



Order F26-03

## PROVINCIAL HEALTH SERVICES AUTHORITY

Denise Eades  
Adjudicator

January 16, 2026

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**Summary:** An individual (applicant) requested access to three records from Provincial Health Services Authority (PHSA) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). PHSA disclosed responsive records but withheld some information in one of the records under s. 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA. The adjudicator found that s. 22(1) applied to most of the withheld information and required PHSA to disclose the remaining information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, s. 22(1), 22(4)(e), 22(3)(d), 22(2)(a), 22(2)(e), 22(2)(f), 22(2)(h), and Schedule 1 (definition of "personal information", "contact information", and "third party").

## INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) asked Provincial Health Services Authority (PHSA) for access to records relating to the following: 1) the results of a staff survey conducted in 2022, 2) the results of an external review conducted by a named company in 2022, and 3) the results of a workplace assessment conducted by a named investigator.

[2] PHSA disclosed item 1 in full, withheld item 2 pursuant to s. 20 of FIPPA (information that will be published within 60 days), and withheld item 3 (the report) in full under s. 14 of FIPPA (solicitor client privilege).<sup>1</sup>

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review PHSA's decision to withhold access to item 3, the report, under s. 14.

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

[4] The OIPC's mediation process did not resolve the issues in dispute, and the matter proceeded to inquiry.

[5] Prior to the inquiry, PHSA withdrew its reliance on s. 14 and released most of the report to the applicant but withheld some information in it under s. 22(1) (unreasonable invasion of a third party's personal privacy). Accordingly, I find that s. 14 is no longer at issue in this inquiry and I will not consider it further.

[6] After receiving the redacted report, the applicant confirmed to the OIPC registrar of inquiries that she still wanted to proceed with the inquiry to determine if PHSA properly applied s. 22(1) to the record at issue, as this issue had not been addressed at mediation.<sup>2</sup>

## ISSUE AND BURDEN OF PROOF

[7] The sole issue to be decided in this inquiry is whether PHSA is required to refuse to disclose the information in dispute under s. 22(1).

[8] PHSA has the initial burden to prove that the information it withheld under s. 22(1) is personal information. If established, the burden then shifts to the applicant to prove that disclosure of the personal information at issue would not be an unreasonable invasion of a third party's personal privacy under s. 22(1).<sup>3</sup>

## DISCUSSION

### *Background*

[9] PHSA is a provincial health authority responsible for coordinating and delivering specialized health care services across British Columbia.<sup>4</sup> Among other things, PHSA provides administrative and operational oversight of British Columbia Emergency Health Services (BCEHS).<sup>5</sup> In particular, PHSA supports BCEHS in managing its labour and human resources and is responsible for receiving and responding to access requests submitted to BCEHS under FIPPA.<sup>6</sup>

[10] In August 2022, BCEHS hired an external investigator (Investigator) to conduct a workplace assessment of the Vancouver Island Region of BCEHS in response to concerns that were raised by employees about inappropriate workplace behaviour and its negative impact on the workplace culture.<sup>7</sup>

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<sup>2</sup> Amended Schedule for Notice of Written Inquiry dated May 29, 2025.

<sup>3</sup> Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

<sup>4</sup> Order F23-56, 2023 BCIPC 65 (CanLII) at para 10.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Page 3 of the report. For clarity, when I refer to page numbers of the report, I am referring to the numbers listed at the bottom center of each page of the report (e.g., Page X of 37).

[11] The purpose of the assessment was to “provide an opportunity for employees to provide their views and experiences about the workplace culture in the Island Region.”<sup>8</sup> The report indicates that “the focus was not on any specific individual or incident.”<sup>9</sup>

[12] As part of the assessment process, the Investigator conducted videoconference interviews with several BCEHS employees in the Island Region.

[13] The applicant is an employee of BCEHS who was invited to participate in an interview as part of the workplace assessment. It is unclear from the parties’ submissions whether the applicant did participate.

### ***Information at Issue***

[14] The sole record at issue in this inquiry is a 37-page workplace assessment report prepared by the Investigator.

[15] The report is comprised of two parts: the “Assessment Report” and the “Confidential Addendum”. PHSA withheld information from both parts of the report under s. 22(1). However, most of the withheld information is in the Confidential Addendum.

### ***Section 22(1) - unreasonable invasion of third-party personal privacy***

[16] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would unreasonably invade a third party’s personal privacy. A third party is any person other than the applicant and a public body.<sup>10</sup>

[17] There are four steps in the s. 22(1) analysis and I will apply each step under the subheadings that follow.<sup>11</sup>

#### ***Step 1 – personal information***

[18] Since s. 22(1) only applies to personal information, the first step is to determine whether the withheld information is personal information.

[19] FIPPA defines personal information as “recorded information about an identifiable individual other than contact information.”<sup>12</sup> 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

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<sup>8</sup> Ibid.

<sup>9</sup> Page 4 of the report.

<sup>10</sup> FIPPA, Schedule 1.

<sup>11</sup> Order F15-03, 2015 BCIPC 3 (CanLII) at para 58 and Order F16-38, 2016 BCIPC 42 (CanLII) at para 108.

<sup>12</sup> FIPPA, Schedule 1.

number, business address, business email or business fax number of the individual.”<sup>13</sup>

[20] Information is about an identifiable individual when it is reasonably capable of identifying an individual, either alone or when combined with other available sources of information.<sup>14</sup>

Parties’ submissions re: personal information

[21] PHSA submits that all of the withheld information is personal information. PHSA asserts that although the Investigator attempted to de-identify the third-party information in the report, releasing the withheld information would amount to disclosure of personal information because it would allow the applicant or other persons with knowledge of the workplace to identify individuals, either explicitly or by inference, including by way of the mosaic effect.<sup>15</sup>

[22] The mosaic effect refers to circumstances where seemingly innocuous information can be linked with other available information and used to identify individuals, thereby transforming the innocuous information into personal information.<sup>16</sup>

[23] For example, PHSA submits that individuals who are not identified by name could be identified by their position within BCEHS, turns of phrases unique to them, and personal anecdotes related to their experience of disrespectful or objectionable behaviour in the workplace.<sup>17</sup>

[24] PHSA submits that the risk of identification occurring is increased in this case because the applicant is an employee within the Vancouver Island Region of BCEHS. PHSA states that accordingly, the applicant is a knowledgeable individual who may be able to use the information already known to her as an employee of BCEHS and the content of the report, including the information participants volunteered about themselves in their responses, to deduce participants’ identities.<sup>18</sup>

[25] The applicant did not make submissions about whether the withheld information is personal information.

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<sup>13</sup> Ibid.

<sup>14</sup> See for example, Order F21-17, 2021 BCIPC 22 (CanLII) at para 12; Order F16-38, 2016 BCIPC 42 (CanLII) at para 112; and Order F13-04, 2013 BCIPC 4 (CanLII) at para 23.

<sup>15</sup> PHSA’s initial submission at paras 26 and 27.

<sup>16</sup> Order F24-86, 2024 BCIPC 98 (CanLII) at para 29.

<sup>17</sup> PHSA’s initial submissions at para 30.

<sup>18</sup> PHSA’s initial submission at para 28.

Analysis and findings re: personal information

[26] The information PHSA withheld under s. 22(1) consists of comments of participants who are not identified by name and the participant numbers assigned to each of the participants.

[27] For the reasons that follow, I find that most of the information PHSA withheld from the participants' comments is the personal information of the participants or other third parties discussed in their comments. Further, I find that most of the participant numbers PHSA withheld from the Assessment Report are the personal information of the participants.

i. Participant comments

[28] The participants' comments consist of their views and opinions about the workplace, incidents that have occurred, and/or their colleagues. The participants are not named in the report. However, some third parties are named in their comments.

[29] It is well established that an individual's opinions and comments are their personal information if their identity is known or can be accurately inferred.<sup>19</sup> The same principle applies to the individual whom the opinion and/or comment was made about.<sup>20</sup>

*Information in comments that is personal information*

[30] I find that most of the information PHSA withheld from the comments of participants under s. 22(1) is about identifiable individuals and is clearly not contact information. Accordingly, this information is personal information.

[31] This information I find to be personal information is compromised of the following:

- comments that are about named individuals;<sup>21</sup> and
- comments, or parts of comments, that contain sufficient detail about the participant, third party, or incident being discussed to reasonably enable someone familiar with the workplace to identify the participant or other

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<sup>19</sup> For example, see Order F20-13, 2020 BCIPC 15 (CanLII) at para 41 and Order F23-13, 2023 BCIPC 14 (CanLII) at para 49.

<sup>20</sup> Ibid.

<sup>21</sup> For example, the comments on pages 35-37 of the report.

third party based on what was said, even though individuals are not explicitly named.<sup>22</sup>

*Information in comments that is not personal information*

[32] However, I find that some of the information PHSA withheld from the comments of participants under s. 22(1) is not personal information because it is not about identifiable individuals.

[33] This information I find not to be personal information is compromised of:

- General statements about the workplace;<sup>23</sup> and
- Incidental language or phrases.<sup>24</sup>

[34] I do not see, nor did PHSA sufficiently explain, how disclosing general statements about the workplace or incidental language in comments would reveal the identity of third parties, including by way of the mosaic effect. Accordingly, PHSA is not authorized to withhold this information under s. 22(1).<sup>25</sup>

[35] I note that while some of the withheld incidental language may, at first glance, appear inconsequential, in my view it is still capable of conveying meaning to the applicant about the content of the responsive record. Further, disclosing this language in the Confidential Addendum will provide the applicant with at least a general sense of this part of the record, rather than entirely or mostly blacked-out pages.<sup>26</sup>

ii. Participant numbers

[36] As set out above, the participants are not named in the report. However, the comments participants made are attributed to them via their assigned participant number (e.g., P1, P2, P3 and so on to P17).

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<sup>22</sup> For example, comments on pages 13, 14, 16, 17, 22, 23, 29, 35, 36, and 37 of the report. For cases with similar findings, see: Order F24-86, 2024 BCIPC 98 (CanLII) at paras 26-31; Order F23-74, 2023 BCIPC 89 (CanLII) at para 44; Order F19-15, 2019 BCIPC 17 (CanLII) at paras 44-46; Order F24-76, 2024 BCIPC 86 (CanLII) at para 26; Order F23-48, 2023 BCIPC 56 (CanLII) at para 36; Order F24-48, 2024 BCIPC 56 (CanLII) at paras 64-65.

<sup>23</sup> For example, information on pages 13 and 36 of the report. This information will be highlighted in green in the copy of the report I will provide to PHSA with this order.

<sup>24</sup> For example, information on pages 35-37 of the report. This information will be highlighted in green in the copy of the report I will provide to PHSA with this order.

<sup>25</sup> For cases with similar reasoning, see: Order F05-30, 2005 CanLII 32457 (BC IPC) at para 37; Order F24-48, 2024 BCIPC 56 (CanLII) at para 66; Order F25-13, 2025 BCIPC 15 (CanLII) at para 42; Order F24-83, 2024 BCIPC 95 (CanLII) at para 24.

<sup>26</sup> For cases with similar findings, see: Order F23-78, 2023 BCIPC 94 (CanLII) at para 79 and Order F21-34, 2021 BCIPC 42 (CanLII) at para 24.

[37] PHSA's submissions do not explain its rationale for withholding the participant numbers under s. 22(1).

[38] It is clear that a participant number, on its own, does not reveal anything about an identifiable individual. Accordingly, the issue is whether the participant numbers could reveal the identity of the participants when combined with other available sources of information, including the participants' comments in the report.

[39] Since my findings on this issue are influenced by the context of which part of the report the participant numbers appear in, I will first provide some background information about the two parts of the report and how they differ from each other.

[40] As discussed above, the report is comprised of two parts: the Assessment Report and the Confidential Addendum. The Assessment Report consists of the comments participants made in their interviews, an analysis of themes, and recommendations to BCEHS. The comments in the Assessment Report do not contain the names of any third parties.

[41] The Confidential Addendum consists of an amalgamation of participant comments that contain "specific details of incidents or names of employees that were shared during the Assessment."<sup>27</sup> These comments are provided under the heading "Summary of Specific Concerns reported during Assessment." The report indicates that if participants chose to share specific incidents or names in their interviews, these details would be provided separately and anonymously to BCEHS in a Report Addendum (i.e., the Confidential Addendum), unless participants consented to be named.<sup>28</sup> The comments in the Confidential Addendum contain the names of multiple third parties.

[42] In the Assessment Report, PHSA released the participant comments in full, subject to minor redactions, but withheld the participant number that appears at the end of each comment. In the Confidential Addendum, with the exception of one comment and participant number, PHSA withheld all of the participant comments in full *and* the participant numbers.

*Participant numbers that could reveal the identity of participants*

[43] Having reviewed the report, I am satisfied that releasing most of the participant numbers in the Assessment Report could reasonably enable the identification of the participants they belong to.<sup>29</sup> This risk arises for participants

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<sup>27</sup> Page 35 of the report.

<sup>28</sup> Ibid.

<sup>29</sup> This finding applies to the following participant numbers in the Assessment Report: P1, P2, P4, P5, P7, P8, P9, P10, P11, P12, P13, P14, P15 and P16.

who provided identifying information about themselves over the course of several comments that were replicated in the Assessment Report. This identifying information includes things like their gender, family status, level of seniority, work location, job duties, job type, and personal anecdotes. I am satisfied that if this information was attributed to the same individual via their participant number, there would be a real risk that someone familiar with the workplace could determine who the participant was based on what the participant said about themselves and the workplace in their comments.<sup>30</sup> Accordingly, I am satisfied that the participant numbers of these individuals are their personal information.

*Participant numbers that cannot reveal the identity of participants*

[44] On the other hand, I am not satisfied that releasing the remainder of the withheld participant numbers in the report could result in the identification of participants. This finding applies to a handful of participants who provided a limited number of comments in the Assessment Report that are non-identifying in nature. PHSA did not explain, nor do I see, how revealing the participant numbers of these individuals would reveal the identity of the participants. Accordingly, absent more information, I am not satisfied that the participant numbers of these participants are their personal information.<sup>31</sup>

[45] This finding also applies to all of the withheld participant numbers in the Confidential Addendum.<sup>32</sup> As previously mentioned, in this part of the report, the participant's comments were either fully redacted or almost entirely redacted. I do not see, nor did PHSA explain, how a participant number alongside a redacted comment could reveal the identity of a participant. Further, I am satisfied that the small amount of general or incidental information in the comments in this section of the report that I found above must be disclosed does not impact this analysis because this information is not identifying information about the participants.

[46] Accordingly, I find that the some of the participant numbers in the Assessment Report and all of the participant numbers in the Confidential Addendum are *not* personal information because they cannot reasonably be used on their own or in combination with other information to determine the identity of participants. Therefore, they cannot be withheld under s. 22(1).

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<sup>30</sup> For cases with similar reasoning, see: A-2023-040, 2023 CanLII (NL IPC) at para 19 and Order F24-86, 2024 BCIPC 98 at para 26-31.

<sup>31</sup> This finding applies to the following participant numbers: P3, P6, and P17. These participant numbers appear on pages 7, 8, 12, 13, 19, 25, 29 of the report.

<sup>32</sup> For clarity, I am referring to the participant numbers that appear on pages 35-37 of the report.



Conclusion re: personal information

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

- Comments about the workplace that are too general to identify anyone;
- Incidental language in participant comments; and
- Some of the participant numbers in the Assessment Report and all of the participant numbers in the Confidential Addendum.

[48] I will not consider this information further in the s. 22 analysis because this information it is not personal information.

*Step 2 – circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy*

[49] 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). If it does, then the disclosure of the personal information is deemed *not* to be an unreasonable invasion of a third party's personal privacy, and the information must be disclosed.

[50] PHSA submits that s. 22(4)(e) (third party's positions, functions or remuneration) does not apply to the withheld information.<sup>33</sup> The applicant did not provide any submissions on s. 22(4).

Section 22(4)(e) – third party's position, functions, or remuneration

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

[52] PHSA acknowledges that some portions of the withheld personal information reveal a participant's position with a public body (BCEHS).<sup>34</sup> However, PHSA submits this type of information falls outside the scope of s. 22(4)(e) when it appears in a context that is connected to an investigation, allegation or other similar workplace dispute.<sup>35</sup>

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<sup>33</sup> PHSA's initial submissions at para 35.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

[53] It is well established that whether s. 22(4)(e) applies in a particular case depends on the context in which the information at issue appears.<sup>36</sup> Past orders have found that s. 22(4)(e) applies to personal information when it is about individuals *in the normal course* of performing their work duties, and can include employee names, job titles, duties, functions, remuneration or positions.<sup>37</sup> However, where 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 duties, then s. 22(4)(e) does not apply.<sup>38</sup>

[54] Having reviewed the record, I can confirm that some of the withheld personal information includes employees' names, job titles, and details about their work duties. However, this information, as it appears in the record, is not about these individuals in the normal course of performing their work duties within the meaning of s. 22(4)(e). Rather, this information is about individuals in the context of participating in or being discussed in a workplace assessment. Therefore, consistent with past orders, I find that that s. 22(4)(e) does not apply to this information.

### *Step 3 – presumptions against disclosure*

[55] The third step in the s. 22(1) analysis is to determine whether any of the presumptions listed under s. 22(3) apply to the withheld personal information. If so, then disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[56] PHSA submits that s. 22(3)(d) applies to the information at issue.<sup>39</sup> The applicant does not address s. 22(3) in her submissions.

### Section 22(3)(d) – employment, occupational, or educational history

[57] Section 22(3)(d) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to employment, occupational or educational history. Past orders have found that the term "employment history" includes certain contents of a personnel file, the details of disciplinary action taken against employees, performance appraisals of employees, and materials relating to investigations into workplace behaviour.<sup>40</sup>

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<sup>36</sup> Order F23-28, 2023 BCIPC 32 (CanLII) at para 42.

<sup>37</sup> Order F23-66, 2023 BCIPC 77 (CanLII) at para 28.

<sup>38</sup> For example, see Order F23-28, 2023 BCIPC 32 (CanLII) at paras 42-43; Order F25-83, 2025 BCIPC 97 (CanLII) at paras 92-94; Order F21-34, 2021 BCIPC 42 (CanLII) at paras 32-34.

<sup>39</sup> PHSA's initial submissions at para 39.

<sup>40</sup> Order F24-86, 2024 BCIPC 98 (CanLII) at para 49.

[58] PHSA submits that the information at issue is comprised of “Participants’ employment history, conduct, and workplace actions” and “includes information about Participants who are describing their own interactions and the interactions of other third-party individuals who were affected by or engaged in disrespectful or objectionable behaviour in the workplace.”<sup>41</sup> PHSA submits that all of this information constitutes information about the employment or occupational history of participants.<sup>42</sup>

[59] PHSA further submits that past orders have found that, in the context of a workplace investigation, information disclosing witness names, secondary identifiers, and other information from which a third-party witness’s identity may be inferred is presumed to give rise to an unreasonable invasion of personal privacy under s. 22(3)(d). PHSA submits that the workplace assessment is analogous to a workplace investigation, and accordingly s. 22(3)(d) applies to the information at issue.<sup>43</sup>

[60] Turning to the content of the withheld personal information, I find that the bulk of it consists of allegations or evaluative information about the workplace behaviour of named or identifiable individuals.<sup>44</sup> It is well-established that s. 22(3)(d) applies to allegations and evaluative information about a third party’s workplace behaviour and actions.<sup>45</sup> I make the same finding here.

[61] Next, a small amount of the withheld personal information consists of information about sensitive employment-related issues experienced by identifiable third parties other than the participants, such as issues relating to the third party’s compensation or request for accommodation. I am satisfied that disclosing this information would reveal information connected to the employment history of these individuals.<sup>46</sup>

[62] The balance of the remaining withheld personal information consists of information that could reasonably identify participants and what they told the Investigator about their subjective experiences working for BCEHS.<sup>47</sup> This information was collected from the participants in the context of a formal investigation into employees’ views and experiences of the workplace culture. These individuals were not merely third-party witnesses to an investigation about another person or incident; rather, they were the primary subjects of an investigation into systemic workplace culture issues. In the course of participating

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<sup>41</sup> PHSA’s initial submissions at para 39.

<sup>42</sup> *Ibid.*

<sup>43</sup> PHSA’s initial submissions at paras 40-41.

<sup>44</sup> This information is found on pages 14, 16, 35, 36, and 37 of the report.

<sup>45</sup> For example, Order F25-67, 2025 BCIPC 77 (CanLII) at para 125 and Order F24-48, 2024 BCIPC 56 (CanLII) at para 94.

<sup>46</sup> This information is found on pages 22 and 23 of the report.

<sup>47</sup> For example, information on pages 13, 17, 29, 36, and 37 of the report, as well as the applicable participant numbers in the Assessment Report.

in this investigation, the participants provided sensitive information regarding their thoughts and feelings about the workplace and their colleagues. I am satisfied that disclosing information that could identify participants in connection with their subjective views about their employment with BCEHS would reveal information connected to the employment history of these individuals for the purposes of s. 22(3)(d).<sup>48</sup>

[63] Accordingly, for these reasons, I find that s. 22(3)(d) applies to all of the withheld personal information. As a result, disclosure of this information is presumed to be an unreasonable invasion of third-party personal privacy.

#### *Step 4 – relevant circumstances*

[64] The final step in the s. 22(1) 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 of the analysis that the applicable s. 22(3) presumptions may be rebutted by the applicant.

[65] PHSA submits that s. 22(2)(a) (public scrutiny) does not weigh in favour of disclosure, while s. 22(2)(f) (supplied in confidence), 22(2)(e) (financial or other harm), and 22(2)(h) (unfair damage to reputation) weigh against disclosure.<sup>49</sup> The applicant did not address s. 22(2) in her submissions.

[66] I have also considered whether there are any other circumstances, including those listed under s. 22(2), that may apply. Based on my review of the withheld information, the sensitivity of the information is also a relevant factor and I will consider it below.

#### Section 22(2)(a) – public scrutiny of a public body

[67] Section 22(2)(a) requires a public body to consider whether disclosing the personal information at issue is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Where disclosure would foster the accountability of a public body, this may be a relevant circumstance that weighs in favour of disclosing the information at issue.<sup>50</sup>

[68] PHSA submits that the public interest would not be served by disclosure of the specific contents of the withheld information.<sup>51</sup> PHSA submits that the

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<sup>48</sup> Though the context differs, see Order F24-86, 2024 BCIPC 98 (CanLII) at paras 51-53 for a similar finding regarding s. 22(3)(d) applying to information collected by an employer that would reveal what employees said about their subjective experience working for the employer and their personal opinions about colleagues.

<sup>49</sup> PHSA's initial submission at Section K.

<sup>50</sup> Order F05-18, 2005 CanLII 24734 (BC IPC) at para 49.

<sup>51</sup> PHSA's initial submission at para 48.

information it has withheld under s. 22 is “of an intensely personal nature” and that the public interest is best served by protecting the privacy and security of the individuals who voluntarily participated in the workplace assessment with an expectation of anonymity.<sup>52</sup>

[69] Past orders have noted that the purpose of s. 22(2)(a) is to make public bodies more accountable, not to scrutinize the activities of individual third parties.<sup>53</sup>

[70] Having reviewed the report, I can confirm that PHSA already provided access to the majority of the information in the record, including several pages of participant comments, a thorough analysis of themes in the concerns that were raised by participants about the work environment, and the Investigator’s conclusions and recommendations to BCEHS.<sup>54</sup>

[71] The personal information that PHSA withheld from the report consists of comments that reveal allegations, complaints, or evaluative remarks about named and/or otherwise identifiable individuals, or information that could reveal the identity of participants. I do not find that disclosure of this information is desirable for subjecting PHSA to public scrutiny. Rather, it would mostly result in subjecting individual third parties to public scrutiny or revealing the identity of participants, which is not the purpose of s. 22(2)(a).

[72] Accordingly, I find that s. 22(2)(a) is not a factor weighing in favour of disclosure of the withheld information in this case.

#### Section 22(2)(f) – information supplied in confidence

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

[74] In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the information and did so under an objectively reasonable expectation of confidentiality at the time the information was supplied.<sup>55</sup>

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<sup>52</sup> PHSA’s initial submissions at paras 48-49.

<sup>53</sup> For example, see Order F16-14, 2016 BCIPC 16 (CanLII) at para 40 and Order F23-48, 2023 BCIPC 56 (CanLII) at para 48.

<sup>54</sup> Past orders have found that a public body’s current level of disclosure of the information in the record at issue is a relevant factor when considering the applicability of s. 22(2)(a). For example, see Order F23-28, 2023 BCIPC 32 (CanLII) at paras 67-68; Order F16-14, 2016 BCIPC 16 (CanLII) at para 40; Order F24-80, 2024 BCIPC 91 (CanLII) at para 57.

<sup>55</sup> Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing Order 01-36, 2001 CanLII 21590 (BCIPC) at paras 23-26. See also Order F23-02, 2023 BCIPC 3 (CanLII) at para 45.

[75] PHSA submits that there can be no question that the personal information supplied by the participants and reproduced in the report was provided in confidence.<sup>56</sup> In support of this, PHSA points to the following factors:

- The investigator consistently made assurances that witness participation would be treated as confidential.
- The investigator advised the participants that their responses would remain anonymous and that to maintain their anonymity they would be referred to by a code.
- Participants who shared specific instances or names in their responses were informed that their responses would be provided separately and anonymously to BCEHS in the Confidential Addendum and that sharing their identity would require their express consent, which was not provided.<sup>57</sup>

[76] PHSA submits that considerable weight should be afforded to s. 22(2)(f) in the circumstances of this case because assurances of confidentiality are critical to the willingness of employees and other third-party witnesses to participate, or to be forthright and candid, in workplace investigations.<sup>58</sup>

[77] Having reviewed the record, I find that it is clear on the face of the report that information participants provided to the Investigator was supplied in confidence. For example, the “Introduction and Methodology” section of the report explicitly states that “It was confirmed to Participants that their responses would remain anonymous during the Assessment process and in this Report, and to maintain their anonymity, Participants are referred to by code.”<sup>59</sup> This section further states “it was also clarified that if Participants chose to share specific instances or names in their responses, those details may be provided separately and anonymously to BCEHS, unless Participants otherwise consented to be named.”<sup>60</sup> I find these statements in the report to be persuasive evidence that the information participants provided to the Investigator was supplied by them in confidence.

[78] Additionally, the content of the comments and context in which they were provided further support a conclusion that the information at issue was supplied in confidence. First, ensuring anonymity among participants clearly supported BCEHS’s goal of receiving candid feedback from employees about the workplace. Second, the honesty and candidness of participants’ comments

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<sup>56</sup> PHSA’s initial submission at para 51.

<sup>57</sup> Ibid.

<sup>58</sup> PHSA’s initial submissions at para 52.

<sup>59</sup> Page 4 of the report.

<sup>60</sup> Ibid.

strongly indicates that they did not expect their identities to be revealed or their comments to be publicly disclosed.<sup>61</sup>

[79] Accordingly, for these reasons, I find that s. 22(2)(f) applies to all of the personal information PHSA withheld from participant comments and this weighs against disclosing this information to the applicant.<sup>62</sup>

[80] However, I find that s. 22(2)(f) does not apply to the withheld participant numbers because these numbers were not “supplied by” the participants. Rather, they were generated by the Investigator.

Sections 22(2)(e) and (h) - unfair harm and damage to reputation

[81] PHSA grouped its submissions with respect to ss. 22(2)(e) and 22(2)(h) together.

[82] Section 22(2)(e) asks whether disclosure of the personal information will unfairly expose a third party to financial or other harm. Past orders have said that the “other harm” under this provision includes mental harm. However, the mental harm must rise to “serious mental distress or anguish”. Embarrassment, upset, or having a negative reaction do not rise to the level of mental harm contemplated by s. 22(2)(e).<sup>63</sup>

[83] Section 22(2)(h) asks whether disclosure of the personal information may unfairly damage the reputation of a person referred to in the records. It has two requirements; first the information must damage an individual’s reputation. Second, the damage to an individual’s reputation must be unfair.<sup>64</sup>

[84] With respect to s. 22(2)(e), PHSA submits that disclosure of the information at issue would expose participants unfairly to actual and potential harm, “including unnecessary stress, fear or anxiety about disclosure of the Third Party Information and its implications for the Third parties.”<sup>65</sup> PHSA further submits if the applicant or other person is able to infer participants’ identities, they may seek to retaliate against them for their comments and participation in the workplace assessment.<sup>66</sup>

[85] Regarding s. 22(2)(h), PHSA submits that because participants refused to disclose their identities in the Confidential Addendum, “it is reasonable to infer that they feared that if the redacted information was disclosed, others will know of

<sup>61</sup> For a case with similar reasoning, see: Order F24-86, 2024 BCIPC 98 (CanLII) at para 76.

<sup>62</sup> For example, the information on pages 13, 14, 16, 17, 22, 23, 29, 35, 36, and 37 of the report.

<sup>63</sup> For example, see: Order F24-83, 2024 BCIPC 95 (CanLII) at para 42 and Order F24-81, 2024 BCIPC 93 (CanLII) at para 90.

<sup>64</sup> Order F19-02, 2019 BCIPC 2 (CanLII) at para 69.

<sup>65</sup> PHSA’s initial submissions at para 57.

<sup>66</sup> Ibid.

their participation and make negative statements about them to BCEHS, PHSA, or others (such as other colleagues) because of their participation.”<sup>67</sup> PHSA submits that the participants had a reasonable concern that such disclosure might unfairly damage their reputations.<sup>68</sup>

[86] Turning first to s. 22(2)(h), past orders dealing with workplace and other complaints have consistently held that the harm caused by disclosing personal information is unfair where the information amounts to unproven allegations against the individual affected and that individual did not have an opportunity to rebut the allegations in the context of an investigation process.<sup>69</sup>

[87] Having reviewed the report, I find that disclosure of the withheld personal information in the Confidential Addendum that consists of unproven allegations or negative remarks about named or identifiable individuals could harm the reputation of those individuals.<sup>70</sup> It is stated directly in the report that these individuals did not have the opportunity to respond to these allegations or comments and that no evidentiary findings were made.<sup>71</sup> Consequently, the resulting reputational damage to these individuals would be unfair.

[88] Further, I can also accept that disclosure of some of the allegations and negative comments participants made about their colleagues in the Confidential Addendum could result in reputational harm to the participants if they were identified as the person who made the allegation or comment.<sup>72</sup> This reputational harm would be unfair because participants provided these comments confidentiality and with an expectation that they would not be publicly disclosed.<sup>73</sup>

[89] Turning next to s. 22(2)(e), I find that due to the serious nature of some of the allegations that were made about the workplace behaviour of certain individuals in the Confidential Addendum, it is reasonable to conclude that these individuals would be subjected to serious mental distress if these allegations were disclosed.<sup>74</sup> I cannot say more without revealing the personal information in dispute. I find that this mental distress would be unfair because these allegations were not tested, and the third parties did not have the opportunity to respond to them.

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<sup>67</sup> PHSA’s initial submissions at para 54.

<sup>68</sup> Ibid.

<sup>69</sup> For example, see Order F24-48, 2024 BCIPC 56 (CanLII) at para 127; Order F16-50, 2016 BCIPC 55 (CanLII) at para 53; Order F24-48, 2024 BCIPC 56 (CanLII) at para 130.

<sup>70</sup> For example, the comments that appear on pages 35-37 of the report.

<sup>71</sup> This is noted on page 35 of the report as follows: “No allegations have been put to any individuals during the Assessment process and therefore no evidentiary findings have been made.”

<sup>72</sup> For example, the comments that appear on pages 35-37 of the report.

<sup>73</sup> For a case with a similar finding, see: Order F21-34, 2021 BCIPC 42 (CanLII) at para 70.

<sup>74</sup> For example, the comments that appear on pages 35-37 of the report.



[90] Taking all of this together, I find that ss. 22(2)(e) and (h) apply to the withheld information in the Confidential Addendum that consists of unproven allegations and negative remarks about individuals and that this weighs against disclosing this information to the applicant.<sup>75</sup>

[91] However, there is insufficient explanation or evidence before me to conclude that ss. 22(2)(e) or (h) apply to the remaining withheld personal information.<sup>76</sup> PHSA's submissions do not explain, nor do I see, how disclosing the balance of the withheld personal information could cause the level of harm or reputational damage to third parties contemplated by ss. 22(2)(e) and (h). Although discrete portions of the withheld information in the Assessment Report contain comments about individuals that are critical in nature, I am not satisfied that they are critical to the extent that their disclosure would cause unfair reputational damage or harm to the individuals they are about.

#### Sensitivity of information

[92] While neither party made submissions on sensitivity, previous orders have held that the sensitivity of the information at issue may be a relevant circumstance either for or against disclosure under s. 22(2).<sup>77</sup>

[93] In my view, most of the withheld personal information is sensitive in nature. This information I find to be sensitive includes information that would reveal one or more of the following: allegations of inappropriate workplace behaviour, negative evaluations about how someone performed their job, and the impact of workplace issues on the well-being of the participant. Past orders have found this type of information to be sensitive<sup>78</sup> and I make the same finding here. I therefore conclude that sensitivity is a relevant factor in this case and that it weighs against disclosure of most of the withheld personal information.<sup>79</sup>

#### *Conclusion – section 22(1)*

[94] To begin, I found that some of the information PHSA withheld from the report is not personal information and therefore cannot be withheld under s. 22(1). The balance of the withheld information is personal information.

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<sup>75</sup> Specifically, the comments (or parts of comments) on pages 35-37 that contain allegations or negative remarks about individuals

<sup>76</sup> Namely the information withheld on pages 7 to 29 of the report and the portions of comments on pages 35-37 of the report that do not contain allegations or negative comments about individuals (such as, for example, the second sentence in the last bullet on page 37).

<sup>77</sup> Order F23-29, 2023 BCIPC 33 (CanLII) at para 74.

<sup>78</sup> For example, see Order F23-29, 2023 BCIPC 33 (CanLII) at para 75; Order F23-03, 2023 BCIPC 4 (CanLII) at para 53; Order F23-106, 2023 BCIPC 122 (CanLII) at para 75.

<sup>79</sup> For example, information on pages 13, 14, 16, 35, 36, and 37 of the report.

[95] With respect to the withheld information I found qualifies as personal information, I determined that none of the provisions of s. 22(4) apply to it.

[96] Next, I determined that disclosure of this personal information is presumed to be an unreasonable invasion of personal privacy under s. 22(3)(d) because it relates to the employment history of the participants or other third parties.

[97] Turning to the relevant circumstances under s. 22(2), I determined that s. 22(2)(a) does not weigh in favor of disclosing the personal information because its disclosure would subject the activities of individual third parties to public scrutiny, rather than the PHSA. Further, I determined that most of the personal information is sensitive in nature, was supplied by participants in confidence (s. 22(2)(f)) and could unfairly expose third parties to harm or reputational damage if disclosed (ss. 22(2)(e) and 22(2)(h)). All of these factors weigh against disclosing this information. There are no relevant circumstances weighing in favour of disclosure. Consequently, the s. 22(3)(d) presumption has not been rebutted.

[98] Taking all of the above into consideration, including the applicable presumptions and relevant circumstances, I conclude that disclosure of the withheld personal information would constitute an unreasonable invasion of one or more third party's personal privacy. I therefore find that s. 22(1) applies to the personal information and PHSA must refuse to disclose it.

## **CONCLUSION**

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

1. Subject to item #2 below, I confirm PHSA's decision to refuse to disclose the information it withheld from the record under s. 22(1).
2. PHSA is not authorized or required under s. 22(1) to refuse to disclose the information I have highlighted in green on pages 7, 8, 12, 13, 19, 25, 29, 35, 36, and 37 of the copy of the record I will provide to PHSA with this order. PHSA is required to give the applicant access to the highlighted information.
3. PHSA must provide the OIPC registrar of inquiries with a copy of the cover letter and record it sends to the applicant in compliance with item #2 above.

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[100] Pursuant to s. 59(1) of FIPPA, PHSA is required to comply with this order by **March 2, 2026**.

January 16, 2026

**ORIGINAL SIGNED BY**

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Denise Eades, Adjudicator

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