



Order F25-35

## MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Carol Pakkala  
Adjudicator

May 15, 2025

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**Summary:** An applicant requested access to information from the Ministry of Children and Family Development (Ministry). The Ministry provided records but withheld some information from them under various sections of the *Freedom of Information and Protection of Privacy Act* (FIPPA), the *Child, Family and Community Service Act* (CFCSA), and the *Youth Criminal Justice Act* (YCJA). Regarding the provisions of FIPPA, the adjudicator found that: s. 3(3)(f) (records created by or for an officer of the Legislature) applied to exclude certain records from the scope of FIPPA; s. 14 (solicitor client privilege) authorized the Ministry to withhold information; and the Ministry was required to withhold certain information under s. 22(1) (unreasonable invasion of a third party privacy). The adjudicator also found that ss. 77(1) (identity of a person who made a child protection report) and 77(2)(b) (information supplied in confidence during an assessment or investigation) of the CFCSA applied to all the information the Ministry withheld under those sections.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c 165, ss. 3(3)(f), 14, 22(1), 22(2), 22(2)(a), 22(2)(e), 22(2)(f), 22(3)(a), 22(3)(d), 22(3)(e), 22(3)(f), 22(4)(f), 44(1)(b), 44(2.1), 58; and *Child, Family and Community Service Act*, RSBC 1996 c 46, ss. 2, 77(1), 77(2)(b).

## INTRODUCTION

[1] An applicant requested access to his personal information from the Ministry of Children and Family Development (the Ministry). The Ministry had been involved with, and provided services to, the applicant's family.

[2] The Ministry asserted that some of the records were outside the scope of FIPPA<sup>1</sup> pursuant to ss. 3(3)(f) (records created by or for an officer of the Legislature) and 3(7) (conflict between provisions of FIPPA and another Act).

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<sup>1</sup> From this point forward, unless otherwise specified, whenever I refer to section numbers, I am referring to sections of FIPPA.

[3] The Ministry withheld information from the records it did disclose under ss. 14 (solicitor client privilege), 15 (disclosure harmful to law enforcement), and 22 (unreasonable invasion of third party privacy). In addition, the Ministry withheld other information under s. 77 of the *Child, Family and Community Services Act* (CFCSA) (exceptions to access rights under FIPPA) and s. 110(1) of the federal *Youth Criminal Justice Act* (YCJA) (publication of information would identify a young person).<sup>2</sup>

[4] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision to withhold information. The Ministry subsequently released to the applicant all the records they originally withheld<sup>3</sup> under s. 110(1) of the YCJA.<sup>4</sup> For this reason, those records are no longer at issue, and I will not consider them further. The OIPC's mediation and investigation process did not resolve all the outstanding issues, and the matter proceeded to this inquiry.

[5] During the inquiry, the Ministry withdrew its reliance on s. 15 and provided the applicant with the information that had been withheld under that exception.<sup>5</sup> In addition, the OIPC invited the Representative for Children and Youth (Representative) to make submissions regarding the s. 3(3)(f) issue.<sup>6</sup> The applicant, the Ministry and the Representative all provided written inquiry submissions. The OIPC allowed the Ministry to submit some of its affidavit evidence *in camera*.

## ISSUE AND BURDEN OF PROOF

[6] The issues I must decide in this inquiry are as follows:

1. Do some of the records requested by the applicant fall outside the scope of FIPPA pursuant to s. 3(3)(f)?
2. Is the Ministry authorized to refuse to disclose some information under ss. 77(1) and/or 77(2)(b) of the CFCSA?
3. Is the Ministry authorized to refuse to disclose the information at issue under s. 14?
4. Is the Ministry required to refuse to disclose the information at issue under s. 22?

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<sup>2</sup> *Child, Family and Community Services Act*, RSBC 1996 c. 46. *Youth Criminal Justice Act*, SC 2002, c. 1.

<sup>3</sup> OIPC Fact Report at para 5.

<sup>4</sup> Section 110 of the YCJA prohibits the publication of the names or other information that would identify a young person dealt with under that Act.

<sup>5</sup> Ministry's initial submissions at para 11.

<sup>6</sup> Under s. 54 the OIPC can invite any person it considers appropriate to participate in an inquiry.

[7] Section 57 of FIPPA sets out who has the burden of proving that an applicant should or should not be given access to a particular piece of information. The Ministry has the burden of establishing that s. 14 applies and that the information at issue under s. 22 is personal information. The applicant bears the burden of proving that the disclosure of personal information withheld under s. 22 would not be an unreasonable invasion of third party personal privacy.<sup>7</sup>

[8] Section 57 is silent about who has the burden of establishing that s. 3 of FIPPA or s. 77 of CFCSA applies. Consistent with previous orders, I consider the Ministry has the burden of establishing that s. 3 of FIPPA and s. 77 of CFCSA applies to the records.<sup>8</sup>

## **DISCUSSION**

### **Background**

[9] The CFCSA is the legislative framework governing the Ministry's provision of services, including child protection services, to families. The CFCSA provides, in s. 2, that it must be interpreted and administered so that the safety and well-being of children are the paramount considerations. The provision of child protection services across the province is delegated to child protection workers.

[10] Child protection services were provided to the applicant's family. These services later shifted to non-protection services until the applicant reached the age of majority (19).<sup>9</sup>

[11] The Representative's function, in part, is to provide independent support, including advocacy, to families receiving services. The Representative was involved in providing support to the applicant's family.<sup>10</sup>

### **Records and information at issue**

[12] The responsive records total 4911 pages and consist of a wide variety of documents in the applicant's Ministry case file. The information at issue appears on approximately 432 of those pages. This information consists of portions of Ministry case notes, notes of interviews with third parties, and portions of various other documents including email correspondence.

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<sup>7</sup> Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

<sup>8</sup> Regarding s. 3 FIPPA: Order F23-08, 2023 BCIPC 10 (CanLII) at para 6; Order F15-61, 2015 BCIPC 67 (CanLII) at para 7; Order 03-06, 2003 CanLII 49170 (BC IPC) at para 6. Regarding s. 77 CFCSA: Order F23-15, 2023 BCIPC 18 (CanLII) at para 7 citing Order F21-35, 2021 BCIPC 43 (CanLII) at paras 20-22 and Order F21-64, 2021 BCIPC 75 (CanLII) at para 10.

<sup>9</sup> Ministry Social Worker's affidavit at para 8.

<sup>10</sup> Affidavit of the Executive Director, Advocacy and Youth Engagement, Office of the Representative for Children and Youth (Executive Director) at paras 5 and 8.

[13] The Ministry provided some, but not all, of the information at issue for my review in this inquiry. Specifically, the Ministry provided me with copies of the information it withheld under s. 22(1) and under s. 77 of the CFCSA.

[14] The Ministry chose not to provide me with the information it withheld under ss. 3(3)(f) and 14. Instead, for both sections, the Ministry relies on the context provided by the records as a whole and on the detailed submissions and affidavit evidence.

[15] For s. 3, the Ministry relies on the affidavit evidence of a Ministry social worker (Social Worker) and on the affidavit evidence the Representative provided from its Executive Director, Advocacy and Youth Engagement (Executive Director). For s. 14, the Ministry relies on the affidavit evidence of the Social Worker and of a Ministry lawyer.

[16] After carefully reviewing the evidence, submissions, and the records for context, I have decided that I have enough information to make my findings respecting ss. 3(3)(f) and 14 without seeing those records.

### **Scope of FIPPA - s. 3(3)(f)**

[17] Section 3(3)(f) provides that FIPPA does not apply to certain records. The relevant parts of s. 3 say as follows:

3 (1) Subject to subsections (3) to (5), this Act applies to all records in the custody or under the control of a public body, including court administration records.

...

(3) This Act does not apply to the following:

(f) a record that is created by or for, or is in the custody or under the control of, an officer of the Legislature and that relates to the exercise of functions under an Act;

[18] Prior to amendments to FIPPA in 2021, s. 3(1)(c) was the section dealing with these types of records. The wording of s. 3(3)(f) is essentially the same as the prior wording in s. 3(1)(c) so I consider the prior orders under that section to be applicable to s. 3(3)(f).

[19] Previous orders establish that the purpose of this section is to facilitate, and prevent interference with, the exercise of an officer of the Legislature's functions under an enactment.<sup>11</sup> They have also said that for this section to apply, the following three criteria must be met:

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<sup>11</sup> Order F16-07, 2016 BCIPC 9 (CanLII) at para 9.

1. An officer of the Legislature (officer) must be involved;
2. The records must either:
  - a. have been created by or for the officer; or
  - b. be in the custody or under the control of the officer; and
3. The records must relate to the exercise of the officer's functions under an Act.<sup>12</sup>

[20] The Ministry takes the position that s. 3(3)(f) applies to some of the records because they were either created by the Representative and the Ombudsperson or were created for them by the Ministry.<sup>13</sup> The Representative takes the same position with respect to various email strings saying it created those strings, or they were created for it by its staff.<sup>14</sup>

[21] In my view, the first two criteria of s. 3(3)(f) are clearly met. The definition of "officer of the Legislature" in Schedule 1 specifically includes the Representative and the Ombudsperson which satisfies the first criterion. For the second, I accept the evidence of the Social Worker and the Executive Director. Their evidence satisfies me that all the information withheld under s. 3(3)(f) was created "by" or "for" the Representative or the Ombudsperson.

[22] The final criterion requires that the records relate to the exercise of the officers' functions under an enactment. Previous orders have drawn a distinction between the administrative and operational records of an officer. Operational records relate to the exercise of an officer's statutory functions and fall outside the scope of FIPPA per s. 3(3)(f), whereas administrative records do not.<sup>15</sup>

[23] Operational records include case-specific records received or created during the course of opening, processing, investigating, mediating, settling, inquiring into, considering taking action on or deciding a case.<sup>16</sup> For example, records relating to the investigation and disposition of complaints by the Ombudsperson have been held to be operational records falling outside the scope of FIPPA.<sup>17</sup> Administrative records, on the other hand, do not relate to specific case files, but instead include things like personnel, competition and office management files.<sup>18</sup>

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<sup>12</sup> Order 01-43, 2001 CanLII 21597 (BC IPC) at paras 13-14.

<sup>13</sup> Ministry's initial submission at para 43.

<sup>14</sup> Representative's submission at paras 3, 29, and 40.

<sup>15</sup> Order F20-11, 2020 BCIPC 13 (CanLII) at para 14 citing Order 01-43, 2001 CanLII 21597 (BC IPC) at paras 28-30.

<sup>16</sup> Adjudication Order No. 17 at para 22. This decision is available on the OIPC website at <https://www.oipc.bc.ca/adjudications/1180>.

<sup>17</sup> Order F07-07, 2007 CanLII 10862 (BC IPC) at para 14.

<sup>18</sup> Adjudication Order No. 6 at para 14. This decision is available on the OIPC website at <https://www.oipc.bc.ca/adjudications/1169>.

[24] The Ministry says, and I agree, that purely administrative records of officers of the Legislature would normally only be in the custody or under the control of those officers, not of the Ministry.<sup>19</sup> I am satisfied that none of the records that I found above were created by or for the Representative and the Ombudsperson are administrative.

[25] I accept the evidence of the Executive Director that the records of the Representative are part of its advocacy file which is in the custody of the Representative and that they relate to the exercise of the Representative's functions.<sup>20</sup>

[26] I also accept the evidence of the Social Worker that the records of the Ombudsperson were either created by the Ombudsperson's office or for the Ombudsperson's office in fulfillment of its statutory mandate.<sup>21</sup> I find all of these records are operational and relate to the exercise of the Representative or the Ombudsperson's statutory functions.

[27] In conclusion, I find that s. 3(3)(f) applies to the information and records withheld under that section.

### **Identity of person who made a child protection report - CFCSA s. 77(1)**

[28] Section 77(1) of the CFCSA protects the identity of a person who has made a child protection report to a director under s. 14 of the CFCSA. It says:

77(1) A director must refuse to disclose information in a record to a person who has a right of access to the record under the *Freedom of Information and Protection of Privacy Act* if the disclosure could reasonably be expected to reveal the identity of a person who has made a report under section 14 of this Act and who has not consented to the disclosure.

[29] Section 14 of the CFCSA requires a person who has reason to believe a child needs protection under s. 13 to “promptly report the matter to a director or a person designated by a director.”

[30] Section 13 sets out a list of circumstances where a child needs protection. For instance, s. 13(1)(a) applies where a child has been, or is likely to be, physically harmed by their parent. Section 16 requires a director who receives a report either to assess the information in it or promptly refer the report to another director.

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<sup>19</sup> Ministry's initial submission at para 53.

<sup>20</sup> Executive Director's affidavit at para 13.

<sup>21</sup> Social Worker's affidavit at para 14.

*Parties' positions - CFCSA s. 77(1)*

[31] The Ministry says it is clear on the face of the records that the withheld information could reasonably be expected to reveal the identities of people who have made reports under s. 14 of the CFCSA.<sup>22</sup> It also says that the applicant is a central figure in the events described in the reports and could use his knowledge of the events to identify who made reports even if their identities might not be clear to others.<sup>23</sup>

[32] The applicant does not say anything specifically about the application of s. 77(1) of the CFCSA.

*Analysis - CFCSA s. 77(1)*

[33] On my review of the records, I am satisfied that the information the Ministry withheld under s. 77(1) would reveal, directly or indirectly, the identity of a person who made a child protection report under s. 14. The withheld information expressly includes the names and other identifying details of the people who made reports. There is also some information that would indirectly reveal the identity of one of those people to the applicant because the applicant himself was involved.

[34] I find that s. 77(1) applies to all the information the Ministry refused to disclose under that provision.

**Information supplied in confidence during an assessment or investigation - CFCSA s. 77(2)(b)**

[35] Section 77(2)(b) of the CFCSA protects information supplied in confidence during an assessment or investigation. It says:

77(2) A director may refuse to disclose information in a record to a person who has a right of access to the record under the *Freedom of Information and Protection of Privacy Act* if

...

(b) the information was supplied in confidence, during an assessment under section 16(2)(b.1) or an investigation under section 16(2)(c), by a person who was not acting on behalf of or under the direction of a director.

[36] Section 16(2) sets out what a director may do on receiving a child protection report. In part, it provides that a director may conduct an assessment

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<sup>22</sup> Ministry's initial submission at para 72.

<sup>23</sup> Ministry's initial submission at para 74.

of the family (s. 16(2)(b.1)) or investigate the child's need for protection (s. 16(2)(c)).

[37] For s. 77(2)(b) to apply, there must be evidence showing all of the following:

1. The information must have been provided to the Ministry by a person who was not acting on behalf of or under the direction of a director;
2. The information must have been provided in the course of an assessment under s. 16(2)(b.1) or an investigation under s. 16(2)(c); and
3. The information must have been supplied in confidence.<sup>24</sup>

*Parties' positions - CFCSA s. 77(2)(b)*

[38] The Ministry says that the information it withheld under s. 77(2)(b) relates to confidential interviews of third parties. The Ministry also says it withheld information relating to its assessment of the safety of the applicant, his need for continued services, and the family's need for services from the Ministry.<sup>25</sup>

[39] The Ministry says that based on the context within which the s. 77(2)(b) information was gathered and its sensitive content, it is reasonable to conclude that it was supplied in confidence.<sup>26</sup>

[40] To support its position, the Social Worker deposes that the Ministry was conducting both an assessment (under s. 16(2)(b.1)) and an investigation (under s. 16(2)(c)) of the applicant's family at the time the information was supplied, and that the two processes were, as is normally the case, "related and overlapping."<sup>27</sup>

[41] The Social Worker also deposes that it is the practice of Ministry social workers, who interview collateral sources of information during an assessment or investigation, to advise the source that the information the source provides will be treated confidentially by the Ministry.<sup>28</sup>

[42] The applicant does not say anything specifically about the application of s. 77(2)(b).

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<sup>24</sup> Order F24-93, 2024 BCIPC 106 (CanLII) at para 42 citing Order F21-35, 2021 BCIPC 43 (CanLII) at para 134.

<sup>25</sup> Ministry's initial submission at para 78.

<sup>26</sup> Ministry's initial submission at para 80.

<sup>27</sup> Social Worker's affidavit at para 26.

<sup>28</sup> Social Worker's affidavit at para 30.



*Analysis - CFCSA s. 77(2)(b)*

[43] The information the Ministry withheld under s. 77(2)(b) is found in correspondence from people involved in the applicant's life or notes of interviews or phone calls with people involved in the applicant's life.

[44] I find that all the information withheld under s. 77(2)(b) was supplied by persons who were not acting on behalf of or under the direction of a director. In addition, while some of the withheld information consists of notes generated by Ministry employees, I find that these notes record information supplied to them by persons who were not acting on behalf of or under the direction of a director in the course of an assessment or investigation.

[45] I accept the Ministry's submissions and evidence that it was engaged in an assessment under s. 16(2)(b.1) and/or an investigation under s. 16(2)(c) when the information withheld under s. 77(2)(b) was collected. The applicant has not challenged this claim, and I can readily infer from the circumstances, and from the contents of the withheld information, that such actions were underway.

[46] As for whether the information was supplied in confidence, given the context and the content of the information withheld under s. 77(2)(b), and without revealing the withheld information itself, I have no difficulty concluding that it was.

[47] In summary, I find that s. 77(2)(b) applies to all the information the Ministry refused to disclose under that provision.

**Solicitor client privilege - s. 14**

[48] Section 14 allows a public body to refuse to disclose information that is subject to solicitor client privilege. The term "solicitor client privilege" in s. 14 encompasses both legal advice privilege and litigation privilege.<sup>29</sup> I can readily infer from the Ministry's submission that it is relying on legal advice privilege to withhold information. The withheld information is in notes of a telephone conversation.

*Legal advice privilege*

[49] Legal advice privilege promotes full and frank disclosure between solicitor and client, thereby promoting "effective legal advice, personal autonomy (the

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<sup>29</sup> *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 26.

individual's ability to control access to personal information and retain confidences), access to justice and the efficacy of the adversarial process."<sup>30</sup>

[50] Legal advice privilege attaches to communications that:

- are between a solicitor and their client,
- entail the seeking or giving of legal advice, and
- are intended by the parties to the communication to be confidential.<sup>31</sup>

[51] Not every communication between a solicitor and client is privileged merely because it is a communication between those parties, but if the above three conditions exist, legal advice privilege applies.<sup>32</sup>

[52] In addition to the communications set out above, legal advice privilege also applies to the "continuum of communications" related to the seeking and giving of legal advice, including the information furnished by the client to the lawyer as part of seeking legal advice and internal client communications that comment on the legal advice received and its implications.<sup>33</sup>

#### *Parties' submissions - s. 14*

[53] The Ministry's lawyer says he reviewed the withheld information and confirms its notes of a confidential telephone conversation between the Ministry's then lawyer and a Ministry social worker. He says he cannot be more specific about the content of the notes without reflecting the legal advice sought or given or allowing an individual to draw accurate inferences as to the legal advice sought or given.<sup>34</sup> The Ministry says this information is protected by legal advice privilege.

[54] The applicant does not specifically address the application of s. 14.

#### *Analysis - s. 14*

[55] For the reasons that follow, I am satisfied that the elements of legal advice privilege are met in this case.

[56] I accept the evidence of the Ministry's lawyer<sup>35</sup> and the Social Worker who each reviewed the withheld information. They say this information is a record of

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<sup>30</sup> *College*, *supra* note 30 at para 30.

<sup>31</sup> *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at p. 837.

<sup>32</sup> *Ibid* at p. 829.

<sup>33</sup> *Bilfinger Berger (Canada) Inc v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24.

<sup>34</sup> Lawyer's affidavit at paras 6-7.

<sup>35</sup> The lawyer is a practicing lawyer who has a professional obligation to ensure that privilege is properly claimed, and I am required to give some weight to the judgment of a practicing lawyer

notes of a telephone conversation between the Ministry's lawyer and the Social Worker. I am satisfied that this conversation was about legal advice and was intended to be confidential. I have no evidence to the contrary and the applicant does not dispute that legal advice privilege applies to this information.

[57] I find therefore that the Ministry has established that the withheld information is protected by legal advice privilege and is authorized to refuse to disclose it under s. 14.

### ***Unreasonable invasion of third party personal privacy - s. 22***

[58] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. This provision of FIPPA is mandatory, meaning a public body has no discretion and is required by law to refuse to disclose this information. Previous orders have considered the proper approach to the application of s. 22 and I apply those same principles here.<sup>36</sup>

[59] The Ministry has withheld the following types of information under s. 22: names; birthdates; addresses and phone numbers; social insurance numbers; and information about physical and mental health, employment, education, opinions, finances, criminal records, and law enforcement.<sup>37</sup>

#### *Personal information*

[60] Section 22(1) only applies to personal information, so the first step in a s. 22 analysis is to decide if the information in dispute is personal information.

[61] 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."<sup>38</sup> Whether information is "contact information" depends upon the context in which it appears.<sup>39</sup>

[62] I will first consider whether the information in the records in dispute is about identifiable individuals. I will then consider whether any of the information that I find is about identifiable individuals is contact information.

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when adjudicating claims of solicitor client privilege. *British Columbia (Ministry of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para 86.

<sup>36</sup> Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58 sets out a summary of the steps in a s. 22 analysis which I follow here.

<sup>37</sup> Social Worker's affidavit at para 33.

<sup>38</sup> FIPPA, Schedule 1.

<sup>39</sup> Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

*Parties' positions - personal information*

[63] The Ministry says the information withheld in the Records under s. 22 is the personal information of various third parties.<sup>40</sup> The Ministry further says that public body employees are third parties for the purposes of s. 22 and that the personal bank account numbers of third parties are personal information.<sup>41</sup>

[64] The applicant does not comment specifically on whether any of the withheld information is personal information. I understand the applicant's position to be that the information should not be withheld because he knows the individuals. The applicant says the records can be severed to abbreviate the names of third parties by showing only their first or last name and to paraphrase the withheld information.<sup>42</sup>

*Analysis - personal information*

[65] I find that all the information severed under s. 22 is personal information. This information either directly identifies individuals by name or initials or is reasonably attributable to a particular individual, on its own or when combined with other available sources of information.

[66] The information withheld under s. 22 includes details about matters related to education, employment, health, finances, criminal activity and law enforcement, and other individual activities and relationships. There is a small amount of information that is simultaneously the applicant's and various third parties' personal information because it is about his interactions with those third parties and what they have said about him.

[67] Other information withheld under s. 22 consists of a cell phone number, email and letter mail addresses, and bank account numbers. I find that the cell phone number is not contact information because it is marked as personal and the business contact number for that individual has already been disclosed in the same record. I find that all of the withheld email and letter mail addresses are not contact information because it is clear they are not included in the records for the purpose of contacting those individuals at a place of business. For the bank account numbers found on the cheques, I find these are easily attributed to particular individuals given what has already been disclosed from the face of those records. I find that all this information is also personal information.

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<sup>40</sup> Ministry's initial submission at para 96.

<sup>41</sup> Ministry's initial submission at paras 94-95.

<sup>42</sup> Applicant's submission at p. 2.

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

[68] The next step in the s. 22 analysis is to determine whether the personal information falls into any of the categories set out in s. 22(4) and is, therefore, not an unreasonable invasion of a third party's personal privacy. The Ministry submits that s. 22(4) does not apply to any of the information it withheld under s. 22. I find that none of the provisions in s. 22(4) apply.

[69] While neither party raised it, I have considered whether one piece of information at issue falls under s. 22(4)(f) because it is about payment for services. Section 22(4)(f) says it is not an unreasonable invasion of a third party's personal privacy if the disclosure reveals financial and other details of a contract to supply goods or services to a public body. In my view, this piece of information would not reveal details of a contract to supply services to the Ministry. Instead, it is about the provision of services to a named client. I conclude therefore that s. 22(4)(f) does not apply.<sup>43</sup>

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

[70] The third step in the s. 22 analysis is to determine whether any presumptions set out in s. 22(3) apply. Section 22(3) sets out circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[71] The Ministry says ss. 22(3)(a), (d), and (e) apply so I consider those provisions below. I also consider whether some of the withheld information falls under s. 22(3)(f).

[72] The relevant portions of s. 22(3) say:

A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,  
...
- (d) the personal information relates to employment, occupational or educational history,
- (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,

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<sup>43</sup> For similar reasoning, see Order F20-28, 2020 BCIPC 34 (CanLII) at para 29.

- (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness,

...

Medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation – s. 22(3)(a)

[73] The Ministry says that the presumption under s. 22(3)(a) applies to numerous portions of the information it withheld under s. 22. The Ministry also says that a considerable amount of this personal information is inextricably intertwined with other information throughout the records. This information includes details about the medical conditions, diagnoses, and treatment of multiple third parties.

[74] I agree with the Ministry that disclosure of a significant portion of the personal information would reveal third parties' medical history, diagnosis, condition, treatment, and evaluation within the meaning of s. 22(3)(a). I find that disclosure of this personal information is presumed to be an unreasonable invasion of the personal privacy of various third parties.

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

[75] The Ministry says there are numerous instances in the records where information relates to employment or educational history of third parties. This information includes details about employment status and leaves, as well as education levels attained by various third parties. I agree with the Ministry that disclosure of this personal information would reveal third parties' employment, occupational or educational history within the meaning of s. 22(3)(a). I find the disclosure of this information is also presumed to be an unreasonable invasion of the personal privacy of various third parties.

Obtained on a tax return – s. 22(3)(e)

[76] The Ministry says that it withheld personal information that was obtained on a tax return. This information includes net income received and its source. I agree with the Ministry that disclosure of this personal information would reveal information obtained on a tax return within the meaning of s. 22(3)(e). I find the disclosure of this information is also presumed to be an unreasonable invasion of the personal privacy of various third parties.

Financial information – s. 22(3)(f)

[77] Previous OIPC orders have found s. 22(3)(f) applies to the bank account information of a third party<sup>44</sup> and to personal information on a cheque.<sup>45</sup>

[78] I am satisfied that s. 22(3)(f) applies to individuals' bank account numbers on the cheques in the records. I find the disclosure of this information is presumed to be an unreasonable invasion of the personal privacy of these individuals.

[79] In summary, I find that ss. 22(3)(a), (d), (e) and/or (f) apply to most, but not all, of the personal information in dispute.

*Relevant circumstances – s. 22(2)*

[80] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information while considering all relevant circumstances, including (but not limited to) those set out in s. 22(2). It is at this step that any applicable s. 22(3) presumptions may be rebutted.

[81] The Ministry submits argument on the application of ss. 22(2)(a), (e), and (f). Sections 22(2)(a), (e), and (f) say as follows:

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(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,

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

[82] The only thing the applicant said about the circumstances that should be taken into account is that he knows the individuals so their personal information should not be withheld from him.

[83] I have considered the s. 22(2) circumstances the Ministry raises and find that disclosing the personal information at issue would not be desirable for the

<sup>44</sup> Order F14-12, 2014 BCIPC 15 (CanLII) at para 45.

<sup>45</sup> Order F18-06, 2018 BCIPC 8 (CanLII) at para 26.

purpose of subjecting the Ministry's activities to public scrutiny, disclosing some of it will expose third parties unfairly to financial harm, and most of the information was clearly supplied in confidence. I also considered the fact that much of the information is sensitive. None of those circumstances weigh in favour of disclosure.

[84] The only circumstances that weigh in favour of disclosure are the fact that the applicant clearly already knows some of the information and some of it is his personal information. I find however, that his personal information is inextricably intertwined with that of various third parties.

*Requirement to give applicant a summary - s. 22(5)*

[85] Section 22(5) requires a public body withholding information about an applicant under s. 22(1) to give the applicant a summary of the information. It says:

(5) On refusing, under this section [s. 22], to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless

- a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information

[86] The Ministry says it is not possible to create a summary without disclosing the identify of the third party who supplied the information. The applicant says that information should not be withheld because he knows the individuals. The applicant further says the records can be severed to abbreviate the names of third parties by showing only their first or last name and to paraphrase the withheld information.

[87] I find that s. 22(5)(a) applies. The applicant was intimately involved in the events to which the withheld personal information relates. I have no doubt that any summary of the information supplied in confidence to the Ministry would reveal to the applicant who supplied it. For these reasons, I find that the Ministry is not required to prepare a summary of any of the personal information about the applicant that was supplied to it in confidence.

*Conclusion, s. 22(1)*

[88] I found that all the information withheld by the Ministry under s. 22(1) is personal information and that s. 22(4) does not apply. I also found that a presumption of an unreasonable invasion of third party personal privacy under ss. 22(3)(a), (d), (e), and (f) applies with respect to most, but not all, of the withheld information.



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[89] After considering the relevant circumstances under s. 22(2) (both listed and unlisted), I conclude that disclosing any of the personal information would be an unreasonable invasion of a third party's personal privacy. The Ministry must withhold all the information it withheld under s. 22(1).

## **CONCLUSION**

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

1. I confirm the decision of the Ministry to refuse to disclose the information to which it applied s. 3(3)(f).
2. I require the Ministry to withhold information under s. 77(1) of the CFCSA;
3. I confirm the Ministry's decision to withhold information under s. 77(2)(b) of the CFCSA;
4. I confirm the Ministry's decision to withhold information under s. 14;
5. I require the Ministry to refuse access to the information it withheld under s. 22(1).

May 15, 2025

## **ORIGINAL SIGNED BY**

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Carol Pakkala, Adjudicator

OIPC File No.: F22-91446