



Order F24-86

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

Alexander R. Lonergan
Adjudicator

September 27, 2024

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Summary: An applicant requested access to records about employee exit interviews conducted by the British Columbia Housing Management Commission (Commission). The Commission disclosed some responsive records but withheld information from them and other records in their entirety pursuant to s. 22(1) (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator determined that the Commission was required to withhold almost all the information in dispute under s. 22(1). The adjudicator ordered the Commission to disclose the information it was not required to withhold to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 22(1), 22(2)(a), 22(2)(b), 22(2)(f), 22(3)(d), 22(4) and Schedule 1 (definition of “personal information”).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the following from the British Columbia Housing Management Commission (Commission):

Copies of all reports, summaries, or interview notes regarding exit interviews with BC Housing senior management and/or executives, including but not limited to reports by [a particular accounting firm]. Date range for records search: 01/01/2021 to 09/28/2022.

[2] After receiving the request, the Commission identified 126 pages of responsive records and provided some information from these records to the applicant while withholding information under s. 22(1) (disclosure harmful to personal privacy) of FIPPA.¹

¹ All sectional references in this Order refer to FIPPA unless otherwise noted.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Commission's decision to withhold responsive information and records. Mediation by the OIPC did not resolve the issues in dispute and the applicant requested that the matter proceeded to this inquiry.

New Issue, s. 25(1)

[4] The applicant raises s. 25(1) in his submission and says the Commission must release the disputed information because disclosure is clearly in the public interest.² In response, the Commission submits that s. 25(1) is not applicable to any of the information in dispute.³

[5] Section 25(1) states as follows:

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.

[6] Section 25(1) is not listed as an issue in the Notice of Inquiry or the OIPC Investigator's Fact Report. Therefore, I find that s. 25(1) is a new issue raised by the applicant for the first time during the submissions phase of this inquiry.

[7] Many prior OIPC orders have considered requests by parties to add new issues at the inquiry stage. Those orders have consistently held that parties may only add new issues after the close of mediation with the express permission of the OIPC.⁴ Further, the Notice of Inquiry which was sent to the parties prior to the submissions phase of the inquiry clearly explains the process for adding new issues.

[8] Here, there is no indication in the record before me that the applicant sought the OIPC's permission to add s. 25(1) to this inquiry. Moreover, the applicant does not point to any exceptional circumstances which would warrant me departing from the OIPC's general practice regarding requests to add new issues in this case.

² Applicant's submission at paras. 24, 31 and 34.

³ Commission's reply submission at paras. 2 and 4-30.

⁴ See, for example, Order F12-07, 2012 BCIPC 10 (CanLII) at para. 6; and Order F10-37, 2010 BCIPC 55 (CanLII), at para. 10.

[9] Given this, I will not add s. 25(1) as an issue or consider what the parties have said about how it does, or does not, apply to the information in dispute.⁵

ISSUE AND BURDEN OF PROOF

[10] The issue I must decide in this inquiry is whether s. 22(1) requires the Commission to refuse to disclose any of the information in dispute.

[11] Section 57(2) says the applicant has the burden of proving that disclosure of the information in dispute would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, the Commission has the initial burden of showing that the disputed information is personal information.⁶

DISCUSSION

Background⁷

[12] The Commission is an agency of the Crown in Right of British Columbia. The Commission's mandate includes developing, managing and administering provincial and federal-provincial housing, and assisting in making affordable housing available to persons with low incomes or other disadvantages.

[13] During the period relevant to the access request, the Commission hired a private consulting firm to hold exit interviews with any employees departing the Commission. The firm also provided reports to the Commission which compiled the answers the departing employees gave in response to specific questions asked during the exit interviews.

Records in Dispute

[14] The consulting firm conducted 92 exit interviews with former employees and made notes of what each employee said. Only the notes from four of the 92 interviewees are included in the disputed records (the Notes). These four interviewees consented to the consulting firm giving their respective Notes to the Commission.

[15] Further, the consulting firm created two reports that cite, categorize, and summarize information obtained from all of the 92 interviews (the Reports). The 2021 report contains information about 31 interviewees and the 2022 report contains information about 61 interviews. The Reports reproduce many

⁵ For clarity, the applicant also raises the "public interest" in disclosure in the context of s. 22, and I will consider those arguments at the appropriate stage of my s. 22(1) analysis.

⁶ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

⁷ The information in this background section is based on information provided in the parties' submissions and evidence and is not in dispute.

comments made by former employees during the phone interviews but do not contain their names.

[16] The records in dispute consist of the Notes and the Reports. Under s. 22(1), the Commission severed nearly all of the information in the Notes and most of the information in the Reports.

SECTION 22 – UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY

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

[18] Past OIPC orders have established the analytical approach for s. 22, which I will also apply in this matter.⁸

Personal Information

[19] Section 22(1) only applies to personal information, so the first step of the analysis is to determine whether the information in dispute is personal information.

[20] FIPPA defines personal information as “recorded information about an identifiable individual other than contact information”. Contact information is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”⁹

[21] Information is about an identifiable individual when it is reasonably capable of identifying the individual, either alone or when combined with other available sources of information.¹⁰

Parties' positions, “personal information”

[22] The Commission says that all of the information it has withheld is the personal information of identifiable individuals. The Commission explains that the information reveals the identities of individuals who participated in exit interviews

⁸ Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58; and Order F16-38, 2016 BCIPC 42 (CanLII) at para. 108.

⁹ Schedule 1 of FIPPA contains the definitions of “personal information” and “contact information”.

¹⁰ See for example, Order F21-17, 2021 BCIPC 22 (CanLII) at para. 12; Order F16-38, 2016 BCIPC 42 (CanLII) at para. 112; and Order F13-04, 2013 BCIPC 4 (CanLII) at para. 23.

as well as those individuals' candid and personal opinions about their colleagues and their employment with the Commission.¹¹ Finally, the Commission says that even where the information does not include an interviewee's full name, the records contain sufficient detail about interviewees' careers and personal relationships to enable their identification, especially given that some of the Commission's departments only had one or two employees depart in a given period of time.¹²

[23] The applicant says that the Commission has not shown how the disputed information could be used to identify the individuals who participated in exit interviews. The applicant argues that without knowing a given individual's name, it is not possible to identify them based on the other information in the records.¹³

Analysis and findings, "personal information"

[24] The withheld information includes biographical information about interviewees, interview answers in the form of transcribed sentences, numerical scores provided by interviewees, department names and interview participation statistics.

i. Biographical interviewee information

[25] The Commission withholds some information from the Notes that directly identifies the four interviewees by name, position, date of interview, department and length of service to the Commission. I find that this information is reasonably capable of identifying the individual interviewees, therefore, it is their personal information.

ii. Interview answers

[26] Most of the withheld information in the Notes and Reports consists of the consulting firm's record of what interviewees said during their exit interviews. While this information does not include the interviewee names, they do contain opinions, descriptions of roles and interactions, names of interviewees' colleagues, and information about interviewees' careers.

[27] Given that the interview answers do not directly identify the interviewees, I will consider two well-established principles to determine whether this information is reasonably capable of identifying any of them.

¹¹ Commission's initial submission at paras. 21-22.

¹² Commission's initial submission at para. 23; Commission's reply submission at para. 32.

¹³ Applicant's submission at paras. 27 and 29.

[28] The first principle is that the disclosure of information under FIPPA is considered to be disclosure to the world.¹⁴ Therefore, it is not enough to decide whether the applicant could identify specific individuals using the disputed information; rather, the question is whether the disputed information is reasonably capable of enabling anyone to identify the individuals to whom it relates, whether on its own or in combination with other available sources of information.

[29] The second principle is known as the “mosaic effect”. In some circumstances, seemingly innocuous information can be linked with other available information and used to identify individuals, thereby transforming the innocuous information into personal information.¹⁵ A public body seeking to rely on the mosaic effect must explain how the seemingly innocuous information in dispute could actually be used to identify individuals.¹⁶ Past orders have declined to apply the mosaic effect where a public body has failed to adequately explain the logic behind their conclusion that apparently non-identifying information can be used to identify individuals.¹⁷

[30] In the Notes, the four interviewees’ answers are not mixed together. Instead, there is a separate record of answers for each interviewee. If these answers are combined with a modest amount of knowledge about who worked at the Commission during the relevant years, I consider it likely that the interviewee would become identifiable by what they said. Therefore, I find that the written answers in the Notes are the personal information of the four interviewees that supplied them.

[31] The Reports contain answers to the exit interview questions. These answers are taken from 92 interviewees and grouped according to the department where they worked. Overall, I find that these answers, in combination with the information about the interviewees’ departments, are sufficiently detailed to reveal the identity of the interviewees. Therefore, the answers in the Reports are personal information.

[32] Finally, the Commission withholds a short list of labels that categorize common reasons that interviewees gave for leaving their employment. I do not see, nor did the Commission explain, how these labels are capable of identifying anyone. Therefore, I find that the labels are not personal information.

¹⁴ Order 03-25, 2003 CanLII 49204 (BC IPC) at para. 24.

¹⁵ Order F08-03, 2008 CanLII 13321 (BC IPC) at paras. 39-40.

¹⁶ Order F21-47, 2021 BCIPC 55 (CanLII), at para. 17.

¹⁷ For example, see Order F24-72, 2024 BCIPC 82 (CanLII), at para. 86; and Order F23-72, 2023 BCIPC 85 (CanLII), at para. 61.

[33] I conclude that all of the interview answers in the Notes and the Reports are the personal information of the interviewees that supplied them. I find that the labels used to categorize the answers are not personal information.

iii. Numerical scores

[34] Some of the information withheld from the Notes includes numerical scores that interviewees gave relating to management practices and workplace satisfaction. The Commission does not explain how the scoring information alone could be used to identify the interviewees or whether there is any external information that could be combined with it to enable their identification.

[35] It seems to me that the only way this information can be used to identify anyone is if combined with the withheld biographical information or interview answers that appear alongside it in the Notes, which are being withheld. I do not see how these numbers can be used to identify anyone, whether alone or in combination with information that is already available.¹⁸ Therefore, I find that the scores are not personal information and may not be withheld under s. 22(1).

iv. Department names and participation statistics

[36] The Commission withholds the following information from the Reports:

- The number and percentage of total interviewees sorted by Commission department;
- The names of some Commission departments;
- From one of the two Reports, the number and percentage of total of interviewees sorted by length of employment (less than 1 year, 1-5 years, 5 to 10 years, and more than 10 years); and
- The number and percentage of total interviewees by geographic location (GVRD, Other BC, Home Office or Regional Office).

[37] The Commission explains that in certain cases, the name of department and the number of former employees that were interviewed from that department would reveal who was interviewed because the number of employees who departed those departments was so small.¹⁹ I agree and find that the number of participating employees for those departments is sufficiently small to have this effect, so both the small numbers and their associated department names are personal information.

¹⁸ For similar reasoning, see: Order F22-56, 2022 BCIPC 63 (CanLII) at paras. 44-46.

¹⁹ The logic of this process follows the general explanation provided in the Commission's initial submission at para. 23 and the Commission's reply submission at paras. 31-33.

[38] At a few locations in the records, the Commission withheld the name of departments which had many exit interview participants, as well as the number and percentage of interviewees from those departments. In my view, the relatively large number of interviewees from these departments removes any reasonable likelihood that these department names can be used to identify an individual. Therefore, I find that these department names and their associated numbers are not personal information.

[39] The Commission withheld the number and percentage of interviewees sorted by the length of their employment from one of the two reports. I am satisfied that a small amount of knowledge about who left the Commission soon after beginning their employment would allow a motivated observer to accurately determine who was interviewed. For this reason, I find that the number of interviewees with less than one year of employment is the personal information of those interviewees.

[40] On the other hand, the other lengths of employment relate to a relatively large number of interviewees. At first glance, these numbers appear to be too large to identify anyone. However, if these numbers are subtracted from the total number of interviewees (which was disclosed), then the number of interviewees with less than one year of employment would be immediately revealed. Moreover, unlike the interviewee numbers as sorted by department name, there is only one withheld employment length category with few interviewees. Therefore, I find that all of the numbers and percentages of interviewees, as sorted by their employment length in one of the Reports, are personal information.

[41] Finally, I am not persuaded that the number and percentage of interviewees sorted by geographic location could be used to identify any individuals. The Commission has not explained whether specific roles were limited to remote work or whether certain departments are located in specific regional offices. Moreover, the geographic location descriptions are broad and unclear, which further reduces the reasonable likelihood that they can be used to identify an interviewee. Consequently, I find that the geographic breakdown of interview participants is not personal information.

Conclusion, “personal information”

[42] I find that most of the withheld information is personal information. The only information the Commission withheld that I find is not personal information is the following:

- Labels describing common reasons interviewees gave for leaving their employment;
- Numerical scores given by interviewees;

- The names of Commission departments that had many exit interview participants; and
- The numbers and percentages of interviewees sorted by geographic location.

[43] I will not consider the exceptions identified above any further because that information is not personal information. I conclude that all of the other information withheld under s. 22(1) is the personal information of the exit interviewees, all of whom are “third parties” for the purpose of the s. 22 analysis.²⁰

Section 22(4) – Disclosure Not an Unreasonable Invasion of Privacy

[44] The second step in the s. 22(1) analysis is to determine whether the personal information falls into any of the circumstances listed in s. 22(4). If so, disclosure would not be an unreasonable invasion of a third party’s personal privacy.

[45] The Commission says that none of the withheld information falls within any of the circumstances listed in s. 22(4).²¹ The applicant did not discuss s. 22(4) in his submission.

[46] I have considered the circumstances and categories of information set out at s. 22(4) and I find that none of them apply in this matter.

Section 22(3) – Presumptively unreasonable invasion of personal privacy

[47] The third step of the s. 22 analysis is to determine whether any of the provisions set out at s. 22(3) apply. If so, then disclosure is presumed to be an unreasonable invasion of a third party’s personal privacy.

Section 22(3)(d) - Employment history

[48] Section 22(3)(d) says that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the third party’s employment, occupational or educational history.

[49] Past orders have found that the term “employment history” includes certain contents of a personnel file, the details of disciplinary action taken against employees, performance appraisals of employees, and materials relating to

²⁰ Schedule 1 of FIPPA says: “third party” in relation to a request for access to a record or for correction of personal information, means any person, group of persons, or organization other than the person who made the request or a public body.

²¹ Commission’s initial submission at para. 41.

investigations into workplace behaviour.²² Additionally, it is well-established that s. 22(3)(d) typically applies to personal information in a resume because that information, in most cases, directly relates to an individual's employment and educational history.²³

Parties' positions, s. 22(3)(d)

[50] The Commission says that releasing any of the personal information in dispute would be an unreasonable invasion of personal privacy pursuant to s. 22(3)(d) because the information relates in various ways to the interviewees' employment before, during and after their position at the Commission.²⁴ In response, the applicant argues that factual information and third-party descriptions of the processes, decisions, and the overall performance of the Commission is not employment history information within the meaning of 22(3)(d).²⁵

Analysis and findings, s. 22(3)(d)

[51] The disputed personal information plainly relates to the employment history of the interviewees who supplied it. First, this information includes the reasons why interviewees left their positions at the Commission, their subjective experience as an employee, personal opinions about their colleagues, and a summary of their employment before, during, and after working at the Commission.²⁶

[52] In addition, the fact that an individual was interviewed at all would, if disclosed, also reveal that they are a former employee of the Commission whose employment ended within the period contemplated by the applicant's access request and the date of the record at issue.

[53] I conclude that all of the personal information at issue relates to the interviewees' employment history under s. 22(3)(d) because it reveals the existence, subjective experience, and end of their employment at the Commission. Therefore, disclosure of this information is presumed to be an unreasonable invasion of third-party personal privacy.

²² Order F12-12, 2012 BCIPC 17 (CanLII), at para. 31; Order F14-41, 2014 BCIPC 44 (CanLII), at paras. 45-46.

²³ Order F09-24, 2009 CanLII 66956 (BC IPC), at para 9; Order 01-18, [2008] BCIPCD No. 19, at para. 15; Order F14-22, 2014 BCIPC 25 (CanLII), at para. 63.

²⁴ Commission's initial submission at paras. 31-34.

²⁵ Applicant's submission at paras. 22-24.

²⁶ Commission's initial submission at para. 34.

Section 22(3)(h) – Personal recommendations, evaluations, references

[54] The applicant says that the Commission is relying on s. 22(3)(h) to withhold the information in dispute.²⁷ However, the Commission's submissions contain no argument that ss. 22(3)(h)(i) and (ii) apply.

[55] In addition, it is not apparent how the disputed personal information falls within the types of information contemplated by s. 22(3)(h), so I find that provision does not apply.

Section 22(2) – Relevant circumstances

[56] The fourth step in the s. 22(1) analysis is to examine whether, considering all of the relevant circumstances including those listed in s. 22(2), disclosing the disputed personal information would be an unreasonable invasion of personal privacy. It is at this stage that the applicant may rebut the s. 22(3)(d) presumption which I found above applies to all of the personal information in dispute.

[57] The parties raise the following s. 22(2) circumstances as relevant in this case:

- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
- (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
- [...]
- (f) the personal information has been supplied in confidence[.]²⁸

[58] I will consider each of these circumstances below.

Section 22(2)(a) – Public Scrutiny of a Public Body

[59] Section 22(2)(a) asks whether disclosure of the personal information is desirable for subjecting the activities of the government of British Columbia or a public body to public scrutiny. If disclosure would foster the accountability of a public body, this may weigh in favour of disclosing the disputed information.²⁹ Section 22(2)(a) does not apply where the disclosure of the information at issue would only result in the public scrutiny of an individual third party's activities.³⁰

²⁷ Applicant's submission at para. 25.

²⁸ Commission's initial submission at para. 39; Applicant's reply submission at paras. 10 and 15.

²⁹ Order F05-18, 2005 CanLII 24734 at para. 49.

³⁰ Order F16-50, 2016 BCIPC 55 (CanLII) at para. 48.

[60] The applicant says that s. 22(2)(a) applies to all of the information in dispute. In support, he refers to a publicly available report produced by an accounting firm following its investigation into the Commission. The applicant says that the accounting firm determined (among other things) that the Commission had a culture of tolerating non-compliance with conflict of interest policies.³¹ Based on what he says about s. 22(2)(a), I understand the applicant to be arguing that disclosure is desirable for enhancing public scrutiny of the Commission's operations in the context of preventing conflicts of interest.

[61] In reply, the Commission points out that the accounting firm's investigation did not involve a review of the disputed records.³² The Commission also argues that the applicant does not plainly identify the matter he claims to be clearly in the public interest beyond a general public interest in the process and procedures of the Commission, which it says is insufficient to engage s. 22(2)(a).³³

[62] Ultimately, the Commission's position is that disclosing the disputed information would not facilitate the expression of public opinion or contribute in a meaningful way to holding the Commission accountable because the information is "personal comments from interviewees with respect to their employment histories, pensions, family illnesses, and details with respect to their interpersonal relationships with staff and management."³⁴

[63] I can see that some of the disputed information includes employee perspectives and constructive criticism of the Commission's operations, including about matters that plainly engage the broader public interest. Specifically, these matters relate to possible conflicts of interest and operational efficiency.

[64] In my view, some of these perspectives would contribute to public scrutiny of the Commission because they are first-hand, internal observations of how the Commission operates that are unlikely to be obtained elsewhere. For these reasons, I find that s. 22(2)(a) weighs in favour of disclosing some of the personal information that is about the Commission's internal operations or matters of conflicts of interest.

Section 22(2)(b) – Promotion of public health, safety, or protection of environment

[65] Section 22(2)(b) asks whether disclosing the personal information at issue is likely to promote public health and safety or to promote the protection of the environment. If so, this will weigh in favour of disclosure.

³¹ Applicant's submission at paras. 11-14. In its reply submission, the Commission did not specifically dispute that the accounting firm reached this determination.

³² Commission's reply submission at paras. 13-15.

³³ Commission's reply submission at paras. 10-11.

³⁴ Commission's reply submission at paras. 17 and 19.

[66] The applicant argues that s. 22(2)(b) weighs in favour of disclosure because “commentary on [the Commission’s] processes and procedures may enable better scrutiny of safety measures at social housing, and may enable the public to better hold the government to account for the safety of social housing.”³⁵ The applicant additionally raises an example of a fatal fire at a single-room occupancy building and the resulting public discourse about investment in health and safety measures that protect occupants of similar buildings.³⁶

[67] I understand the applicant’s argument to be that the withheld information, if disclosed, would promote public health and safety because it would contribute to public discourse about the Commission’s investment policy decisions for the single-room occupancy buildings that it manages.

[68] In its reply submission, the Commission says that the disputed records and information have no connection to the Commission’s policy and funding decisions about single-room occupancy buildings, and that they are not otherwise likely to promote public health and safety.³⁷

[69] A small amount of the personal information raises the issue of public safety in a very general way. However, none of the information is sufficiently related to public health or safety to meaningfully contribute to a discussion of those issues. It is not apparent to me how disclosure would promote public health and safety and I am not persuaded by the applicant’s argument that it would. I find that s. 22(2)(b) does not weigh in favour of disclosing any of the personal information in dispute.

Section 22(2)(f) - Supplied in confidence

[70] Section 22(2)(f) asks whether the personal information was supplied to the public body, explicitly or implicitly, in confidence. If it was, this weighs in favour of withholding the information.

[71] In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the information and did so under an objectively reasonable expectation of confidentiality at the time the information was supplied.³⁸ Evidence of a party’s subjective intentions respecting confidentiality, without more, is insufficient.³⁹

³⁵ Applicant’s submission at paras. 19-21.

³⁶ Applicant’s submission at paras. 17-18. For clarity, the building fire example raised by the applicant did not occur at a building managed by the Commission.

³⁷ Commission’s reply submission at paras. 26-30.

³⁸ Order F11-05, 2011 BCIPC 5 (CanLII) at para. 41, citing Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26; See also Order F23-02, 2023 BCIPC 3 (CanLII) at para. 45.

³⁹ Order 01-39, 2001 CanLII 21593 (BC IPC), at para. 28, citing *Re Maislin Industries Ltd. and Minister for Industry* (1984) 1984 CanLII 5386 (FC), 10 DLR (4th) 417 (FCTD) and *Timiskaming Indian Band v. Canada (Minister of Indian and Northern Affairs)* (1997) 1997 CanLII 5125 (FC), 148 DLR (4th) 356 (FCTD).

[72] The Commission says that the individuals who supplied the disputed information did so on the basis that the information would be kept strictly confidential. The Commission argues that the suppliers are akin to whistleblowers, and that disclosure would affect the Commission's ability to solicit candid feedback in the future.⁴⁰ The applicant does not discuss s. 22(2)(f) or expectations of confidentiality.

[73] The Commission's Vice President of Human Resources provides the following context about whether the personal information in dispute was supplied to the Commission in confidence:

- The four interviewees who consented to the Commission reviewing their information set out in the Notes did so "on the condition that their information would be held strictly confidential."⁴¹
- "Departing employees from [the Commission] are not obligated to participate [in exit interviews] but if they agree to do so, they are assured that their identities will not be revealed to [the Commission] or anyone else."⁴²
- Of all the interviewees who participated in the exit interviews, only four subsequently consented to sharing their individual interview contents with the Commission. Of those four interviewees, three declined to consent to any part of their interview being disclosed in response to the applicant's access request, and one interviewee provided their consent only to disclosing their numerical scoring information.⁴³

[74] I accept the contents of this affidavit as strong evidence that the interviewees expected their answers to remain confidential when they supplied those answers in the interviews.

[75] The disputed records themselves contain explicit indications that the interviewees had expectations of confidentiality. For example, the Reports each include a section that sought interviewees' feedback about the exit interview process.⁴⁴ In this section, there are interviewee responses that plainly indicate they were assured of their confidentiality by the interviewer.

[76] Finally, I also place weight on the circumstances in which the personal information was supplied. Ensuring anonymity among interviewees clearly supported the Commission's interest in receiving candid feedback from its former employees.⁴⁵ Additionally, the honesty and tone of the interviewees' answers

⁴⁰ Commission's initial submission at paras. 35-39.

⁴¹ Affidavit #1 of VP HR, at paras. 6-9.

⁴² *Ibid.*, at para. 4.

⁴³ *Ibid.*, at paras. 9-11.

⁴⁴ The title of this section and a related introductory sentence was not withheld from the Reports.

⁴⁵ Commission's initial submission at para. 37.

leads me to conclude that they did not expect their identities to even be revealed to the Commission. I find that these are circumstances in which the interviewees and the Commission shared a mutual expectation of confidentiality over the personal information collected through the exit interviews.

[77] Taking all of this together, it is clear to me that the personal information in dispute was supplied in confidence. I find that s. 22(2)(f) applies to all of the personal information in dispute and this weighs against disclosing that information to the applicant.

Conclusions, s. 22(1)

[78] I have found above that most of the information in dispute is the personal information of interviewees. Some of the information in dispute is not reasonably capable of identifying any individuals, so it is not personal information and cannot be withheld under s. 22(1).

[79] I determined that none of the provisions of s. 22(4) apply to the personal information. Turning to s. 22(3), I have found that s. 22(3)(d) applies to all of the personal information in dispute because it relates to the interviewees' employment histories. For that reason, disclosure is presumed to be an unreasonable invasion of the interviewees' personal privacy.

[80] After considering s. 22(2) and all of the relevant circumstances, I find that releasing some of the personal information in dispute would be desirable for the purpose of subjecting the Commission to public scrutiny pursuant to s. 22(2)(a) and this weighs in favour of disclosing that information. However, I also find that the applicant has not sufficiently explained how disclosure is likely to promote public health or safety, so s. 22(2)(b) does not weigh in favour of disclosure. Furthermore, I find that all of the personal information in dispute was supplied to the Commission in confidence pursuant to s. 22(2)(f) which weighs against disclosing it.

[81] Taking all of the above into consideration, I conclude that the applicant has not rebutted the presumption that disclosing the personal information in dispute would be an unreasonable invasion of third-party personal privacy pursuant to s. 22(3)(d). Therefore, I find that s. 22(1) requires the Commission to withhold it on that basis.

CONCLUSION

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

1. Subject to item #2 below, I require the Commission under s. 22(1) to refuse to disclose all of the information in dispute.

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2. The Commission is not authorized or required under s. 22(1) to refuse to disclose the information that I have highlighted in green on pages 2-4, 6-8, 11-15, 17-21, 27, 29, 31-35, 41, 65, 71, 73, 76-80, 90, 104, and 125 in a copy of the records that will be provided to the Commission along with this order.
 3. I require the Commission to give the applicant access to the information described at item #2 above.
 4. The Commission must concurrently copy the OIPC registrar of inquiries when it provides the applicant with the information described at item #2 above and all accompanying cover letters.

Pursuant to s. 59(1) of FIPPA, the Commission is required to comply with this order by November 13, 2024.

September 27, 2024

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

OIPC File No.: F22-91834