also find that information related to supervision arrangements for physicians other than the applicant is the employment history of those physicians for purposes of s. 22(3)(d).⁶⁸ Finally, I find that personal information related to investigations into complaints against registrants, including file numbers assigned to those investigations,⁶⁹ status updates regarding those investigations,⁷⁰ and personal information contained in submissions from those registrants⁷¹ or communications from the College alerting those registrants of a complaint against them,⁷² constitute the occupational histories of those registrants.⁷³

⁶⁴ See pp. 42 and 45 of the records.

⁶⁵ See pp. 2, 19, 87, 231, 374, 406, 545, 577, 879, 987, 1301, 1396, and 1427 of the records.

⁶⁶ College's Submission at para. 16.

⁶⁷ Order F23-14, 2023 BCIPC 16 at para. 87.

⁶⁸ See pp. 107-108, 176, 251-252, 320, 426-427, 495, 1447-1448, and 1516 of the records. The applicant is not a "third party" in this inquiry and s. 22(3)(d) does not apply to their employment history on that basis.

⁶⁹ See pp. 950-951, 1270, and 1272 of the records.

⁷⁰ See p. 1270 of the records.

⁷¹ See pp. 68, 71-72, 87, 231, 369, 374, 389, 394-395, 406, 541, 545, 558, 1342-1343, 1363, 1380, 1396, and 1427 of the records.

⁷² See pp. 42 and 45 of the records.

⁷³ See Order F19-02, *supra* note 58 at para. 44.

[56] Based on the above, I find that revealing some of the personal information in dispute is presumed to be an unreasonable invasion of third-party personal privacy on the basis that it constitutes third-party employment or occupational history under s. 22(3)(d).

Section 22(3)(g) – Personal recommendations and evaluations

[57] Section 22(3)(g) says that disclosure of a third party's personal information is presumed to be an unreasonable invasion of that third party's personal privacy where the information consists of personal recommendations or evaluations, character references, or personnel evaluations about the third party. As noted above, the appropriate person submits that s. 22(3)(g) applies to the personal information contained in the letter.⁷⁴

[58] Section 22(3)(g) only applies to personal information that is about a "third party". Schedule 1 of FIPPA defines a third party as anyone other than an applicant or the public body that is the subject of an access request. I have reviewed the letter in detail and while I do find that it contains personal evaluations, I find that in each case the subject of those evaluations is the applicant, not a third party. Therefore, s. 22(3)(g) does not apply to the information in the letter.

Section 22(3)(h) – Identity of an evaluator and content of an evaluation

[59] Section 22(3)(h) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it would reveal,

- (i) the identity of a third party who supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, or
- (ii) the content of a personal recommendation or evaluation, character reference or personnel evaluation supplied, in confidence, by a third party, if the applicant could reasonably be expected to know the identity of the third party.

[60] The appropriate person submits that the letter is composed of a third party's personal evaluations of the applicant,⁷⁵ that these evaluations were provided to the College in confidence,⁷⁶ and that the applicant could reasonably be expected to know the identity of the third party even if all identifying information were stripped from the letter.⁷⁷ On this basis, the appropriate person

⁷⁴ Appropriate Person's Submission at item II.

⁷⁵ Appropriate Person's Submission at para. 30.

⁷⁶ Appropriate Person's Submission at paras. 30-31.

⁷⁷ Appropriate Person's Submission at para. 33.

submits that s. 22(3)(h) applies to the personal information in the letter. The applicant and the College do not address s. 22(3)(h) in their submissions.

[61] I have reviewed the letter and can confirm that it contains a third party's evaluations of the applicant. Further, the letter is clearly marked "confidential" and I find that the evaluations it contains were provided to the College in confidence on that basis.

[62] Finally, the part of the letter that contains the name of the third party has already been disclosed to the applicant, so disclosing the redacted information about how the third party evaluated the applicant would reveal the type of information s. 22(3)(h)(ii) is designed to protect. Disclosure of the information in the letter is presumed to be an unreasonable invasion of third-party personal privacy on this basis.⁷⁸

Section 22(2)

[63] Section 22(2) says that when a public body decides whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some weigh against. Relevant circumstances that weigh in favour of disclosure may rebut any applicable presumptions under s. 22(3).

[64] I have found above that release of any of the personal information I am considering at this stage is presumed to be an unreasonable invasion of third-party personal privacy pursuant to ss. 22(3)(b), (d), and/or (h).⁷⁹ In considering s. 22(2), the College says "there is nothing to support disclosure or to rebut the presumption that the disclosure of the personal information would be an unreasonable invasion of third party personal privacy".⁸⁰

[65] Turning to the applicant's submission, they do not make any specific arguments related to s. 22(2). However, based on the content of their submission as a whole, I find that the applicant feels that ss. 22(2)(a) and (c) may apply to the information in the letter.

[66] For their part, the appropriate person raises ss. 22(2)(e), (f), and (h) as circumstances they say strengthen the presumption regarding the information in the letter.⁸¹ I have already found above, in the context of s. 22(3)(h), that the

⁷⁸ Records at pp. 68, 71-72, 394-395, and 1342-1343.

⁷⁹ See pp. 2, 19, 42, 45, 68, 71-72, 87, 107-108, 176, 195, 201, 231, 251-252, 320, 339, 345, 369, 374, 389, 394-395, 406, 426-427, 495, 514, 520, 541, 545, 558, 577, 879, 950-951, 987, 1270, 1272, 1301, 1342-1343, 1363, 1380, 1396, 1427, 1447-1448, 1516, 1535, and 1541 of the records.

⁸⁰ College's Submission at para. 20.

⁸¹ Appropriate Person's Submission at item III.

information in the letter was supplied in confidence. Therefore, I do not need to consider whether s. 22(2)(f) also applies to this information.

[67] For reasons which will become apparent below, I do not find that the circumstances weighing in favour of disclosure carry sufficient weight to rebut the presumption that disclosure would be an unreasonable invasion of third-party personal privacy under s. 22(3). Therefore, it is not necessary for me to consider whether ss. 22(2)(e) or (h) applies to the personal information in dispute at this stage as finding that these sections apply would only strengthen the s. 22(3) presumption.

[68] Given all of this, I consider ss. 22(2)(a) and (c) as well as one additional circumstance, below.

Section 22(2)(a) – Public scrutiny of a public body

[69] 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.⁸² It is well established that the purpose of s. 22(2)(a) is to make public bodies more accountable, not individual third parties.⁸³

[70] The applicant makes numerous allegations of misconduct on the part of the College and third parties, going so far as alleging that the College is "corrupt to the core".⁸⁴ However, the applicant provides no evidence in support of any of these allegations. Further, the applicant appears to be primarily concerned with subjecting the activities of the specific third party who composed the letter to scrutiny.⁸⁵ Having reviewed the information in dispute it is not clear to me how release of any of it would assist in subjecting the College or any other public body to public scrutiny and I find that s. 22(2)(a) does not apply to the information in dispute on that basis.

Section 22(2)(c) – Fair determination of an applicant's rights

[71] Section 22(2)(c) applies to personal information that is relevant to a fair determination of an applicant's rights. Previous OIPC orders establish the test for s. 22(2)(c) to apply:

⁸² Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

⁸³ See, for example, Order F18-47, 2018 BCIPC 50 at para. 32.

⁸⁴ Applicant's Submission at p. 2.

⁸⁵ Applicant's Submission at p. 1.

1. The right in question must be a legal right drawn from the common law or statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either underway or contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or ensure a fair hearing.⁸⁶

[72] The applicant clearly feels they have been morally or ethically wronged by the College and the third party who composed the letter, and that securing an unredacted copy of the letter is key to redressing these alleged wrongs.⁸⁷ However, the applicant has not explained what specific legal right they allege has been breached, or the source of that right in the common law or a statute.

[73] Moreover, it is not clear to me that a proceeding is either underway or legitimately being contemplated at this time. The College says that the HPRB issued its decision on the complaint more than 18 months ago and there is no indication in the record that the applicant petitioned for judicial review of that decision.⁸⁸ The applicant does make a broad statement that they are “pursuing justice through the courts”,⁸⁹ however, they provide no further information regarding whether an action is in legitimate contemplation. Past orders set a relatively low bar for this stage of the test, stating that “an applicant only needs to establish that they are intently considering commencement of a proceeding”.⁹⁰ However, I do not find that a single statement with no supporting or clarifying information or evidence meets that standard.

[74] Finally, even if I am wrong and the applicant does pass the first two stages of the s. 22(2)(c) test, I still would not find that the personal information in the letter is necessary for the applicant to prepare for a proceeding or to ensure a fair hearing. It is clear from the record before me that the applicant has a general understanding of the content of the letter and the identity of the third party who composed it. Given this, it would be open to the applicant to, for example, commence an action against the College or that third party, seek disclosure of the letter through the court’s process, and then amend their claim based on the information in the letter, if necessary. Therefore, I do not find that disclosure is

⁸⁶ See, for example, Order F23-71, 2023 BCIPC 84 at para. 69, citing Order 01-07, 2001 CanLII 21561 (BC IPC) at para. 31.

⁸⁷ See Applicant’s Submission, generally.

⁸⁸ College’s Submission at para. 8.

⁸⁹ Applicant’s Submission at p. 2.

⁹⁰ Order F23-71, *supra* note 85 at para. 75, citing Order F16-36, 2016 BCIPC 40 at para. 50.

necessary for the applicant to prepare for any proceeding they may or may not be contemplating at this time.⁹¹

[75] Based on the above, I find that s. 22(2)(c) does not apply to the information in dispute.

Applicant's personal information

[76] Where an applicant is seeking release of their own personal information, this can weigh heavily in favour of disclosing that information to them. However, where the applicant's personal information is interwoven with the personal information of a third party this factor carries less weight.⁹²

[77] In this case, all the severed information which is the applicant's personal information is also the personal information of the third party who composed the letter. Therefore, while the fact that the letter contains the applicant's personal information weighs in favour of disclosing the letter to the applicant, I find that this factor carries minimal weight in this case.

Section 22(5)

[78] Section 22(5) says that if a public body refuses to disclose personal information supplied in confidence about an applicant to an applicant, the public body must provide the applicant with a summary of the information unless the summary cannot be prepared without disclosing the identity of the third party who supplied the information, or s. 22(3)(h) applies to the information and the applicant could reasonably be expected to know the identity of the third party who supplied the information.

[79] The only record containing severed information that is about the applicant is the letter. I have already found that s. 22(3)(h) applies to the letter and that the applicant could reasonably be expected to know the identity of the third party who wrote the letter. Therefore, I find that s. 22(5) does not apply in this case.

Conclusion on s. 22

[80] I have found above that the majority of the information the College has withheld under s. 22(1) is "personal information". However, I have also found that a small portion of this information is not "personal information" because it is not about an identifiable individual. Section 22(1) does not apply to that information and the College must provide it to the applicant.

⁹¹ See Order F21-19, 2021 BCIPC 24 at paras. 32-33 where the adjudicator reached a similar conclusion regarding the necessity of information under the s. 22(2)(c) test.

⁹² Order F14-47, *supra* note 44 at para. 36.

[81] Considering s. 22(4), I have found that s. 22(4)(e) applies to a small amount of information on one page of the records. The College must also provide this information to the applicant.

[82] Regarding s. 22(3), I have found that disclosure of any of the remaining personal information in dispute is presumed to be an unreasonable invasion of third-party personal privacy pursuant to ss. 22(3)(b), (d), and/or (h).

[83] Turning to s. 22(2), I have found that the fact the records also contain the applicant's personal information weighs in favour of disclosure. However, I find that this factor does not rebut the s. 22(3) presumptions.

[84] Finally, I have found that while some of the information in dispute is about the applicant, s. 22(5) does not apply to it because s. 22(3)(h) applies to this information and the applicant could reasonably be expected to know the identity of the third party who provided it to the College.

CONCLUSION

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

1. I confirm that the College is authorized to refuse to disclose information in the records pursuant to s. 13(1).
2. Subject to item 3 below, I confirm that the College is required, in part, to refuse to disclose information in the records pursuant to s. 22(1).
3. The College must provide the applicant with the information I have highlighted in the copy of the records delivered to the College alongside this order.
4. 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 3 above.

[86] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by January 2, 2024.

November 16, 2023

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

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