



Order F25-70

VANCOUVER POLICE DEPARTMENT

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Summary: An applicant asked the Vancouver Police Department (the Department) for access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to all records in the Department's custody or control that are about him. The Department provided responsive records but withheld some information under s. 22 (unreasonable invasion of third-party personal privacy) of FIPPA. With the exception of certain Department officers' names, the adjudicator found that disclosing any of the disputed information would be an unreasonable invasion of third-party personal privacy under s. 22(1). The adjudicator required the Department to refuse to disclose that information but required it to disclose the officers' names.

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

INTRODUCTION

[1] An individual (applicant) asked the Vancouver Police Department (the Department) to provide him with access under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to all information and records about him held by the Department between January 1, 2021 and the date of the access request.

[2] The Department provided responsive records but withheld some information from those records under multiple provisions of FIPPA. The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Department's decision to withhold information. Mediation by the OIPC did not resolve the matter and it proceeded to this inquiry. Both the Department and the applicant provided written submissions for this inquiry.

PRELIMINARY MATTERS

New Issues, s. 25(1) of FIPPA and Charter Issues

[3] The applicant argues that s. 25(1) (disclosure clearly in the public interest) of FIPPA requires the Department to disclose the disputed information regardless of whether s. 22(1) applies to it. The applicant says s. 25(1) applies here because the disputed information was withheld from him during an underlying criminal proceeding within which, he says, his rights under the *Canadian Charter of Rights and Freedoms* (the *Charter*) were violated. The applicant says that it is clearly in the public interest that the disputed information be disclosed because disclosure will help prevent similar violations of *Charter* rights in the future.¹

[4] The Notice of Inquiry states parties may not add new issues to the inquiry without the OIPC's prior consent. Where a party has not sought prior approval to add a new issue and there are no exceptional circumstances which strongly favour adding the issue, the OIPC will usually decline to add a new issue after an inquiry has begun.²

[5] In this matter, neither s. 25 nor the *Charter* are listed as an issue on the Notice of Inquiry or the Investigator's Fact Report. Additionally, the applicant did not seek or receive permission to add these issues before raising them in his submission.

[6] I understand that the applicant's *Charter* rights played an important role in the underlying criminal proceedings. However, I see no exceptional circumstances which favour adding *Charter* issues or s. 25 to this inquiry at this late stage. Moreover, I am not persuaded that this inquiry is the appropriate forum to address the applicant's concerns about these issues, which are in essence about disclosure requirements in the criminal law context instead of the applicant's access rights established under FIPPA. Therefore, I will not consider s. 25 or the *Charter* as issues in this inquiry.

[7] However, some of the applicant's arguments about the application of s. 25(1) are, in my view, also relevant to s. 22(2)(a) (disclosure encouraging public scrutiny of public bodies). Therefore, notwithstanding my decision to not add s. 25 as an issue, I will consider the relevant parts of what the applicant says about it under the s. 22(2)(a) analysis below.

¹ Applicant's submission at paras 10 and 19-31; *Canadian Charter of Rights and Freedoms*, Part 1 of *The Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

² Order F12-07, 2012 BCIPC 10 (CanLII) at para 6; Order F10-37, 2010 BCIPC 55 (CanLII) at para 10.

ISSUE AND BURDEN OF PROOF

[8] The issue I must decide in this inquiry is whether the Department is required to refuse to disclose the information in dispute under s. 22(1) because disclosure would unreasonably invade third-party personal privacy.

[9] Section 57(2) places the burden on the applicant to establish that disclosure of the information withheld under s. 22 would not be an unreasonable invasion of a third party's personal privacy.³ However, as the public body in this matter, the Department has the initial burden of proving that the information it has withheld under s. 22 is "personal information" as defined in FIPPA.⁴

DISCUSSION

Background⁵

[10] Following a criminal investigation, the Department arrested the applicant. After being arrested, the applicant was released on conditions. Eventually, the prosecution service discontinued its criminal prosecution against the applicant.

[11] Some time later, the applicant made the following request to the Department:

The information sought is a copy of all information, documents, records, and correspondence which the [Department] has in its custody or control relation [*sic*] to [myself] including but without limiting the generality of the foregoing copies of any police reports and/or other police documents, handwritten notes by police, and any witness statements. In addition I seek copies of any information relating to a credit file inquiry about [myself] made by the [Department] in January of 2023. The search may be limited to court file no.: [*omitted*], police file no.: [*omitted*], and the following date range 1 January 2021 – present.

[12] The Department provided responsive records to the applicant while withholding some information under ss. 15(1) (disclosure harmful to law enforcement), 16(1)(b) (information received in confidence from a government), and s. 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA.

³ Schedule 1 of FIPPA says that a "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.

⁴ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras 9-11.

⁵ The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.

The applicant asked the OIPC to review the Department's decision to sever information from the records.

[13] At inquiry, the Department says that it no longer relies on ss. 15(1) or 16(1)(b). Therefore, the only remaining issue is whether the Department is required to withhold information under s. 22(1).

Records and Information at Issue

[14] The disputed records are 79 pages of Department file notes related to the Department's investigation of the applicant and the events that led to the applicant's arrest.

[15] The Department has withheld a large variety of information from 41 of 79 pages of records, including names, descriptions of events, interview notes, and copies of written statements. The Department is withholding all the disputed information under s. 22(1) and specifically says that s. 22(3)(b) (information related to investigation of possible violation of law) applies to all of it.

Unreasonable Invasion of Third-Party Personal Privacy – s. 22

[16] There are four steps in the s. 22 analysis, and I apply each step under the headings that follow.⁶

Personal Information

[17] The first step in the s. 22 analysis is to determine whether the information in dispute is "personal information" within the meaning of FIPPA.

[18] Schedule 1 of FIPPA defines personal information as "recorded information about an identifiable individual other than contact information" and contact information as "information to enable an individual at a place of business to be contacted [including] the name, position name or title, business telephone number, business address, business email or business fax number of the individual."

[19] The Department says the disputed information is clearly personal information because it is about identifiable third-party individuals, specifically, a victim and witnesses.⁷ The applicant says that he does not seek the "personal identifying information" of individuals other than himself but believes that the Department has improperly withheld information that s. 22(1) does not require it to withhold.⁸

⁶ Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

⁷ Department's initial submission at para 13.

⁸ Applicant's response submission at paras 11-14.

[20] I have reviewed the disputed information and can see that all of it is about identifiable third parties. For instance, the information includes descriptive information about both police officers and civilians, including their names, as well as descriptions of what those individuals said and did during certain events. Additionally, some of the withheld information is simultaneously about the applicant and third parties, so I find that this information is also the applicant's personal information.

[21] Some of the disputed information may be considered contact information under other circumstances, for example, third parties' names, phone numbers and email addresses. However, in the circumstances of this case, I find that this information is not contact information because it was not provided to the Department to enable the individuals to be contacted at a place of business or for a business purpose.

[22] For these reasons, I find that all of the information withheld by the Department under s. 22(1) is personal information.

Not an Unreasonable Invasion of Privacy, s. 22(4)

[23] The second step of the analysis is to consider s. 22(4), which sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If the information falls into one of the circumstances listed in s. 22(4), then s. 22(1) does not apply and the Department cannot withhold it on that basis.

[24] Neither party discusses s. 22(4) in their submissions. However, as noted above, the Department withheld some Department police officer names from the disputed records. Therefore, I find that it is appropriate for me to consider whether s 22(4)(e) applies to the officer's names.

Information About a Third Party's Position or Functions – s. 22(4)(e)

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

[26] Past orders have found that s. 22(4)(e) applies to information about a public body employee's job duties in the normal course of work, including objective, factual information about what the individual said or did while discharging their job duties. However, if the information at issue appears in a context that reveals more than just the third party's name, job title, duties,

functions, remuneration, position, or what they did in the normal course of their work, then s. 22(4)(e) may not apply.⁹

[27] In this matter, the Department withheld the names of individual police officers from a few pages of interview notes.¹⁰ The Department did not withhold the same officers' names from elsewhere in the records or explain this inconsistency.

[28] I find the police officer names withheld on these pages is information about what the officers did in their capacities as employees of the Department. The officers clearly recorded their names onto these interview notes while performing their normal job duties. Moreover, these names only reveal which officer recorded the information obtained in an interview. The withheld officer names reveal nothing about the third parties who supplied information during the interview, what those third parties said during the interview, or any additional information about the officers. Therefore, I find that s. 22(4)(e) applies to the officers' names and the Department may not withhold them under s. 22(1).

Section 22(3) – Presumed to be an Unreasonable Invasion of Personal Privacy

[29] The third step in the s. 22(1) analysis is to consider whether any of the presumptions in s. 22(3) apply to the personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy. The Department applied s. 22(3)(b) to all of the information that it withheld in the records.¹¹

Investigation Into a Possible Violation of Law – s. 22(3)(b)

[30] Section 22(3)(b) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[31] There are two requirements for s. 22(3)(b) to apply. First, there must be an investigation into a possible violation of law. Second, the relevant information must have been "compiled" and must be identifiable as part of the investigation. For purposes of s. 22(3)(b) "compiling" information involves some exercise of judgment, knowledge, or skill on behalf of the public body and, in this way, is distinct from merely collecting or happening across the information in question.¹²

⁹ Order F23-28, 2023 BCIPC 32 (CanLII), at paras 41-42.

¹⁰ For clarity, the Department did not withhold the title of these records.

¹¹ The Department's initial submission at paras 6 and 7.

¹² Order F19-02, 2019 BCIPC 2 at paras 33 and 39; Order F24-97, 2024 BCIPC 111 (CanLII), at para 59.

[32] The Department says that it is clear on the available evidence and upon a plain reading of the responsive records, that the disputed information was compiled during the Department's investigation into a possible violation of law, specifically, the Department's investigation into the applicant's allegedly criminal behaviour.¹³

[33] The applicant does not argue that s. 22(3)(b) is wholly inapplicable but says the Department's reliance on and application of s. 22(3)(b) in this case is overbroad. Specifically, the applicant says it is improper for the Department to rely on s. 22(3)(b) to withhold entire sentences or paragraphs from the records as opposed to only withholding discrete pieces of information.¹⁴

[34] Among the information that was disclosed from the records, there is a description of the possible *Criminal Code* offences that the Department investigated in relation to the applicant. The records indicate that the Department ultimately arrested the applicant as a result of its investigation. For these reasons, I am satisfied that the Department conducted an investigation into a possible violation of law.

[35] Furthermore, it is apparent on the face of the records that the disputed information was compiled as part of that investigation. The Department compiled the disputed information using investigative interviews and law enforcement record-keeping practices. The result is the disputed records, which organize the compiled information in such a way that maximizes its usefulness for investigation and law enforcement purposes.

[36] There is nothing in the material before me to suggest that disclosing the disputed information is necessary to prosecute a violation of law or continue an investigation. As the applicant explains, the charges were stayed and there is no indication the case is subject to further investigation or likely to be re-opened in future. Therefore, I find that disclosure is not necessary for those purposes.

[37] Having considered the circumstances discussed above, I find that all of the disputed personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

[38] Past orders have found that s. 22(3)(b) does not operate as a presumption in favour of withholding the applicant's own personal information.¹⁵ However, I consider those orders distinguishable from the present case. In Order F11-10,

¹³ The Department's initial submission at paras 9 and 21.

¹⁴ Applicant's submission at paras 14 and 17.

¹⁵ Order F21-57, 2021 BCIPC 66 (CanLII) at para 54; Order F11-10, 2011 BCIPC 13 (CanLII) at paras 39-42.

the information at issue under s. 22(3)(b) was solely about the applicant.¹⁶ In this matter, the applicant's personal information is intertwined with the personal information of several third parties. The Department has already disclosed all information in the records that is only the applicant's personal information.

[39] Furthermore, in Order F21-57, the personal information at issue under s. 22(3)(b) was limited to an investigator's summary that described "steps the investigator took in the course of the investigation" and the applicant's personal information.¹⁷ The information at issue here includes information about several third parties that are not investigators and who have a meaningful, personal connection to the matters that the Department investigated. Therefore, in these circumstances, the fact that some of the disputed personal information is also about the applicant does not, in my view, prevent the application of s. 22(3)(b).

[40] Having considered the circumstances discussed above, I find that s. 22(3)(b) applies to all of the remaining personal information in dispute. Therefore, disclosing that information is presumptively an unreasonable invasion of third-party personal privacy.

Section 22(2) – All Relevant Circumstances

[41] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this stage that the applicant may rebut the presumption created under s. 22(3)(b).

[42] The Department says that s. 22(2)(f) weighs against disclosure and that no factors under s. 22(2) weaken the presumption created by s. 22(3)(b).¹⁸

[43] The applicant argues that s. 22(2)(f) should not weigh against disclosure to the extent that the Department has applied it.¹⁹ While the applicant does not expressly refer to other factors under s. 22(2), I find that some of his arguments are possibly relevant to s. 22(2)(a). In addition, it is my opinion that the nature of the underlying criminal proceedings warrants consideration of s. 22(2)(e). Therefore, I will consider whether ss. 22(2)(a), (e), and (f) weigh for or against disclosure.

Public Scrutiny of a Public Body – s. 22(2)(a)

[44] Section 22(2)(a) asks whether disclosing the personal information is desirable for subjecting the activities of the government of British Columbia or a

¹⁶ Order F11-10, 2011 BCIPC 13 (CanLII) at paras 39-41.

¹⁷ Order F21-57, 2021 BCIPC 66 (CanLII) at paras 46 and 54.

¹⁸ The Department's initial submission at paras 5 and 39.

¹⁹ Applicant's submission at para 15.

public body to public scrutiny. The purpose of s. 22(2)(a) is to foster accountability of a public body as opposed to scrutinizing individual third parties.²⁰

[45] The applicant says that the Department failed to provide all relevant evidence to the crown prosecution service during the underlying criminal proceedings against him. He explains that by failing to provide this evidence to the crown, the Department prevented him from exercising his constitutional right to review the evidence against him. The applicant says that authorizing the Department to continue withholding the disputed information will undermine public confidence in the administration of justice by condoning conduct designed to defeat court processes.²¹

[46] As I read it, the essence of the applicant's argument is that the Department should be subjected to public scrutiny because it failed to provide evidence to the crown prosecution service. Further, the applicant seems to be saying that this evidence is found in the records at issue in this inquiry and disclosing it will allow the applicant to take further steps to foster the necessary public scrutiny.

[47] In response, the Department says that *Charter* issues and disclosure requirements in the criminal law context are outside the purview of the Commissioner to assess. The Department argues that the only issue in this inquiry is whether the Department has properly applied FIPPA; not whether the Department's disclosures during prior criminal proceedings were sufficient or appropriate.²²

[48] In my view, the information that has been withheld from the disputed records does not clearly establish that the Department engaged in the type of wrongdoing that the applicant describes. Furthermore, the withheld information does not establish that the Department withheld information because it wanted to defeat the normal criminal law disclosure mechanisms, or for any other reason that would warrant the kind of public scrutiny of the Department for which the applicant is advocating.

[49] For these reasons, I find the information at issue in this inquiry is not desirable for subjecting the Department's activities to public scrutiny. Therefore, s. 22(2)(a) does not favour disclosing it.

Unfairly Exposed to Financial or Other Harm – s. 22(2)(e)

²⁰ Order F16-14, 2016 BCIPC 16 (CanLII), at para 40.

²¹ Applicant's submission at paras 21-25, 29, and 30.

²² The Department's reply submission at paras 2 and 3.

[50] Section 22(2)(e) asks whether disclosure will unfairly expose a third party to financial or other harm. “Harm” under s. 22(2)(e) includes “serious mental distress or anguish or harassment.”²³ Embarrassment, upset, or negative reactions fall below the required level of mental harm for the purposes of s. 22(2)(e).²⁴

[51] Based on the information before me, I can see that there is a history of negative interactions between the applicant and some of the third parties whose information is revealed in the disputed records. While I cannot discuss the specifics of those interactions without revealing the information in dispute, I find that releasing some of the disputed information would unfairly expose some of those third parties to significant mental distress. Therefore, I find s. 22(2)(e) applies to some of the information in dispute and weighs against disclosing that information.

Information Supplied in Confidence – s. 22(2)(f)

[52] Section 22(2)(f) asks whether the personal information was supplied in confidence. If so, this will weigh against disclosure. Section 22(2)(f) requires evidence that an individual has an objectively reasonable expectation of confidentiality at the time they supplied the information.²⁵

[53] Previous orders have recognized that, generally, people have a reasonable expectation of privacy over information they supply to the police in an investigation context even absent specific evidence showing that the information was supplied in confidence.²⁶

[54] The Department argues that s. 22(2)(f) applies to some of the disputed information but does not explain its position further.²⁷

[55] The applicant says that some of the withheld information likely relates to an individual who had power of attorney over the applicant’s financial affairs. The applicant argues that s. 22(2)(f) should not apply to information about his own financial affairs.²⁸

²³ Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42.

²⁴ Order 01-15, 2001 CanLII 21569 (BC IPC), at paras 49-50; Order F20-37, 2020 BCIPC 43 (CanLII), at para 120.

²⁵ Order F23-66, 2023 BCIPC 77 (CanLII) at para 69 citing Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing Order 01-36, 2001 CanLII 21590 (BCIPC) at paras 23-26.

²⁶ Order F24-46, 2024 BCIPC 54 (CanLII) at para 47; Order F18-05, 2018 BCIPC 7 (CanLII), at paras 26-27 and Order F15-30, 2015 BCIPC 33 (CanLII) at paras 91-92, adopting the SCC’s discussion of privacy in police occurrence reports in *R. v. Quesnelle*, 2014 SCC 46 (CanLII), [2014] 2 SCR 390 at para 43.

²⁷ The Department’s initial submission at para 5.

²⁸ The Department’s initial submission at paras 5 and 19; Applicant’s submission at para 15.

[56] The applicant did not provide any authority to support his argument that information is not supplied in confidence if the information is about an access applicant's financial affairs. I am not aware of any authority for that principle, and it is not apparent to me how this is the case. Whether the information at issue is about the access applicant is a different factor which I will consider below.

[57] In this matter, it is plain on the face of the records that most of the disputed information was provided by individual third parties directly to the Department. Furthermore, the content of the disputed information indicates that this information was supplied in the context of a law enforcement investigation. In my view, the third parties who provided personal information to the Department were under a reasonable expectation, at the time they supplied that information, that the Department's officers would keep the information as confidential as possible.

[58] Having considered these circumstances, I conclude that most of the disputed information was supplied in confidence. Therefore, s. 22(2)(f) weighs against disclosing that information.

Applicant's Own Personal Information

[59] Where the withheld information is an applicant's own personal information, this will weigh in favour of disclosure.²⁹ In this matter, there is a significant amount of disputed personal information that is simultaneously about the applicant and one or more third parties. The fact that it is about the applicant weighs in favour of disclosing it.

Conclusion, s. 22(1)

[60] All of the disputed information is personal information. Some of this information is about the applicant and one or more third parties, and some of it is only about one or more third parties. I determined that almost all of the disputed information is subject to a presumption that disclosure would be an unreasonable invasion of third parties' personal privacy under s. 22(3)(b) because the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

[61] Turning to the circumstances set out under s. 22(2), I determined that disclosure is not desirable for subjecting the Department's activities to public scrutiny under s. 22(2)(a). I also determined that most of the disputed information was supplied in confidence under s. 22(2)(f) and that disclosing some of the disputed information would unfairly expose third parties to harm under

²⁹ Order F10-10, 2010 BCIPC 17 (CanLII) at para 37; Order F20-13, 2020 BCIPC 15 (CanLII) at para 73.

s. 22(2)(e), both of which are circumstances that weigh against disclosing the information to which they apply.

[62] Taking all relevant circumstances into consideration, I find the presumption under s. 22(3)(b) is not rebutted and disclosing any of the disputed information would constitute an unreasonable invasion of a third party's personal privacy. While some of the information at issue was about the applicant, which weighs in favour of disclosing it, I found that this same information was also about one or more third parties, that it was supplied in confidence in accordance with s. 22(2)(f), and that disclosing some of it would unfairly expose several third parties to harm under s. 22(2)(e). Therefore, I find that s. 22(1) applies to all of the disputed information and the Department must refuse to disclose it.

[63] Excluded from my finding are the names of individual officers that were withheld from interview notes, which I determined is information about the position and duties of those officers. I determined that s. 22(4)(e) applies to those officers' names, so they cannot be withheld under s. 22(1) because disclosure would not be an unreasonable invasion of third-party personal privacy.

[64] Finally, the applicant generally questions whether the Department is required to sever information under s. 22(1) to the extent that it did. For example, the applicant says that the application of s. 22(3)(b) should not result in entire sentences, paragraphs, or pages being withheld because it is unlikely that this information is an unending string of third-party personal information.³⁰

[65] When severing information from requested records, public bodies should review records on a line-by-line basis and apply each FIPPA exception with care and deliberation.³¹ Although the Department withheld some paragraphs and pages in their entirety, I can see that it also engaged in a line-by-line severing for other records.

[66] In my view, the Department's decision to withhold full paragraphs and pages was intentional and made after considering what the information would reveal about the relevant third parties in accordance with s. 22. Consequently, I find that the Department appropriately severed information from the records under s. 22(1).

CONCLUSION

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

³⁰ Applicant's submission at paras 11-17.

³¹ Order F11-04, 2011 BCIPC 4 (CanLII) at para 8.

1. Subject to item #2 below, I require the Department to withhold all of the information in dispute under s. 22(1).
2. The Department is not required to withhold, under s. 22(1), the information I have highlighted in yellow in a copy of the records that will be provided to the Department with this order.
3. I require the Department to give the applicant access to the information described in item #2 above. The Department must concurrently provide the OIPC registrar of inquiries with a copy of its cover letter and the record it provides to the applicant in compliance with this order.

[68] Pursuant to s. 59(1) of FIPPA, the Department is required to comply with this order by October 6, 2025.

September 5, 2025

ORIGINAL SIGNED BY

Alexander R. Lonergan, Legal Counsel

OIPC File No.: F23-93596