



Order F25-84

**THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND
GEOSCIENTISTS OF THE PROVINCE OF BRITISH COLUMBIA**

D. Hans Hwang
Adjudicator

October 28, 2025

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Summary: An applicant made a request under *the Freedom of Information and Protection of Privacy Act* (FIPPA) to the Association of Professional Engineers and Geoscientists of the Province of British Columbia (Association) for access to records about a slope stability analysis performed by a third party. The Association disclosed the responsive records but withheld some information in them under ss. 19(1)(a) (harm to individual or public safety), 21 (harm to third-party business interests) and 22(1) (unreasonable invasion of third-party personal privacy). The adjudicator determined that ss. 19(1)(a) and 21(1) do not authorize or require the Association to refuse to disclose the information. The adjudicator determined that the Association was required to withhold most of the disputed information under s. 22(1). As a result, the adjudicator ordered the Association to give the applicant access to the information it was not authorized or required to refuse to disclose under the FIPPA exceptions.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 19(1)(a), 21(1)(a)(ii), 21(1)(b), 21(1)(c)(ii), 21(1)(c)(iii), 22(1), 22(2), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(b), 22(3)(d), 22(4) and Schedule 1 (definition of “contact information”, “personal information” and “third party”), and *Professional Governance Act*, SBC 2018 c 47, s. 66(1)(b).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) requested access to records containing information about a slope stability analysis performed by a professional engineer (Engineer) from the Association of Professional Engineers and Geoscientists of the Province of British Columbia (Association).

[2] The Association provided the responsive records to the applicant but withheld some information in them under s. 21 (harm to third-party business interests) of FIPPA.¹

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Association's decision. Mediation by the OIPC did not resolve the issue in dispute and the matter proceeded to inquiry.

[4] Before the close of the submissions phase, upon the request of the Association, the OIPC permitted ss. 19(1)(a) and 22(1) to be added as issues in the inquiry.²

[5] The OIPC notified the Engineer of the applicant's request for review and invited him to participate in the inquiry,³ and the Engineer agreed to participate.

[6] The Association and the applicant provided submissions in the inquiry. The Engineer provided an affidavit in support of the Association's decision to refuse access to the information at issue. The OIPC permitted the Association and the Engineer to submit some of their submissions and affidavit evidence *in camera*.

ISSUES

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

1. Is the Association authorized to refuse to disclose the information in dispute under s. 19(1)(a)?
2. Is the Association required to refuse to disclose the information in dispute under ss. 21(1) and/or 22(1)?

[8] Under s. 57(1), the Association has the burden of proving that the applicant has no right of access to the information in dispute under ss. 19(1)(a) and 21(1).

[9] Under s. 57(2), the applicant has the burden of proving that disclosing the information at issue under s. 22(1) would not unreasonably invade a third party's personal privacy. However, the Association has the initial burden of proving that the information qualifies as personal information.

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

² OIPC's April 14, 2025 letter.

³ Under s. 54(b) of FIPPA, the OIPC has the authority to provide a copy of the applicant's request for review to any person the Commissioner considers appropriate. Under s. 56(3), that person must be given an opportunity to make representations to the Commissioner or their delegate during the inquiry.

DISCUSSION

Background

[10] The Association regulates and governs the professions of engineering and geoscience in British Columbia under the authority of the *Professional Governance Act*.⁴

[11] The Engineer is a registrant with the Association. He is a partner at an engineering firm and was an engineer responsible for a construction project the firm performed in 2019 (Construction Project).

[12] The applicant is an owner of a parcel of property adjacent to the construction site and he filed a complaint with the Association against the Engineer. The complaint was about the construction of a sloped retaining wall.

[13] The Association investigated the complaint and found the Engineer's conduct did not fall below the standards of a professional engineer in BC and no discipline was imposed. The applicant made his FIPPA access request shortly after the investigation concluded.

Preliminary Issue

[14] The applicant alleges that, among other things, the Engineer did not properly perform the slope stability analysis for the wall as required by Association's guidelines⁵ and the *Community Charter*.⁶

[15] As the Commissioner's delegate, my role is limited to deciding whether the claimed FIPPA exceptions to disclosure apply to the information in dispute. It is not apparent how the applicant's allegations are relevant to this inquiry or his rights under FIPPA, and I do not have the authority to decide them. Therefore, although I have read the parties' entire submissions, I will only refer to those submissions where they are relevant to the issues that I must decide in this proceeding.

Records and information at issue

[16] The responsive records total 21 pages. The information at issue is in the Engineer's response to the Association, pictures, and calculations. The Association is withholding the responsive records in their entirety.

⁴ *Professional Governance Act*, SBC 2018, c. 47.

⁵ Applicant's response submission at para 6.

⁶ SBC 2003 c 26.

[17] The Association applied ss. 19(1), 21(1) and 22(1) to the same information withheld in the records.

Harm to third party business interests, s. 21(1)

[18] Section 21(1) requires a public body to refuse to disclose information if its disclosure could reasonably be expected to harm the business interests of a third party.

[19] The Association is withholding information from the records under s. 21(1). The relevant third party in this matter is the Engineer and he agrees with the Association's application of s. 21(1) to the records. The applicant does not say anything about this section.

[20] The parts of s. 21(1) that are relevant to this inquiry are as follows:

21(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

...

(ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, ...

[21] Past orders have established a three-part analytical framework to determine the applicability of s. 21(1), which I will follow in this matter. The Association must establish that all three of the following criteria are met, in order to withhold the disputed information under s. 21(1):

1. Disclosing the information at issue would reveal the type of information listed in s. 21(1)(a);

2. The information at issue was supplied, implicitly or explicitly, in confidence under s. 21(1)(b); and
3. Disclosing the information at issue could reasonably be expected to cause one or more of the harms set out in s. 21(1)(c).⁷

[22] The information withheld under s. 21(1) consists of:

- The Engineer's response to an Association investigator's questions about the Construction Project (Response);⁸
- Pictures that depict a sloped retaining wall (Wall) that was built in the Construction Project (Pictures);⁹
- A seismic hazard calculation (Calculation);¹⁰ and
- A slope stability analysis (Analysis).¹¹

Type of information, s. 21(1)(a)

[23] The first step in the s. 21(1) analysis is deciding whether the information withheld is of the type of information listed in s. 21(1)(a). The Association says the information in dispute is the "commercial" and "technical" information of the Engineer.¹²

[24] FIPPA does not define "commercial" or "technical" information, but I will discuss how each term has been interpreted in past orders.

[25] "Commercial information" relates to a commercial enterprise but need not be proprietary in nature or have an independent market or monetary value. The information itself must be associated with the buying, selling or exchange of the entity's goods or services.¹³

[26] "Technical information" is information belonging to an organized field of knowledge falling under the general categories of applied science or mechanical arts. Technical information usually involves information prepared by a professional with the relevant expertise, and describes the construction, operation or maintenance of a structure, process, equipment, or entity.¹⁴

⁷ Order F17-14, 2017 BCIPC 15 (CanLII) at para 9; Order F22-33, 2022 BCIPC 37 (CanLII) at para 25.

⁸ Pages 1-2 of the records.

⁹ Pages 3, 4 and 9-21 of the records.

¹⁰ Page 5 of the records.

¹¹ Pages 6-8 of the records.

¹² Association's initial submission at paras 45-48.

¹³ Order 01-36, 2001 CanLII 21590 (BC IPC) at para 17; and Order F08-03, 2008 CanLII 13321 (BC IPC) at para 63.

¹⁴ Order F10-06, 2010 BCIPC 9 (CanLII) at para 35; Order F12-13, 2012 BCIPC 18 (CanLII) at para 11; and Order F23-32, 2023 BCIPC 38 (CanLII) at para 18.

[27] The information withheld in the Response, Pictures, Calculation and Analysis includes information about the materials, structure and design used in the Construction Project and information about the seismic hazard at the construction site. This information also includes the Engineer's calculation and explanations about the Construction Project.¹⁵ I find that the Engineer prepared and reviewed this information to provide explanation about his slope stability analysis.¹⁶ Therefore, I find most of the information at issue is technical information.

[28] However, I find some of the information contained in the records is not technical information, specifically, an Association investigator's name, address and email and the file number and subject of the complaint.¹⁷ This information does not belong to an organized field of knowledge falling under the general categories of applied science or mechanical arts and, therefore, does not qualify as technical information under s. 21(1)(a)(ii).

[29] Having found most of the information is technical information under s. 21(1)(a)(ii), it is not necessary for me to also consider if this information qualifies as commercial information of a third party. For the s. 21(1) analysis, it is sufficient that the information at issue falls under either technical information or commercial information under s. 21(1)(a)(ii). I will therefore only consider whether information which I found is not technical information qualifies as commercial information.¹⁸

[30] Based on my review of the records, it is not apparent how disclosing an Association investigator's name, address and email and the file number and subject of the complaint would reveal commercial information. I find this information is not associated with buying, selling, or the exchange of goods or services. Without sufficient explanation or evidence, I find the s. 21(1)(a) requirement has not been met for this information.

[31] In summary, I find that most of the disputed information is technical information, satisfying the first requirement of the s. 21(1) analysis. However, there is some information that does not qualify as technical information or commercial information, so I will not consider that information further under s. 21(1) and the Association is not required to withhold it on that basis.

Supplied in confidence, s. 21(1)(b)

¹⁵ Pages 2 and 5-9 of the records.

¹⁶ Pages 4 and 9-21 of the records.

¹⁷ Page 1 of the records.

¹⁸ Association investigator's name, address and email and the file number and the subject of the complaint at page 1 of the records.

[32] The second step of the s. 21(1) analysis is to determine whether the information at issue was supplied to the Association in confidence. Past orders have separately considered whether the information was “supplied” by a third party before deciding whether it was supplied “in confidence”. Both elements are required to engage s. 21(1)(b).¹⁹ I will apply the same two-step approach to s. 21(1)(b) in this matter.

Was the information “supplied”?

[33] Information is considered “supplied” under s. 21(1)(b) if it is provided or furnished to the public body.²⁰

[34] The Association says that the information in dispute was provided to it by the Engineer.²¹ In support of the Association’s position, the Engineer provides affidavit evidence as follows:

- He assessed construction methods and components, subgrade conditions, fill materials, geometry of the Wall, surrounding hazards, and how the Wall would perform if there was a seismic event.²²
- The Association notified him that the applicant had made a misconduct complaint against him in relation to the Construction Project and the Association had opened an investigation into that complaint.²³
- He cooperated with the Association’s investigation process, and he took field review photographs of the Wall. Then, he provided the Association with the Response and a copy of all documentation in his possession about the Wall which included the Pictures, Calculation and Analysis.²⁴

[35] The applicant does not address whether the information in dispute was supplied to the Association.

[36] Based on my review of the records, I can see the Engineer provided his technical information to the Association. I was not provided with any evidence that suggests the Association created or modified that information. Therefore, without any evidence to contradict the records, I conclude that the Engineer supplied most of the information at issue to the Association.

[37] However, I find that some of the information withheld in the records was not supplied by the Engineer. This information is an Association investigator’s

¹⁹ Order 01-39, 2001 CanLII 21593 (BC IPC) at para 26, upheld and cited by *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, 2002 BCSC 603; Order F14-28, 2014 BCIPC 31 (CanLII) at paras 17-18.

²⁰ Order 01-20, 2001 CanLII 21574 (BC IPC) at para 93.

²¹ Association’s initial submission at para 51.

²² Engineer’s affidavit #1 at para 5.

²³ *Ibid* at para 8.

²⁴ *Ibid* at paras 10, 11, 12 and 17.

questions contained in the Response.²⁵ These questions were originally sent to the Engineer from the Association, then were included by the Engineer in the Response for ease of reference. I do not see that this is information that the Engineer supplied to the Association. Therefore, I find s. 21(1)(b) does not apply to the questions and they cannot be withheld under s. 21(1).

Was the supply of the information “in confidence”?

[38] For s. 21(1)(b) to apply to the information that I found was supplied, the Association must show it was supplied in confidence, either implicitly or explicitly. Specifically, the Association must establish that the Engineer had an objectively reasonable expectation of confidentiality when he supplied the information to the Association.²⁶

[39] The Association says that the information at issue was supplied to it in confidence.²⁷ The applicant does not address this point.

[40] The Engineer’s evidence in support of the claim that the information was supplied “in confidence” can be summarized as follows:

- During the Association’s investigative process, the Engineer provided the Association with copies of all documentation about the Wall in his possession to the Association, including the records at issue.²⁸
- The Association’s communications that requested the Engineer provide the information were marked “confidential”.²⁹
- The Engineer understood that the entirety of the investigation process was confidential and any information he provided would be kept confidential.³⁰

[41] While there are no express statements of confidentiality in the records at issue, I find that the technical information in them was supplied in confidence to the Association. I accept the Engineer’s evidence that he provided the information about the Construction Project in the context of providing his response to the Association’s questions in the investigative process. Given the circumstances, in my view, it is reasonable to conclude that the kind of information provided in the investigation is generally understood to be supplied with an expectation that it will be kept confidential by its recipient,³¹ and nothing in the material before me suggests otherwise.

²⁵ Pages 1-2 of the records.

²⁶ Order 01-36, 2001 CanLII 21590 at para 23.

²⁷ Association’s initial submission at paras 51-53.

²⁸ Engineer’s affidavit #1 at paras 11 and 12.

²⁹ *Ibid* at para 11.

³⁰ *Ibid* at para 14.

³¹ See for similar reasoning Order F24-48, 2024 BCIPC 56 (CanLII) at para 136; Order F24-17, 2024 BCIPC 23 (CanLII) at para 168.

[42] Therefore, I conclude that the technical information the Engineer provided to the Association was supplied in confidence.³²

Reasonable expectation of harm, s. 21(1)(c)

[43] The third and final step of the s. 21(1) analysis is to determine whether disclosing the information at issue could reasonably be expected to result in any of the harms set out in s. 21(1)(c). If so, the Association must refuse to disclose the records. The standard of harm under s. 21(1)(c) (and s. 19, which I will discuss later in this order) is “a reasonable expectation of harm”. The Supreme Court of Canada has held that where the phrase “could reasonably be expected to” is used in access to information statutes, the standard of proof is “a middle ground between that which is probable and that which is merely possible”.³³

[44] Therefore, the Association must establish that disclosure will result in a risk of harm that is well beyond the merely possible or speculative. Additionally, there must be a clear and direct connection between disclosing the records and the expected harm.³⁴

[45] The Association says that disclosing the records at issue can reasonably be expected to result in the harms listed at ss. 21(1)(c)(ii) and (iii).

Disclosure would result in similar information no longer being supplied, s. 21(1)(c)(ii)

[46] Section 21(1)(c)(ii) says that the head of a public body must refuse to disclose information if doing so could reasonably be expected to result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied.

[47] The Association says that as a regulatory body under the *Professional Governance Act*, it must be capable of conducting investigation and discipline of its registrants, and it relies on participations of registrants, firms and third parties to do so.³⁵ The Association says that unless a complaint results in a citation, it keeps the process confidential to avoid unfair risks to the professional reputation of the registrants. It also says that disclosure of the information in dispute would

³² All information withheld in the records at issue but a list of questions that the Association sent to the Engineer, a file number and a subject of the complaint, and information about an Association investigator contained in the Response at pages 1-2 of the records.

³³ Order 10-20, 2001 CanLII 21574 (BC IPC) at para 57; Order 01-36, 2001 CanLII 21590 (BC IPC) at para 38; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII), [2012] 1 SCR 23 at para 196; *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 (CanLII) at para 58.

³⁴ Order F07-15, 2007 CanLII 35476 (BC IPC) at para 17.

³⁵ Association's initial submission at paras 67-68.

result in losing confidentiality over the information received in the investigative process and compromising the Association's ability to obtain similar information.³⁶

[48] In support of the Association's submission, the Engineer provides evidence that as a registrant, he had a professional obligation to participate in the Association's complaint process and to provide the records about the Construction Project in his possession to the Association.³⁷

[49] Previous OIPC orders have found that it is typically not reasonable to expect that information will no longer be supplied to a public body in the future if third parties must supply that information under a statutory compulsion. A third party's willingness to supply information is irrelevant if they do not actually have a choice to supply it or not.³⁸

[50] In the present matter, for the reasons that follow, I find the Engineer was under a statutory compulsion to supply the information at issue, so s. 21(1)(c)(ii) does not apply.

[51] Having reviewed the scope and applicability of the legislation raised by the parties, I confirm that the registrants with the Association are required to cooperate with the Association conducting regulatory investigations. This means that they have no other options but to supply information upon the Association's request. The relevant section of the *Professional Governance Act*³⁹ states:

66(1)(b) if there is reason to believe that a registrant whose conduct or competence is being investigated under this subsection possesses any information, record or thing that is relevant to the investigation, issue a written notice requiring the registrant to

(i) cooperate with the investigation,

(ii) answer questions,

(iii) produce files, records or other evidence in the registrant's possession or control, and

(iv) provide explanations on request;

[52] Given this, I am not persuaded that there is any reason why the Association cannot compel its registrants to supply it with similar information in the future by relying on existing legislation. Based on what I can see in the

³⁶ Association's initial submission at paras 67 and 69.

³⁷ Engineer's affidavit #1 at paras 11 and 12.

³⁸ Order 03-05, 2003 CanLII 49169 (BC IPC) at paras 15 and 16; Order No. 57-1995, 1995 CanLII 19204 (BC IPC) at pp 6-7.

³⁹ SBC 2018 c 47.

material before me, assurances of confidentiality and voluntary participation by the registrants are unnecessary to ensure the continued supply of similar information.

[53] I conclude that the registrants are required to supply information of the type at issue in this inquiry to the Association under the *Professional Governance Act* and have no choice but to supply the similar information to the Association because they are required by statute to supply it.

[54] In summary, the Association has not established that disclosure can reasonably be expected to result in similar information not being supplied in the future. Therefore, it is unnecessary for me to also consider whether it is in the public interest that such information continue to be supplied. I find that s. 21(1)(c)(ii) does not apply.

[55] Next, I will consider whether s. 21(1)(c)(iii) applies to the information at issue.

Result in undue financial loss or gain, s. 21(1)(c)(iii)

[56] Section 21(1)(c)(iii) states that the head of a public body must refuse to disclose to an applicant information if disclosure could reasonably be expected to result in undue financial loss or gain to any person or organization.

[57] Past orders have said that the meaning of “undue” financial loss or gain under s. 21(1)(c)(iii) includes loss that is excessive, disproportionate, unwarranted, inappropriate, unfair or improper, having regard for the circumstances of each case. Moreover, in Order 00-10, former Commissioner Loukidelis accepted that “if disclosure would give a competitor an advantage, usually by acquiring competitively valuable information, effectively for nothing, the gain to the competitor will be undue.”⁴⁰

[58] The Association says that the applicant is likely to use the disputed information to continue to file unfounded complaints against the Engineer or to publicize details of the Association’s investigation involving the Engineer.⁴¹ The Association also says that the information, if disclosed to the applicant, could be used to make unfounded attacks on the Engineer’s professional integrity or to diminish his professional reputation.⁴²

[59] With respect to undue financial loss, the Engineer says that he had to spend his professional time to deal with the applicant’s complaint, and the total

⁴⁰ Order 00-10, 2000 CanLII 11042 (BC IPC) at 18.

⁴¹ Association’s initial submission at para 64(a); Engineer’s affidavit #1 at paras 27-33.

⁴² Association’s initial submission at para 64(b); Engineer’s affidavit #1 at paras 30 and 32.

cost of time spent is estimated more than \$25,000.⁴³ He says that if the applicant files a new complaint against him, that will result in additional costs to him.⁴⁴

[60] After reviewing the parties' submissions and evidence, I am not satisfied that s. 21(1)(c)(iii) applies to the information in dispute.

[61] I can see that the Association's concern is that the applicant may use the disputed information to file a new complaint against the Engineer. However, I find that the submissions and evidence of the Association and the Engineer do not bring the anticipated harm under s. 21(1)(c)(iii) out of mere possibility. They do not state to which information withheld in the Response they believe s. 21(1)(c)(iii) applies. It is not apparent to me, and neither the Association nor the Engineer have sufficiently explained or provided evidence which demonstrates, how the applicant or anyone else could use the information at issue to obtain a financial gain or cause the Engineer or another third party to suffer a financial loss, or how any alleged gain or loss would be "undue" as is required under s. 21(1)(c)(iii).

[62] I find the necessary explanation and evidence required to establish harm under s. 21(1)(c)(iii) is lacking here. Therefore, I am unable to conclude there is a clear and direct link between disclosure of the disputed information and a reasonable expectation of probable harm that is well beyond the merely possible or speculative.

Conclusion, s. 21(1)

[63] The Association has established that most of the information in dispute is technical information of the Engineer under s. 21(1)(a), and that most of this was supplied to the Association in confidence under s. 21(1)(b).

[64] However, I do not find that disclosing this information could reasonably be expected to result in the similar information no longer being supplied to the Association under s. 21(1)(c)(ii). Finally, I am not persuaded that disclosure could reasonably be expected to result in any undue financial losses or gains to anyone, so s. 21(1)(c)(iii) does not apply.

[65] Neither the Association nor the Engineer have established that all three components of s. 21(1) apply to the information at issue. I find the Association is not required to refuse to disclose this information under s. 21(1).

⁴³ Engineer's affidavit #1 at para 29.

⁴⁴ *Ibid* at para 30.

Harm to individual or public safety, s. 19(1)(a)

[66] The Association has applied s. 19(1)(a) to all of the information I have found it is not required to withhold under s. 21(1). I will consider whether s. 19(1)(a) applies to this information.⁴⁵

[67] Section 19(1)(a) says that the head of a public body may refuse to disclose information, including personal information about the applicant, if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health.

[68] I have explained "reasonable expectation of harm" standard in my s. 21(1) analysis.⁴⁶ I will apply that standard in my analysis of s. 19(1)(a).

[69] The Association says that disclosure of the information could reasonably be expected to threaten an individual's mental health and result in harm including anxiety and stress.⁴⁷ The applicant does not say anything about this section.

[70] There is a significant amount of *in camera* material in the submissions and evidence, so I am limited in what I can say about it. However, I can say that after reviewing the materials before me, I find that the Association has not sufficiently explained whether and how any specific information at issue could reasonably be expected to threaten anyone's safety or mental or physical health. Regarding the Association's allegation that the applicant will use the withheld information in the Response to target an individual, resulting in a threat to an individual's health and safety, I find the necessary explanation and evidence required to establish a reasonable expectation of harm under s. 19(1) is lacking here.

[71] Without additional explanation or evidence that provides an example of the anticipated threats against an individual's safety or mental or physical health, I cannot see how disclosure of any of the information in dispute could reasonably be expected to result in the alleged harm that is well beyond the merely possible or speculative.

[72] I conclude that the Association is not authorized to withhold any of the disputed information under s. 19(1)(a).

⁴⁵ Pages 1-2 of the records. The information consists of the Association's questions, a file number and a subject of the complaint, and information about an Association investigator.

⁴⁶ Paragraph 43 of this order.

⁴⁷ Association's initial submission at para 100.

Unreasonable invasion of third-party personal privacy, s. 22

[73] The Association has applied s. 22(1) to withhold all of the information I have found it is not authorized or required to withhold under ss. 19(1) and 21(1).

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

[75] The analytical approach to s. 22(1) is well established and I apply that approach below.⁴⁸

Personal Information

[76] The first step in the s. 22(1) analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information".⁴⁹ Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.⁵⁰

[77] 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".⁵¹ Whether information is "contact information" depends on the context in which it appears.⁵²

[78] The Association says all of the information it withheld in the Response, Pictures, Calculation and Analysis under s. 22(1) is the personal information of the Engineer. It says the information includes the Engineer's identity as the subject of an investigation by the Association, summaries of his professional activities and opinions, and communications shared with the Association about the investigation.⁵³ It submits:

Further, EGBC's position is that any information which would reveal the steps taken by a registrant or submissions and responses tendered to defend themselves against a professional disciplinary investigation is personal information. Beyond confirming the existence of an investigation, it would reveal the steps taken by a professional to defend themselves,

⁴⁸ See, for example, Order F15-03, 2015 BCIPC 3 at para 58.

⁴⁹ FIPPA, Schedule 1.

⁵⁰ Order F05-30, 2005 CanLII 32547 (BC IPC) at para 35.

⁵¹ FIPPA, Schedule 1.

⁵² Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

⁵³ Association's initial submission at para 81.

time invested in responding to the investigation, and the substance of the “case to be answered” and the registrant’s response.⁵⁴

[79] The applicant does not address about the Association’s application of s. 22(1) and whether the withheld information qualifies as personal information.

[80] To begin, I find a small amount of information withheld in the Response is an Association investigator’s contact information. This information includes his name, address and work email. I find the investigator was using it to allow someone to contact him for a business purpose.⁵⁵ The Association did not explain how this information qualifies as recorded information about an identifiable individual other than contact information, and I find that it does not. I conclude the name, address and work email of the investigator is not personal information under FIPPA. There is no other contact information in the Response.

[81] I find rest of the information withheld in the Response is personal information about the Engineer. Past OIPC orders have found the information about complaints and investigations involving a registrant or employee is personal information.⁵⁶ In the present case, the information in dispute includes the Engineer’s answers to an Association investigator’s questions about the quality of his work and soundness of his professional judgements, which were provided in a complaint process. I can see he prepared his answers and sent supporting documents (i.e., the Pictures, Calculation and Analysis) to justify the quality of his work, his professionalism and judgements and defend himself against allegations of wrongdoing. For that reason, I find all this information is about the Engineer and it is his personal information.

[82] In addition, I find the investigator’s questions are worded in a way that reveals the aspects of the Engineer’s work that the investigator was probing for possible deficiencies and the fact they are being asked implies something may have been wrong with the Engineer’s professional judgement. Given the content and context of the questions, I find they are about the Engineer and that information is his personal information.

[83] Therefore, I am satisfied most of the information withheld in the Response is the personal information of the Engineer under FIPPA.⁵⁷

Not an unreasonable invasion of privacy, s. 22(4)

[84] The second step in the s. 22(1) analysis is to determine if the personal information falls into any of the categories of information listed in s. 22(4).

⁵⁴ Association’s initial submission at para 83.

⁵⁵ See, for similar reasoning, Order F21-35, 2021 BCIPC 43 (CanLII) at para 164.

⁵⁶ See, Order F24-49, 2024 BCIPC 57 (CanLII) at para 66 and Order F23-53, 2023 BCIPC 61 (CanLII) at paras 108-119.

⁵⁷ Pages 1-2 of the records.

Section 22(4) sets out circumstances where disclosure of the personal information is not an unreasonable invasion of personal privacy.

[85] The Association says that s. 22(4) does not apply in this case.⁵⁸

[86] I have reviewed the circumstances set out in s. 22(4), and I conclude that none of them apply to the personal information in dispute.

Presumed unreasonable invasion of privacy, s. 22(3)

[87] 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) creates a rebuttable presumption that the disclosure of certain types of personal information or in certain circumstances would be an unreasonable invasion of third-party personal privacy.

[88] The Association says that the presumptions under ss. 22(3)(b) and (d) apply.⁵⁹

[89] I considered whether any of other subsections in s. 23(3) apply and find only ss. 22(3)(b) and (d) are relevant in this case.

Part of an investigation into a possible violation of law, s. 22(3)(b)

[90] 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.

[91] The Association says that s. 22(3)(b) applies to the personal information in dispute because the information was compiled as part of its investigation of a complaint against the Engineer.⁶⁰

[92] Section 22(3)(b) requires two things: (1) an investigation into a violation of law, and (2) the compilation of information that is identifiable as part of that investigation.

⁵⁸ Association's initial submission at para 84.

⁵⁹ *Ibid* at paras 86 and 87.

⁶⁰ *Ibid* at para 86.

[93] For the first part of s. 22(3)(b), previous orders have established that professional regulation investigations qualify as investigations into a possible violation of law.⁶¹

[94] I find that the investigation dealt with in the disputed records is into possible violations of the *Professional Governance Act* and the professional rules and standards promulgated under it, and the Association has the power to discipline and sanction such violations. Therefore, the Association's complaint process constitutes an "investigation into a possible violation of law" for the purpose of s. 22(3)(b). I find the first part of the 22(3)(b) test is met.

[95] For the second part of s. 22(3)(b), I must find that the personal information at issue was "compiled" and is identifiable as part of an investigation. A past OIPC order has found that information will have been "compiled" if the information "was gathered or assembled using judgment, knowledge or skill".⁶² Also, past orders have accepted that a response from the subject of a complaint provided during an investigation falls within s. 22(3)(b).⁶³

[96] I find all of the disputed information was compiled and is identifiable as part of an investigation, so s. 22(3)(b) applies. I find the context of this information is the Engineer's response defending himself during the investigation into an allegation of misconduct against him. I can see the Association investigator prepared the investigation questions and collected the Engineer's answers and evidence using his skills and expertise. Based on this, I conclude that this information falls within the s. 22(3)(b) presumption.

[97] Finally, I do not see how disclosing any of this personal information would be necessary to further prosecute the Engineer who has not been charged with a crime or an offence or to continue the investigation which had concluded at the time of the access request.

[98] Given the above, I find that disclosing the personal information in dispute is presumed to be an unreasonable invasion of the Engineer's personal privacy under s. 22(3)(b).

Employment history, s. 22(3)(d)

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

⁶¹ Order 02-20, 2002 CanLII 42445 (BC IPC) at paras. 28-31; Order F23-78, 2023 CanLII 90556 (BC IPC) at para 95; Order F08-16, 2008 CanLII 57359 (BC IPC) at para 22.

⁶² Order F19-02, 2019 BCIPC 2 at para 35.

⁶³ Order F23-78, 2023 BCIPC 94 (CanLII) at para 97.

[100] Past orders have found that personal information related to investigations into complaints against registrants, including file numbers assigned to those investigations, status updates regarding those investigations, and personal information contained in submissions from those registrants or communications from a regulatory body alerting those registrants of a complaint against them, constitute the occupational histories of those registrants.⁶⁴

[101] In the present case, the personal information in dispute consists of a file number assigned to the complaint process, the subject of the investigation, the Association's investigative questions and the Engineer's answers and supporting documents (Pictures, Analysis and Calculation).

[102] Consistent with past orders mentioned above, I find that s. 22(3)(d) applies to the personal information at issue. I find the file number and the name of the subject registrant is a personal identifier, and all of the information withheld in the Association's questions and the Engineer's answers is about the Engineer defending himself against an allegation of misconduct in the Association's investigation. Also, the Pictures, Analysis and Calculation are provided as evidence to demonstrate how the Engineer knows what he is doing and back up his professional judgement and decisions about the Wall.

[103] Based on this, I am satisfied that the personal information at issue relates to the Engineer's occupational history, and its disclosure is presumed to be an unreasonable invasion of personal privacy of the Engineer under s. 22(3)(d).

Relevant circumstances, s. 22(2)

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

[105] The Association says ss. 22(2)(e), (f) and (h) favour withholding the disputed information.⁶⁵ I will consider each of these provision and any relevant circumstances, whether listed in s. 22(2) or not, in the analysis below.

Unfair damage to reputation or other harm, ss. 22(2)(e) and (h)

[106] The Association's arguments are relevant to both ss. 22(2)(e) and (h). Therefore, I will consider both provisions at the same time.

⁶⁴ Order F23-97, 2023 BCIPC 113 (CanLII) at para 55 and Order F19-02, 2019 BCIPC 2 (CanLII) at para 44.

⁶⁵ Association's initial submission at paras 89-90.

[107] 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”.⁶⁶ Past OIPC orders have found that embarrassment, upset, or negative reactions do not rise to the required level of mental harm.⁶⁷

[108] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage the reputation of any person referred to in the records. The analysis under s. 22(2)(h) has two requirements. First, the public body must establish that disclosing the disputed information may damage the reputation of a person referred to in the records. Second, the reputational damage must be unfair.⁶⁸

[109] The Association says that disclosure of the information in dispute would expose the Engineer to the risk of financial and reputational harm.⁶⁹ There is a significant amount of *in camera* materials in the Association’s submissions and evidence about ss. 22(2)(e) and (h), so I am limited in what I can say about these materials.

[110] Based on the materials before me, I find the Association’s arguments on ss. 22(2)(e) and (h) persuasive for the reasons that follow.

[111] I am satisfied that the Engineer’s sworn evidence sufficiently demonstrates disclosure of the personal information would expose the Engineer to serious mental distress and financial and reputational harm for the purpose of s. 22(2)(e). This evidence can be summarized as follows:

- The applicant is engaged in a pattern of filing unfounded complaints with regulatory bodies against the Engineer and several professionals involved in the Construction Project.⁷⁰
- The Engineer spent his professional time, which he could have devoted to other projects at work, to deal with the Association’s investigation of the applicant’s complaint against him, and time he spent to defend himself is estimated more than \$25,000.⁷¹
- The applicant seems to go looking for new concerns to continue to make complaints against the Engineer and professionals. If the applicant files

⁶⁶ Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42.

⁶⁷ Order 01-15, 2001 CanLII 21569 (BC IPC) at paras 49-50; Order F20-37, 2020 BCIPC 43 (CanLII) at para 120.

⁶⁸ Order F21-69, 2021 BCIPC 80 (CanLII) at para 80.

⁶⁹ Association’s initial submission at para 92; Association’s reply submission at para 10d.

⁷⁰ Engineer’s affidavit #1 at para 27.

⁷¹ *Ibid* at para 29.

a new complaint against the Engineer, that will result in mental distress and additional costs to him to defend himself against the allegation.⁷²

[112] While I cannot discuss the specifics of the Association's submissions and evidence about s. 22(2)(e) without risk of revealing information submitted *in camera*, I can say that it relates to stressful occasions and concerns the Engineer had to deal with defending himself against the allegation. Having considered the seriousness of that situation, I accept that disclosing the disputed information would unfairly expose the Engineer to significant mental distress and financial harm. Therefore, I find s. 22(2)(e) applies to the information in dispute weighing against disclosing this information.

[113] Further, in my view, the withheld information, if disclosed, would unfairly damage the reputation of the Engineer under s. 22(2)(h).

[114] The Association withheld information which it compiled in the complaint investigation. Past orders have found s. 22(2)(h) to apply to that kind of information if it reveals incomplete information that implies wrongdoing with no detail about whether the alleged wrongdoing was ever found to be substantiated.⁷³ I agree with that approach and find it would unfairly damage the Engineer's reputation to disclose the information in dispute because it implies that he did something wrong and it is not accompanied by anything to show the Association concluded his conduct did not fall below the standards of a professional engineer in BC and no discipline was imposed.

[115] As a result, I find that this factor weighs against disclosing that information.

Information supplied in confidence, s. 22(2)(f)

[116] Section 22(2)(f) asks whether the personal information at issue was supplied in confidence. If so, this will weigh against disclosure. Section 22(2)(f) requires evidence that an individual supplied the information under an objectively reasonable expectation of confidentiality at the time they supplied the information.⁷⁴

[117] The Association says that the personal information at issue was supplied to the Engineer under an objectively reasonable expectation of privacy as part of its investigation process.⁷⁵

⁷² *Ibid* at para 30.

⁷³ See for example, Order F23-58, 2023 BCIPC 68 (CanLII) at para. 90; and Order F23-48, 2023 BCIPC 56 (CanLII) at para. 52.

⁷⁴ 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.

⁷⁵ Association's initial submission at para 94.

[118] I can see that the personal information at issue was provided to the Association in the context of the complaint investigation. I am persuaded by the Association's submission that it generally treats this kind of information as confidential.⁷⁶ Also, previous OIPC orders have found that information provided by third parties to an investigator who is conducting a workplace investigation is supplied in confidence.⁷⁷ Given the content and context of the information, I find it is reasonable to conclude that the Engineer expected his personal information to be treated confidentially.

[119] Therefore, I conclude that the personal information at issue was supplied in confidence within the meaning of s. 22(2)(f), and that this weighs against its disclosure.

Applicant's pre-existing knowledge

[120] While not listed in s. 22(2), past orders have considered whether the applicant's pre-existing knowledge of the information in dispute weighs for or against disclosure.⁷⁸

[121] The fact that the personal information in dispute is about the Association's investigation of the applicant's complaint suggests that the applicant knows some of this information. For example, the applicant knows the allegation and the subject of his complaint. However, none of the information in the records establishes that the applicant knows the complete details of the personal information at issue. There is also no indication that the applicant was provided with an opportunity to view any of the records during the investigation.

[122] In all of the circumstances, I find that the fact that the applicant may know some of the information weighs minimally in favour of disclosure of that information⁷⁹ since it is not clear what information that applicant actually knew and to what level of detail.

Summary and conclusion, s. 22(1)

[123] I found that most of the information withheld in the records at issue is personal information of the Engineer and a small amount of the information is not personal information because it qualifies as contact information of an Association investigator.

⁷⁶ Association's initial submission at para 94.

⁷⁷ For instance, see Order F20-13, 2020 BCIPC 15 at para 70 and Order F24-83, 2024 BCIPC 95 at para 48.

⁷⁸ Order F18-48, 2018 BCIPC 51 at para 27; Order F20-22, 2020 BCIPC 26 at para 51.

⁷⁹ For a similar finding, see Order F23-83, 2023 BCIPC 99 at para 82 and Order F22-31, 2022 BCIPC 34 at paras 81-82.

[124] I find none of the circumstances set out in s. 22(4) apply to the personal information in dispute.

[125] I find that disclosure of the personal information is presumed to be an unreasonable invasion of the Engineer's personal privacy because it was compiled and is identifiable as part of the Association's investigation under s. 22(3)(b) and it also relates to the Engineer's occupational history under s. 22(3)(d).

[126] I find that the personal information was supplied in confidence under s. 22(2)(f). I also find that the withheld information, if disclosed, would expose the Engineer to harm under s. 22(2)(e) and unfairly damage his reputation under s. 22(2)(h). These circumstances weigh in favour of withholding that information. While I find the applicant knows some of the personal information in dispute, this circumstance weighs minimally in favour of disclosure of that information.

[127] After weighing all of the above, I find that the applicable presumptions against disclosure under ss. 22(3)(b) and (d) have not been overcome by any relevant circumstances, so disclosing the personal information at issue would be an unreasonable invasion of a third party's personal privacy.

CONCLUSION

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

1. The Association is not authorized to refuse to disclose the information withheld under s. 19(1) of FIPPA.
2. The Association is not required to refuse to disclose the information withheld under s. 21(1) of FIPPA.
3. I confirm, subject to item 4 below, the Association's decision to refuse the applicant access to the information withheld under s. 22(1) of FIPPA.
4. In a copy of page 1 of the records that will be provided to the Association with this order, I have highlighted in green the information that the Association is not required to refuse to disclose under s. 22(1) of FIPPA. The Association must give the applicant access to the information that it was not required to refuse to disclose under this section.

5. The Association must provide a copy of its cover letter and the records it provides to the applicant in compliance with item 4 above to the OIPC registrar of inquiries.

[129] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by December 10, 2025.

October 28, 2025

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F23-94544