Order F25-61

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 71 (COMOX VALLEY)

Carol Pakkala
Adjudicator

August 7, 2025

CanLII Cite: 2025 BCIPC 71
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 71

Summary: An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to all records related to himself and his children for a three year period. The Board of Education of School District No. 71 (School District) disclosed responsive records but withheld some information under ss. 13(1) (advice or recommendations), 14 (solicitor client privilege), and 22(1) (unreasonable invasion of third party personal privacy). The adjudicator confirmed the School District's decision to withhold the information in dispute under ss. 13 and 14 and required the School District to withhold the information in dispute under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 13), 14, 22(1), 22(2), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), 22(4)(c); *Family Law Act*, SBC 2011, c 25, s. 41; and *School Act*, RSBC 1996, c 412, s. 9.

INTRODUCTION

[1] A parent of two students (applicant) asked the Board of Education of School District No. 71 (School District) for records related to him and, or his two children (the children) for a three year period.

[2] The School District provided the applicant with responsive records but withheld some information under ss. 13(1) (advice or recommendations), 14 (solicitor client privilege), and 22(1) (unreasonable invasion of third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).[1]

[1] From this point forward, unless otherwise specified, whenever I refer to section numbers, I am referring to sections of FIPPA.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the School District's decision. OIPC's mediation process did not resolve the issues, and the matter proceeded to this inquiry.

[4] During the inquiry, the School District reconsidered some of the information it originally withheld. OIPC confirmed those pages were released to the applicant as a result of this reconsideration. Since the applicant now has access to those pages, I find that they are no longer at issue in this inquiry, and I will not consider them further.[2]

Preliminary Matters

Applicant's further submission

[5] OIPC's Notice of Written Inquiry (Notice) lists the issues to be adjudicated at inquiry and sets the schedule for submissions. This schedule allows for the public body to provide an initial submission, followed by the applicant, and then the public body can submit a final submission replying to what the applicant has said.

[6] Both parties followed the submission schedule set by OIPC's Registrar of Inquiries (Registrar) in this matter. After the submissions phase closed, and without OIPC approval, the applicant sent in a further submission, copied to the School District.[3]

[7] The Registrar informed the applicant that the additional submission would not form part of the inquiry. He also stated that the adjudicator may seek further submissions from the parties if fairness requires it.[4]

[8] After reviewing the submissions of both parties filed in accordance with the schedule, I find that I do not require additional submissions from either party to fairly decide the issues in this inquiry. For this reason, I will not consider the applicant's additional submission.

[9] I note that the applicant took the position with the Registrar that he views the release of additional pages to him as a submission by the School District in this inquiry. I did not see those pages and I did not review any additional information from the School District. I merely confirmed that those pages were no longer at issue in this inquiry.

---

[2] OIPC's Registrar's email dated July 22, 2025.
[3] Applicant's email to the Registrar dated June 16, 2025.
[4] Registrar's email to the applicant dated June 16, 2025.

Additional issues

[10] In his submission, the applicant describes what he sees as the issues before me in this inquiry. He correctly identifies the issues laid out in the Notice and seeks to add issues. For example, he seeks to "ensure [his] legal right to access his Children's educational information";[5] and to revisit an alleged former refusal by the School District to provide access to records.[6]

[11] I decline to consider any new issues. The Notice clearly sets out the issues for this inquiry and states that parties cannot add issues in the inquiry without OIPC's prior consent. Furthermore, even where an applicant does request consent to add a new issue, OIPC will only allow a party to add a new issue at the inquiry stage where there are exceptional circumstances to justify the late addition.

[12] One of the reasons for OIPC's policy is that adding new issues at the inquiry stage circumvents and undermines OIPC's early resolution procedures, with the result that matters which could have been addressed more efficiently through mediation, end up in the more formal process of an inquiry where the resolution can be more time consuming and costly for both OIPC and the parties.

[13] The applicant did not seek permission to add any new issues, and I am not satisfied that it would be fair to add any new issues now. As a result, I decline to add any of the new issues raised by the applicant. I have focused my discussion below only on the evidence and submissions relevant to deciding the ss. 13, 14, and 22 issues.

Matters outside the scope of this inquiry

[14] Both parties make submissions about the context of the applicant's access request. This context appears to me to be quite lengthy and complex. Both parties also provide evidence related to this context attached as exhibits to affidavits.[7]

[15] I can see that the context involves contentious family law matters and includes court orders addressing parental rights and access to the children. I can see the context also includes parallel civil and criminal proceedings, the involvement of the Ministry of Children and Family Development, and extensive allegations of wrongdoing that the applicant and his former spouse, who is the

[5] Applicant's submission at para 14 d.
[6] Applicant's submission at para 15.
[7] For example, the School District provides an affidavit from its Assistant Superintendent attached to which are copies of four family court orders. The applicant provides his own affidavit attached to which are 16 exhibits consisting of copies of various orders, a factum, statement of claim, psychiatric assessments, emails, notes, and a letter.

mother of the children, have made against one another. The applicant's submission also contains extensive allegations of wrongdoing by the School District, including defamation and improper conduct.

[16] I wish to be clear at the outset that while I appreciate the significance of these issues to the parties, they are outside of my jurisdiction. Much of the information provided is not relevant to the application of FIPPA. While I have reviewed this information, I will only refer to those portions that relate to the issues I must decide in this inquiry.

ISSUES AND BURDEN OF PROOF

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

1. Section 13 authorizes the School District to refuse to withhold the information at issue.

2. Section 14 authorizes the School District to refuse to withhold the information at issue.

3. Section 22(1) requires the School District to withhold the information at issue.

[18] Section 57 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 School District has the burden of proving it is authorized to withhold the information in dispute under ss. 13 and 14.

[19] The School District also has the burden of proving the information at issue under s. 22 is personal information.[8] The applicant has the burden of proving that the disclosure of personal information the School District has withheld under s. 22 would not be an unreasonable invasion of third party personal privacy.[9]

DISCUSSION

Background

[20] The School District is a public board of education governed by the *School Act.*[10] It provides publicly funded educational services to school-aged children in British Columbia.

[8] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.
[9] FIPPA, s. 57(2).
[10] RSBC 1996, c. 412.

[21] The applicant's children are students at the School District. The applicant and the children's mother were involved in what I can see are protracted and contentious family, criminal, and civil law proceedings. These proceedings impacted the interactions of the children with the School District.

[22] The applicant made the access request relevant to this inquiry on his own behalf and does not purport to be exercising the children's rights of access.[11]

Records and information at issue

[23] The responsive records total 165 pages. The School District has entirely withheld 65 pages under s. 14. The other 100 pages are communications and related documentation. Of these 100 pages, the School District has withheld information, under ss. 13 and 22(1), on approximately 54 of the 100 responsive pages.

Advice or recommendations – s. 13

[24] Section 13(1) authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister, subject to certain exceptions.

[25] The purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy making were subject to excessive scrutiny.[12]

[26] The first step in the s. 13 analysis is to determine whether the information at issue would reveal advice or recommendations developed by or for a public body or minister.

[27] "Advice" and "recommendations" have distinct meanings. "Recommendations" involve "a suggested course of action that will ultimately be accepted or rejected by the person being advised."[13] The term "advice" is broader than "recommendations"[14] and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.[15]

---

[11] Applicant's submission at para 2.
[12] *John Doe v Ontario (Finance)*, 2014 SCC 6 at para 45 [*John Doe*].
[13] *John Doe* at para 24.
[14] *John Doe* at para 24.
[15] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 at para 113.

[28] Advice usually involves a communication, by an individual whose advice has been sought, to the recipient of the advice, as to which courses of action are preferred or desirable.[16] Advice includes:

- a communication as to which courses of action are preferred or desirable,[17] and

- an opinion that involves exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision.[18]

[29] Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences to be drawn about advice or recommendations.[19]

[30] If the information at issue is "advice" or "recommendations", the next step is to determine whether any of the circumstances in ss. 13(2) or 13(3) apply. If information falls within ss. 13(2) or (3), the public body may not refuse to disclose it, even if it is "advice" or "recommendations" within the meaning of s 13(1).

Parties' submissions – s. 13(1)

[31] The School District describes the records containing the information it withheld under s. 13(1) as an email from the Royal Canadian Mounted Police (RCMP) providing the School District with advice and recommendations regarding the safety and management of the children and related procedures in anticipation of the applicant's possible attendance at the children's school.[20]

[32] The School District says it is plain on the face of the email that it contains advice and recommendations made by the RCMP to the School District. Further, the School District says the RCMP was clearly providing this advice and opinion in the exercise of their professional law enforcement judgment and with a view to assisting the School District in maintaining the safety of the children. [21]

[33] The applicant says "developed by or for" in s. 13(1) means the advice or recommendations must have been created either within the public body or for the public body by a public body, service provider or stakeholder. The applicant says the RCMP is not a public body, stakeholder or service provider under FIPPA.

---

[16] Order F25-24, 2025 BCIPC 30 at para 43.
[17] Order 01-15, 2001 CanLII 21569 at para 22.
[18] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para 103.
[19] See for example *John Doe* at para 24; Order 02-38, 2002 CanLII 42472 (BCIPC); Order F10-15, 2010 BCIPC 24 (CanLII); and Order F21-15, 2021 BCIPC 19 (CanLII).
[20] School District's initial submission at para 78.
[21] School District's initial submission at para 79.

Further, the applicant says the advice given in the email by the RCMP to the School District was long before legal advice was sought or obtained.[22]

Analysis – s. 13(1)

[34] For the reasons that follow, I find that the information withheld from the email would reveal advice or recommendations within the meaning of s. 13(1).

[35] The applicant argues that s. 13(1) does not apply to the RCMP because it is not a public body, stakeholder or service provider. Section 13(1) does not impose any statutory requirements for the source of any advice or recommendations. It only requires that the advice or recommendations be developed by or for a public body. Here, the public body is the School District and the RCMP is the provider of the information contained in the email.

[36] The applicant also argues that the information withheld from the email cannot be advice because the communication took place long before any legal advice. I understand the applicant's position to be that the information cannot be "advice" within the meaning of s. 13(1) because no legal advice was required as of the date of the email. Section 13(1) is not about legal advice, that type of information is covered by s. 14. Further, whether or not advice was required does not preclude a finding that it was given.

[37] I reviewed the email and can see that it is from the RCMP School Liaison officer to the School District's Superintendent.[23] Some information in the email was disclosed to the applicant. I am satisfied that the information that was withheld from the email is advice from the RCMP to the School District about a preferred course of future action for safety management matters. I find this information, if disclosed, would reveal advice developed for the School District.

Exceptions to refusing access under s. 13(1) – s. 13(2)

[38] The next step in the s. 13 analysis is to decide whether the information that I have found reveals advice or recommendations under s. 13(1), falls into any of the categories listed in s. 13(2). If s. 13(2) applies, the information cannot be withheld under s. 13(1).

[39] The School District says that s. 13(2) does not apply. The applicant says that ss. 13(2)(a) and (n) apply.

[22] Applicant's submission at paras 33-34.
[23] Records, p. 87.

s. 13(2)(a)

[40] Section 13(2)(a) says that a public body must not refuse to disclose "factual material" under s. 13(1). The applicant says the suggestion that the email contains no factual or allegedly factual information is nonsense. He says the withheld communication makes various factual statements concerning the applicant and the "advice" given affected the rights of the applicant.[24]

[41] The phrase "factual material" is not defined in FIPPA. However, the courts have interpreted "factual material" to mean "source materials" or "background facts in isolation" that are not necessary to the advice provided.[25] Where facts are selected and compiled by an expert as an integral component of their advice, then this information is not "factual material" under s. 13(2)(a).[26]

[42] The School District only withheld a portion of an email. I found that this portion is advice under s. 13(1). I find that this advice is not "factual material" within the meaning of s. 13(2)(a). The advice does not contain source material or background facts in isolation of the advice given. I find s. 13(2)(a) does not apply.

s. 13(2)(n)

[43] Section 13(2)(n) says that a public body must not refuse to disclose under s. 13(1) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[44] The applicant does not say, and I cannot see, how the withheld information is a decision. I find it is not a decision because it is advice about a decision that the School District will make in future and not the decision itself.

[45] I find s. 13(2)(n) does not apply.

Exception to refusing access under s. 13(1) – s. 13(3)

[46] Section 13(3) says that information that has been in existence for more than 10 years cannot be withheld under s. 13(1). I can see from the date on the email that it has not been in existence for more than 10 years, so I find that s. 13(3) does not apply.

---

[24] Applicant's submission at para 34.
[25] *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 94.
[26] Order F23-82, 2023 BCIPC 98 at para 36.

Conclusion – s. 13(1)

[47] In conclusion, I find that s. 13(1) authorizes the School District to refuse to disclose the information it withheld from the email.

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.[27] The School District says legal advice privilege applies to all of the s. 14 records. The School District also says that litigation privilege additionally applies to some of the withheld communications.[28]

[49] The records withheld under s. 14 are email communications.

Sufficiency of evidence to substantiate the s. 14 claim

[50] The School District did not provide me with the s. 14 records for my review. Instead, in addition to its submission on s. 14, the School District provided affidavit evidence from its lawyer (Lawyer). The Lawyer's affidavit includes a table describing the records withheld under s. 14 (s. 14 table of records).

[51] Section 44(1)(b) gives me, as the Commissioner's delegate, the power to order production of records to review them during the inquiry. However, given the importance of solicitor client privilege, and in order to minimally infringe on that privilege, I would only order production of records being withheld under s. 14 when it is absolutely necessary to fairly decide the issues.[29]

[52] In this case, I do not find it necessary to order production of the s. 14 records under s. 44. The Lawyer's sworn affidavit establishes that she is a practising lawyer and an officer of the court with a professional duty to ensure that privilege is properly claimed. Further, as a lawyer at the law firm representing the School District, she was directly involved in many of the communications. I also accept her evidence that she reviewed all of the s. 14 records.

---

[27] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para 26.
[28] School District's submissions at para 95.
[29] Order F19-14, 2019 BCIPC 16 at para 10; *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 at para 17; *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 at para 68.

[53] Considering all of the above, I am satisfied that I have sufficient evidence to make my s. 14 decision.

Legal advice privilege

[54] Legal advice privilege promotes full and frank disclosure between solicitor and client, thereby promoting "effective legal advice, personal autonomy (the individual's ability to control access to personal information and retain confidences), access to justice and the efficacy of the adversarial process."[30]

[55] 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.[31]

[56] 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.[32]

[57] 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 to internal client communications that comment on the legal advice received and its implications.[33]

Parties' submissions - s. 14

[58] The School District describes the s. 14 records as follows:

- confidential communications between the School District and its Lawyer about legal advice (including about the intention to seek the legal advice that was given);
- confidential internal School District communications about legal advice (including those about the intention to seek the legal advice that was given); and
- confidential communications discussing privileged legal advice shared within the context of a common interest (common interest privilege).[34]

---

[30] *College* at para 30.
[31] *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at p. 837.
[32] *Ibid* at p. 829.
[33] *Bilfinger Berger (Canada) Inc v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24.
[34] School District's initial submission at para 93.

[59] The applicant says that s. 14 does not apply. He makes specific submissions about the last categories of records, which I will explain and address later in this order.

Analysis - s. 14

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

[61] I accept the evidence of the Lawyer[35] who reviewed all of the s.14 records and who was also directly involved in some of those communications. She provides a detailed description of these records in the s. 14 table of records attached as an exhibit to her affidavit.

[62] The Lawyer attests the s. 14 records are communications for the purpose of seeking, formulating, and providing legal advice that she believes and understood were confidential between the School District and its lawyers. She also attests the s. 14 records include communications at the client level, the disclosure of which would reveal the substance of the solicitor client communications.[36]

[63] Considering the Lawyer's evidence and the descriptions in the s. 14 table of records, I accept that disclosing the s. 14 records would reveal communications protected by legal advice privilege, either directly or by inference.

Waiver

[64] The applicant says the School District waived privilege. Solicitor client privilege belongs to, and can only be waived by, the client.[37] To establish waiver, the party asserting it must show:

1. the privilege-holder knew of the existence of the privilege and voluntarily evinced an intention to waive it; or

2. in the absence of an intention to waive, fairness and consistency require disclosure.[38]

---

[35] 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 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.
[36] Lawyer's affidavit at para 6.
[37] *Canada (National Revenue) v. Thompson*, 2016 SCC 21 at para 39.
[38] *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 1983 CanLII 407 (BC SC), 45 B.C.L.R. 218 (S.C.) at para 6.

[65] Generally, disclosure of privileged information to anyone other than the client and the client's lawyer (or their agents) constitutes waiver of the privilege.[39]

[66] The applicant says that privilege was waived through disclosure to a third party, the RCMP.[40] The applicant comments specifically on the communication described in item 5 of the s. 14 table of records (Item 5). Item 5 is described in the s. 14 table of records as an email from the RCMP to the School District Principal referring to legal advice being sought by the School District.

[67] The applicant says the dominant purpose of Item 5 was not legal advice. He says it was about a shared plan between the School District and the RCMP to prevent him from attending school grounds.[41] The applicant offers no evidence of this purpose.

[68] The School District does not dispute that privileged information was shared with the RCMP. It says however, that this sharing is not a waiver of privilege and that it was shared in the context of common interest privilege.

[69] The School District says the uncontroverted evidence is that Item 5 is a communication about the legal advice the School District was seeking on matters concerning the applicant. The School District says the legal advice was shared with the RCMP on a confidential basis within the confines of a common interest in furtherance of a shared objective.[42] The School District says it has a shared interest and overlapping responsibilities with the RCMP in ensuring the safety and wellbeing of the children.[43]

[70] In my view, the School District did not waive privilege in these circumstances for two reasons. First, an understanding that the information is to be treated in confidence negates an intention to waive privilege.[44] Second, I find that common interest privilege applies.

[71] I agree with the School District that the evidence about the s. 14 records is uncontroverted. I accept that the School District shared the legal advice with the RCMP under an express understanding that the RCMP must maintain the confidentiality of the legal advice. There was no intentional or inadvertent waiver of privilege. Since there was no inadvertent waiver of privilege there are no policy reasons (fairness or consistency) that require disclosure of the legal advice.

---

[39] *Malimon v. Kwok*, 2019 BCSC 1972 at para 20.
[40] Applicant's submission at para 37.
[41] Applicant's submission at para 38.
[42] School District's reply submission at para 36.
[43] School District's reply submission at para 34.
[44] *Ibid.* at para 21.

[72] While I found there was no waiver in these circumstances, even if there was one, it would fall under the common interest exception to waiver. Common interest privilege is an exception to the principle of waiver that permits parties with interests in common to share, on a confidential basis, privileged legal advice without the disclosure giving rise to a waiver of the privilege.[45]

[73] Courts have applied common interest privilege to legal opinions shared between parties to litigation with a common adversary, to commercial parties jointly interested in completing a transaction, and to parties in certain fiduciary, contractual or agency relations.[46]

[74] Previous orders have found that common interest privilege applies in circumstances where the subject matter of the legal advice:

- was clearly of common interest and mutual benefit;[47] and
- was evidently of shared concern and interest for the successful completion of a specific legal outcome.[48]

[75] In my view, at the time the School District shared the confidential legal advice it had received with the RCMP, there was a common interest between them of ensuring the safety and wellbeing of the children.

[76] I conclude that there is insufficient evidence to support the applicant's position that the School District waived privilege over the legal advice it shared with the RCMP.

Conclusion - s. 14

[77] For the reasons outlined above, I find that s. 14 applies to the s. 14 records.

Unreasonable invasion of third party personal privacy - s. 22

[78] 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.[49]

---

[45] *Maximum Ventures Inc. v. De Graaf*, 2007 BCCA 510.
[46] *Maximum Ventures Inc.*, *ibid* at para 10; *Pitney Bowes of Canada Ltd. v. Canada*, 2003 FCT 214**;** *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para 24.
[47] Order F21-23. 2021 BCIPC 28 (CanLII) at para 74.
[48] Order F15-61, 2015 BCIPC 67 at para 66.
[49] 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.

[79] The School District has withheld the following types of information under s. 22: names, personal contact details, images, and other identifying details including educational information, and information which reveals the opinion, perspective, or point of view, or state of mind of various third parties.

Personal information

[80] 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.

[81] 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."[50] Whether information is "contact information" depends upon the context in which it appears.[51]

[82] 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.

Parties' positions - personal information

[83] The School District says it is plain on the face of the records that the information withheld under s. 22 is the personal information of various third parties.[52] The School District further says that it is well established that a third party's thoughts and opinions (even where intertwined with that of another individual) constitute their personal information.[53]

[84] The applicant does not say anything about whether the information in dispute meets the statutory definition of is personal information. He does say that no information in the children's school record should be exempted under s. 22(1) as there is no unreasonable invasion of a third party's personal privacy.[54]

Analysis - personal information

[85] I find that all the information severed by the School District under s. 22 is personal information. This information either directly identifies individuals by

---

[50] FIPPA, Schedule 1.
[51] Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.
[52] School District's initial submission at para 49.
[53] School District's initial submission at para 50.
[54] Applicant's submission at para 31.

name or initials or is reasonably attributable to a particular individual, on its own or when combined with other available sources of information.

[86] The information withheld under s. 22(1) includes email addresses. I find this information is not "contact information" because it is clear to me that they are personal, not business, email addresses.

[87] I can see from the records that certain educational information, by which I mean things such as academic performance and attendance was withheld. This information is not about the applicant's children. I can see on those pages that where the information related to the applicant's children, it was released to the applicant. I find that this educational type of information is the personal information of third parties other than the applicant's children.

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

[88] 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.

[89] The School District says that s. 22(4) does not apply to any of the information it withheld under s. 22. The applicant says that s. 22(4)(c) applies. Section 22(4)(c) says that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if an enactment of British Columbia or Canada authorizes the disclosure.

[90] The applicant says that s. 22(4)(c) applies in two ways. First, he says an order under s. 41 of the *Family Law Act*[55] constitutes an "enactment" within the meaning of section 22(4)(c).[56] The applicant says that since the court has, by order, vested in him "parental responsibilities" for receiving educational information about his children, the School District is precluded from withholding such information on the basis of s. 22.

[91] The School District says s. 41(j) of the *Family Law Act* does not provide a basis to apply s. 22(4)(c) because none of the information that has been withheld by the School District about the children is in the nature of "educational information".[57]

[92] The information related to the applicant's children has been released to the applicant and no "educational information" about the applicant's children was withheld from him. For this reason, I need not consider whether s. 41(j) of the *Family Law Act* requires the School District to disclose such information. I find

[55] SBC 2011, c 25.
[56] Applicant's submission at para 16.
[57] School District's reply submission at para 10.

that s. 22(4)(c) does not apply in the first way the applicant argues an enactment authorizes disclosure.

[93] The second way the applicant says s. 22(4)(c) applies is because section 9 of the *School Act*[58] provides parents with a right of access to "student records".[59] The School District says a "student record" cannot be said to properly include communications between and amongst the children's mother, the School District, or other third parties, or to information about the applicant.[60]

[94] The School District says the applicant has already received copies of his children's student records to which he was entitled as a parent for the purposes of the *School Act*.[61] The School District's Associate Superintendent attests to the School District's position on compliance with the family court order and providing the applicant with copies of records to which he was entitled as a parent for the purposes of the *School Act*.[62]

[95] Section 1(1) of the *School Act* defines "student record" as a record of information in written or electronic form pertaining to a student. The courts have clarified that "student record" for purposes of the *School Act* does not comprise any and all records which refer to a student. Instead, "student record" refers to the "formal record maintained by the board" of "grades and results, attendance, and other similar matters of record", but may not include for example "quizzes, tests, and exams".[63]

[96] My review of the records indicates the withheld information is not formal in nature and is not about the applicant's children's grades and results, attendance, or other similar matters. For this reason, I find that s. 22(4)(c) does not apply to the records in dispute by virtue of s. 9 of the *School Act.*

[97] I reviewed the other provisions in s. 22(4) and find that none apply.

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

[98] 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.

---

[58] RSBC 1996, c 412.
[59] Applicant's submission at para 28.
[60] School District's reply submission at para 22.
[61] School District's reply submission at para 23.
[62] Associate Superintendent's affidavit at para 16.
[63] *Fairchels v. Board of School Trustees*, 1996 CanLII 8602, at para 19.

[99] The School District says ss. 22(3)(a) and (d) apply so I consider those provisions below. I also considered whether any of the other provisions might apply and find they do not.

[100] 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,
>
> …

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

[101] The School District says that the presumption under s. 22(3)(a) applies to third party personal information which reflects, relates to, or discloses the emotional or mental health of individuals.[64] The applicant does not comment specifically on the application of s. 22(3).

[102] I find that disclosure of a some of the personal information at issue 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)

[103] The School District says that s. 22(3)(d) applies to third party personal information which pertains to students' academic performance, attending school trips, basketball game participation, or other similar information.[65]

[104] The applicant does not comment specifically on the application of s. 22(3)(d). I conclude from the totality of his submission, that the applicant believes he is entitled to access the personal information of an educational nature that is about his children. I can see from the records that the personal information of an educational nature that is about the applicant's children was

[64] School District's initial submission at para 53.
[65] School District's initial submission at para 56.

released to the applicant. The information I am considering under s. 22(3)(d) is not about his children but is instead about other students.

[105] Previous orders have held that for purposes of s.22(3)(d) educational history information includes information about students' courses, academic activities and concerns, degrees, and their interactions with schools about such matters. Additionally, disclosure of the third party identifying information that links those individuals to a school reveals their educational or employment history, so disclosure would be a presumed invasion of their personal privacy.[66]

[106] I find that disclosure of the personal information about the other students would reveal their educational history within the meaning of s. 22(3)(d). I find the disclosure of this information is presumed to be an unreasonable invasion of the personal privacy of those students.

[107] In summary, I find that the presumptions under ss. 22(3)(a) and (d) apply to most of the personal information in dispute.

Relevant circumstances – s. 22(2)

[108] The final step in the s. 22 analysis is to consider all relevant circumstances, including those listed in s. 22(2), before determining whether the disclosure of personal information would be an unreasonable invasion of personal privacy. It is at this step that any applicable s. 22(3) presumptions may be rebutted.

[109] The School District says that ss. 22(2)(e) (unfair exposure to harm), (f) (supplied in confidence), and (h) (unfair damage to reputation) apply. The School District also says the surrounding context, including the existence of a protection order barring contact between the applicant and his children and their mother is relevant.[67]

[110] The School District further says it is evident on the face of the record that third party personal Information was shared in the context of challenging family circumstances and contentious legal proceedings. The School District maintains that the exposure of any third party personal information communicated to the School District on a confidential basis could undermine any third party's confidence that their privacy will be protected.[68]

[111] The applicant says I should take note of the Orwellian nature of the School District's argument that documents should be withheld due to an unreasonable

[66] Order F19-41, 2019 BCIPC 46 (CanLII) at para 60.
[67] School District's initial submission at para 61, relying upon the evidence of the Associate Superintendent's affidavit at para 9.
[68] School District's initial submission at para 65.

invasion of privacy concerning the mental health of his ex-spouse.[69] He says the protection order issued against him was granted illegally and was not continued.[70] He further says the protection order did not bar him from making educational inquiries about his children so he continued to do so.[71]

[112] I have considered the s. 22(2) circumstances the School District raises and find that disclosing some of the personal information at issue would expose third parties unfairly to harm, including reputational harm. I further find that some of the withheld information was clearly supplied in confidence. I also considered the fact that much of the information is sensitive in nature. None of those circumstances weigh in favour of disclosure.

[113] The only circumstances that weigh in favour of disclosure are the fact that the applicant may already know some of the information and that a small amount is also his personal information. I find however, that his personal information is inextricably intertwined with that of various third parties.

Conclusion, s. 22(1)

[114] I found that all the information withheld by the School District 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) and (d) apply to some of the withheld information.

[115] After considering all of 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 personal privacy. The School District must withhold all the information it withheld under s. 22(1).

CONCLUSION

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

1. I confirm the School District's decision to withhold information under s. 13.

2. I confirm the School District's decision to withhold information under s. 14; and

[69] Applicant's submission at para 22.
[70] Applicant's submission at para 12.
[71] Applicant's submission at para 11.

3. I require the School District to refuse access to the information it withheld under s. 22(1).

August 7,2025

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No.: F23-93731