OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F26-32

WORKERS' COMPENSATION BOARD

Lisa Siew
Adjudicator

April 27, 2026

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the Workers' Compensation Board (Board) provide access to records related to a bullying and harassment complaint that they submitted to the Board about their former employer. The Board refused access to some information in two responsive records under ss. 19(1)(a), 13(1), or 22(1) of FIPPA. The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Board's decision and the matter was later forwarded to inquiry. The OIPC decided to add as an issue to the inquiry whether it would be an abuse of process to review the Board's decision to refuse access to information in one record. The adjudicator determined it would be an abuse of process to review the Board's decision regarding that record. For the remaining record at issue, the adjudicator found the Board was required to refuse access to some information under s. 22(1). The Board was not required to refuse the applicant access to the other information in that record under s. 22(1) and it was not authorized to refuse access to the information that it withheld under ss. 13(1) or 19(1)(a). The Board was required to provide the applicant with access to the information that it was not required or authorized to withhold under ss. 13(1), 19(1)(a) or 22(1).

Statute and sections considered in the order: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. Schedule 1 (definitions of "contact info", "personal information" and "third party"), 13(1), 19(1)(a), 22(1), 22(2), 22(2)(a), 22(2)(e), 22(2)(f), 22(2)(h), 22(3), 22(3)(a), 22(3)(d), 22(4), 54(b), 56(1), 56(3), 58(1), 58(2), 58(4), 58(5)(c).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (the Applicant) requested the Workers' Compensation Board (the Board) provide access to records related to a bullying and harassment complaint that they submitted to the Board about their former employer.[1]

[1] The Workers' Compensation Board is listed as a public body in Schedule 2 of FIPPA. It does business as WorkSafeBC, but I will refer to it in this order as the Board.

[2] The Board located records responsive to the Applicant's access request, including records that it determined were created by, or originated from, Langara College (College). One of those records was an investigation report regarding the Applicant's bullying and harassment complaint (the Report). The Board consulted with the College about the relevant records. The College requested the Board refuse access to some information in two records and the Board agreed with the College's redactions. The Board provided the Applicant with partial access to the two records, but withheld information in both records under ss. 19(1)(a), 13(1), or 22(1) of FIPPA.

[3] The Applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Board's decision to refuse access. The OIPC's review and mediation process did not resolve the dispute between the parties, and an OIPC investigator decided to forward the matter to the OIPC's inquiry phase for adjudication.

[4] After the matter was forwarded to inquiry, the OIPC decided to add a new issue to the inquiry. The OIPC was aware that the Report was the record at issue in an inquiry between the Applicant and the College that resulted in Order F24-83.[2] Therefore, the OIPC decided to add as an issue to this inquiry, whether it would be an abuse of process for the OIPC to consider the Board's decision to refuse access to the Report as part of this inquiry. The OIPC can, on its own initiative, consider whether a matter should not be heard at an inquiry because it would be an abuse of process.[3]

[5] The OIPC also notified the College of the Applicant's request for review and invited it to participate in this inquiry.[4] The College made written submissions.

PRELIMINARY MATTER – NEW ISSUE

[6] Although the notice of inquiry sent to the parties identified abuse of process as the only additional issue for consideration in this inquiry, both the College and the Board also argued issue estoppel applies in this case to prevent the Applicant from attempting to re-litigate Order F24-83. The common law doctrine of issue estoppel prevents the re-litigation of an issue that a court or tribunal has already decided in a previous proceeding.[5]

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[2] Order F24-83, 2024 BCIPC 95 (CanLII).
[3] Decision F25-03, 2025 BCIPC 70 (CanLII) at para. 15; Order F25-43, 2025 BCIPC 51 (CanLII) at para. 14.
[4] 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.
[5] *Schweneke v. Ontario*, 2000 CanLII 5655 (ONCA) at para. 25. See also Order 01-03, 2001 CanLII 21557 (BCIPC) for a full discussion about issue estoppel.

[7] Although they are related and share common goals and principles, abuse of process and issue estoppel are two separate doctrines.[6] The doctrine of abuse of process is a more flexible doctrine compared to issue estoppel which has strict requirements.[7] Moreover, each doctrine has a different focus. An abuse of process focuses "more on the integrity of judicial decision making as a branch of the administration of justice", while issue estoppel focuses on the interests of the parties such as whether there would be any "unfairness to a party being called twice to put its case forward."[8]

[8] Issue estoppel was not set out in the notice of inquiry as an issue for consideration in this inquiry and none of the parties requested that it be added to this inquiry. Therefore, the College and the Board are trying to add a new issue to this inquiry without the OIPC's prior consent. However, it is not necessary for me to consider here whether issue estoppel should be added as a new issue to this inquiry or whether it applies in this case because, as I will explain later on in this decision, I find the dispute between the parties about the Report can be determined based on the doctrine of abuse of process.

ISSUES AND BURDEN OF PROOF

[9] The issues I need to determine in this inquiry are the following:

- Would it be an abuse of process to review the Board's decision to refuse access to parts of the Report under ss. 13(1), 19(1)(a) and 22(1)? If so, what is the appropriate remedy?

- Is the Board required to refuse to disclose the information at issue under s. 22(1)?

- Is the Board authorized to refuse to disclose the information at issue under ss. 13(1) and 19(1)(a)?

[10] *Sections 13(1) and 19(1)(a)*: Section 57(1) of FIPPA requires the Board, as the public body whose decision is under review in this inquiry, to prove the Applicant has no right of access to the information in dispute under ss. 13(1) and 19(1)(a).

[11] *Section 22(1)*: Where a public body has refused access to all or part of a record under s. 22(1), s. 57(2) of FIPPA requires the applicant to establish that disclosure of the information withheld under s. 22(1) would not be an unreasonable invasion of a third party's personal privacy. However, as the public

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[6] *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII) at paras. 37-38 and 60. *Brown v Miller*, 2010 BCSC 737 (CanLII).
[7] *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII) at para. 37.
[8] *Ibid* at para. 43.

body in this matter, the Board has the burden of first proving that the information it withheld under s. 22(1) is personal information.[9]

[12] *Abuse of process*: FIPPA does not identify which party has the burden of proving whether there is an abuse of process. In this case, the OIPC decided on its own initiative to add this issue to the inquiry and invited the parties to make submissions. In similar circumstances, previous OIPC orders have determined that there is no formal burden of proof on any party, including the OIPC, to prove there is an abuse of process.[10] Previous decision-makers have also recognized, however, that determining whether there is an abuse of process requires reviewing all the available evidence and arguments.[11] I agree and will take the same approach here. Each participating party should provide arguments and evidence to assist the adjudicator with determining whether there is an abuse of process. In the present case, the parties have provided submissions about this matter.

DISCUSSION

Background

[13] The Board is a provincial agency responsible for the administration of the *Workers Compensation Act* (the *Act*).[12] Under the *Act*, the Board has the authority to investigate hazards in the workplace, including allegations of workplace bullying and harassment.

[14] The College is a public post-secondary educational institution which has two campuses in Vancouver, BC. The Applicant was employed as a temporary instructor to teach a course at the College for a semester. There were eight students enrolled in the class.

[15] Shortly after the Applicant's teaching semester started, some students filed a complaint with the College about the Applicant, including a complaint under the College's *F1002 Concerns about Instruction and Course Delivery* policy (the Student Complaint). The College attempted to informally resolve the Student Complaint, but those efforts were unsuccessful. The College eventually decided to end the Applicant's teaching duties before the completion of the semester. The College also conducted a formal investigation into the Student Complaint, which was handled by an internal investigator (Internal Investigator).

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[9] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.
[10] Order F25-43, 2025 BCIPC 51 (CanLII) at paras. 15-16 and Decision F25-03, 2025 BCIPC 70 (CanLII) at para. 35.
[11] Order F23-23, 2023 BCIPC 27 (CanLII) at para. 65; and Order F25-17, 2025 BCIPC 21 (CanLII) at para. 19.
[12] RSBC 2019, c. 1. The information in this background section is compiled from the parties' submissions and evidence and from information disclosed in the disputed records.

[16] A few months after their employment ended, the Applicant filed a bullying, harassment and discrimination complaint with the College, alleging certain College employees bullied, harassed and discriminated against the Applicant. The Applicant also filed a corresponding complaint with the Board about their former employer, the College, under the Board's *Occupational Health and Safety Policy for Workplace Bullying and Harassment*, which creates a mandatory obligation on employers to investigate allegations of bullying and harassment (the Harassment Complaint).[13] The Applicant also initiated other actions against the College and certain College employees related to events that occurred during their employment, including a complaint made to the BC Human Rights Tribunal.

[17] The Board eventually contacted the College about the Harassment Complaint. The College then engaged an external workplace investigator (the External Investigator) to review and assess the allegations in the Harassment Complaint submitted by the Applicant. The External Investigator concluded the Applicant's allegations were unfounded and without merit. The External Investigator wrote the Report to summarize their investigation process and to provide their findings to the College.

Records at issue

[18] There are two records at issue in this inquiry. The first record is the Report which totals 23 pages. It was prepared by the External Investigator and includes details about the allegations in the Harassment Complaint and the External Investigator's findings about that complaint.

[19] The second record is a 12-page document titled, "Langara College response regarding Student Complaint Investigation process (WorkSafeBC reference [file number])."[14] I will refer to this document as the Response. The Board says the College supplied the Response to a Board prevention officer as part of the Board's investigation of the Harassment Complaint.[15] The College describes the Response as its summary of the events that preceded and followed the students' complaint about the Applicant, including information about the College's internal investigation into the complaint.[16]

Should the Board's decision about the Report be part of this inquiry?

[20] The Applicant made separate access requests to the College and to the Board. The Report was a responsive record in each access request, and in both cases, the Applicant was given access to some information in the Report.

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[13] College's submission dated May 2, 2025 at para. 20.
[14] Board's submission dated May 5, 2025 at para. 2(b) and title of Response disclosed in record. WorkSafeBC file reference number omitted by me from quote.
[15] Board's submission dated May 5, 2025 at para. 82.
[16] College's submission dated May 2, 2025 at para. 60(b).

[21] The OIPC held an inquiry regarding the College's decision to refuse access to some information in the Report under ss. 13(1), 19(1)(a) or 22(1) of FIPPA, resulting in Order F24-83. In that decision, the adjudicator concluded that ss. 13(1) and 22(1) applied to some of the information in dispute, but that s. 19(1)(a) did not apply to any of the redacted information. The College was ordered to disclose the information that it was not authorized or required to withhold under FIPPA. The College complied with Order F24-83. The Applicant did not dispute, or petition the Court to judicially review, the adjudicator's findings or conclusions in Order F24-83 about the Report.

[22] As a result of the adjudicator's decision in Order F24-83 and in preparation for this inquiry, the OIPC's Registrar of Inquiries (Registrar) contacted the Applicant to ask whether the Applicant was still interested in obtaining a copy of the Report from the Board.[17] The Applicant informed the Registrar that they still wanted the Board to provide them with access to the Report.[18] Therefore, the Applicant wanted the OIPC to proceed with an inquiry into the Board's decision about the Report.

[23] As previously mentioned, the OIPC then decided to add as an issue to this inquiry, whether it would be an abuse of process for the Commissioner or their delegate to consider as part of this inquiry the Board's decision to refuse access to the information at issue in the Report.[19] Based on my review of the materials before me and the parties' submissions about this issue, I find it important to first consider whether the Applicant is seeking a second decision from the OIPC about the Report on the same exact facts and issues that were decided in Order F24-83. The answer to this question will dictate the relevant legal analysis.

[24] I find the Report is clearly the same record that was at issue in Order F24-83. As well, I am satisfied the Board refused the Applicant access to the same parts of the Report that were at issue in Order F24-83 and based on the same FIPPA exceptions. My conclusion is based on my review of the relevant records and materials for this inquiry and for the inquiry leading to Order F24-83.[20] Moreover, I note that as part of responding to the Applicant's access request, the Board had consulted with the College about the request and agreed with the College about what information should be redacted and what FIPPA exceptions applied.[21]

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[17] OIPC Registrar of Inquiries (Registrar) email to Applicant dated December 4, 2024.
[18] Applicant's email to Registrar dated December 11, 2024.
[19] OIPC letter to parties dated January 14, 2025.
[20] For example, Board's response to the Applicant found at Exhibit F of FIPPA Coordinator's May 2, 2025 affidavit and documents found in OIPC file F22-90205 such as copy of College's response to the Applicant dated January 19, 2023 and redacted copy of Report at issue in Order F24-83.
[21] Board's submission dated May 5, 2025 at paras. 8-9 (and supporting exhibits cited there).

[25] Therefore, for this inquiry, I find the Applicant is asking the OIPC to issue a second decision about the same record and the same information and issues that were already addressed in Order F24-83, even though the public bodies are different. I note the Courts have dealt with an analogous situation under the doctrine of abuse of process. I will discuss the relevant legal principles and considerations below.

FIPPA and abuse of process

[26] Section 56(1) of FIPPA provides that if the matter in dispute between the parties is not referred to a mediator or settled under s. 55, the Commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry. It is well-established that s. 56(1) gives the Commissioner or their delegate a "broad discretionary power to determine whether or not to hold an inquiry."[22] The Commissioner's powers also include the authority to discontinue or not conduct an inquiry that has already commenced[23] and to determine whether an issue or a particular matter will be considered at an inquiry.[24]

[27] Past OIPC orders have concluded that the grounds under which the Commissioner may decline to conduct an inquiry are open-ended and include when an access applicant's pursuit of a review, complaint or inquiry under FIPPA amounts to an abuse of process.[25] An abuse of process has been defined in past OIPC orders as "using a legal process for a purpose other than which is intended by law" or any circumstance in which a legal proceeding is used for an improper purpose.[26] The doctrine of abuse of process is a flexible doctrine that has been applied in a variety of legal contexts and for different reasons, but it exists to ensure that a Court or an administrative tribunal's decision-making process is not abused and to preserve the fairness and integrity of that process by preventing needless multiplicity of proceedings.[27]

[28] What is relevant for this inquiry is that the Courts have applied the doctrine of abuse of process to prevent the relitigation of issues that have already been

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[22] *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 835 (CanLII) at para. 47.
[23] Order F16-10, 2016 BCIPC 12 (CanLII) at para. 10.
[24] For example, Order F11-10, 2011 BCIPC 13 (CanLII) at para. 15 and Order F11-22, 2011 BCIPC 28 (CanLII) at para. 9.
[25] Decision F25-03, 2025 BCIPC 70 (CanLII) at paras. 12-15; Decision F07-04, 2007 CanLII 67284 (BC IPC) at para. 16; Order F23-23, 2023 BCIPC 27 (CanLII) at paras. 32 and 79-80; and Order F25-43, 2025 BCIPC 51 (CanLII) at para. 36.
[26] Decision F10-07, 2010 BCIPC 37 (CanLII) at para. 17 and Order F23-23, 2023 BCIPC 27 (CanLII) at paras. 38-39.
[27] *Behn v. Moulton Contracting Ltd*., 2013 SCC 26 (CanLII) at paras. 39-41 and *British Columbia (Worker's Compensation Board)* v. *Figlioila*, 2011 SCC 52 at paras. 31 and 34.

decided in a prior legal proceeding.[28] The Supreme Court of Canada has referred to this type of claim as "abuse of process by relitigation" and noted the following policy reasons to support it:

> The two policy grounds, namely, that there be an end to litigation and that no one should be twice vexed by the same cause, have been cited as policies in the application of abuse of process by relitigation. Other policy grounds have also been cited, namely, to preserve the courts' and the litigants' resources, to uphold the integrity of the legal system in order to avoid inconsistent results, and to protect the principle of finality so crucial to the proper administration of justice.[29]

[29] In *Brown v. Miller*, the BC Supreme Court applied some of those policy objectives to prevent a party from continuing with their legal action because it would be an abuse of process.[30] The Court found the offending party was trying to relitigate a case that had already been dealt with by another court and had "generated a multiplicity of proceedings, wasted the court's resources, and put the defendant to unnecessary expense and stress."[31]

[30] Considering those court decisions, in determining whether there is an abuse of process by relitigation in this case, I find it appropriate to consider whether proceeding with an inquiry under FIPPA into the matter at issue would violate the principles of judicial economy, consistency, finality and the integrity of the administration of justice.

[31] If I find the Applicant's request to the OIPC for a review of the Board's decision about the Report is an abuse of process by relitigation, then that is not the end of the matter. I must also consider any relevant circumstances to decide if refusing to allow the relitigation to proceed would result in an unfairness or an injustice.[32] The list of factors to consider is open-ended and depends on the circumstances, but may include the same factors that a Court would consider to prevent the doctrine of issue estoppel from operating in an unjust or unfair way.[33]

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[28] For example, *Canam Enterprises Inc. v. Coles*, 2000 CanLII 8514 (ONCA) at para. 56 (majority decision overturned at 2002 SCC 63 (CanLII) and dissenting judgement affirmed); *Saskatoon Credit Union Ltd. v. Central Park Enterprises Ltd*., 1988 CanLII 2941 (BCSC) at paras. 30-32 (and the cases cited therein); and *Brown v. Miller*, 2010 BCSC 737 (CanLII) at paras. 35-36.
[29] *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII) at para. 38.
[30] *Brown v. Miller*, 2010 BCSC 737 (CanLII) at para. 36.
[31] *Ibid* at para. 36.
[32] *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII) at para. 53.
[33] *Ibid* at para. 53.

Parties' submissions about abuse of process

[32] The College and the Board contend that it would be an abuse of process to conduct another inquiry about the Report for one or more of the following reasons:

- The Applicant is attempting to improperly re-litigate the adjudicator's findings about the Report in Order F24-83.
- Re-litigating the adjudicator's decision about the Report in Order F24-83 would undermine the integrity of the OIPC's adjudicative process.
- The Applicant is inappropriately using the inquiry process for ulterior purposes outside the scope, purpose and intent of FIPPA.[34]

[33] The Applicant did not address the Board or the College's arguments or submissions but confirmed that they wanted access to the entirety of the disputed records.[35]

Analysis and findings about abuse of process

[34] I understand the Board and the College are arguing the doctrine of abuse of process applies here to prevent the Applicant from relitigating whether the information at issue in the Report can be withheld under the relevant provisions of FIPPA.

[35] The BC Court of Appeal has said that allowing a party to relitigate an issue that has been finally determined in a previous proceeding challenges the integrity of the adjudicative function of the Courts in the following two ways: (1) the duplication of efforts results in an inefficient use of judicial resources which directly impacts the ability of the courts to function and diminishes public respect for the judicial process; and (2) the relitigation of an issue diminishes the credibility and authority of judgments because there is a possibility for inconsistent findings of fact.[36] As I will explain, I find those judicial concerns are applicable in this case and should be avoided under FIPPA's processes.

[36] If I were to make a second decision about the redaction of the Report, there are two possible outcomes. One possible outcome would be for me to reach the exact same decision as in Order F24-83. As a result, the Applicant would be in the same position as they were in previously in terms of obtaining

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[34] Board submission dated May 5, 2025 at para. 14 and College submission dated May 2, 2025 at para. 45.
[35] The Applicant also made other arguments and requests in their submissions that I find are not relevant to this current issue.
[36] *Petrelli v. Lindell Beach Holiday Resort Ltd.*, 2011 BCCA 367 (CanLII) at para. 71.

access to the Report, and the duplication of effort would have done nothing to produce a more accurate result than the original proceeding. Therefore, the relitigation would be an inefficient use of the OIPC's limited resources, create needless multiple proceedings about the same record and the same issues and would unnecessarily take time away from the adjudication of other inquiries and may diminish public respect for the OIPC's processes.

[37] The second possible outcome would be for me to reach a different decision about the Report than Order F24-83. This result would produce an inconsistent decision about the same record and the same FIPPA exceptions. The Supreme Court of Canada has explained, in two separate decisions, why this outcome is problematic:

> …If the result in the subsequent proceeding is different from the conclusion reached in the first on the very same issue, the inconsistency, in and of itself, will undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality.[37]

> …Respect for the finality of a judicial or administrative decision increases fairness and the integrity of the courts, administrative tribunals and the administration of justice; on the other hand, relitigation of issues that have been previously decided in an appropriate forum may undermine confidence in this fairness and integrity by creating inconsistent results and unnecessarily duplicative proceedings… Avoiding unnecessary relitigation avoids an unnecessary expenditure of resources.[38]

[38] Therefore, if I were to consider the Board's decision about the Report as part of this inquiry and reach a different decision, then it would erode the authority and finality of the adjudicator's decision in Order F24-83 and undermine the credibility of the OIPC processes that led to that decision.

[39] Taking all the above into account, I conclude it would be an abuse of the OIPC's and FIPPA's processes to consider, as part of this inquiry, the Board's decision to refuse the Applicant access to the same parts of the Report and based on the same FIPPA exceptions that were at issue in Order F24-83. Ultimately, whether I make the same decision or different one, in either scenario, a second inquiry about the Report on the same exact facts and issues that were already dealt with by the adjudicator in Order F24-83 challenges and undermines the integrity of the OIPC's and FIPPA's review and adjudicative processes.

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[37] *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII) at para. 51.
[38] *British Columbia (Worker's Compensation Board)* v. *Figlioila*, 2011 SCC 52 at para. 34 (citations omitted).

Are there any circumstances that would make it unfair or unjust to refuse the Applicant's request to relitigate the severing of the Report?

[40] I found it would be an abuse of the OIPC's and FIPPA's processes to allow the Applicant to relitigate the severing of the Report. However, as I noted earlier in this order, even though I found there would be an abuse of process, I must also consider any relevant circumstances to decide if refusing the Applicant's request for a second decision about the Report would cause unfairness or work an injustice between the parties. The list of factors that may impact this decision is open-ended and case specific, but it may include the following: the discovery of new evidence that could not have been diligently provided in the earlier proceedings; or if the earlier proceeding was tainted, for example, because the party prevented from relitigating an issue was not given proper notice or the opportunity to be heard at that proceeding or there was fraud or other misconduct in the earlier proceedings.[39]

[41] The Board says the OIPC has already heard and decided in Order F24-83, the Applicant's dispute regarding the redactions at issue in the Report. Therefore, the Board submits there would be no injustice if the OIPC refuses to consider, as part of this inquiry, the Board's decision about the Report. The Applicant did not address the Board's submissions and arguments. Instead, among other things, the Applicant's submission makes allegations about the External Investigator's credentials and about the investigative process leading the Report, which I find is not relevant to the current analysis and not within the OIPC's jurisdiction to review.

[42] In considering the relevant circumstances, I find the Applicant had notice of the inquiry and of the relevant issues that resulted in Order F24-83 and had the opportunity to fully and fairly argue their position about the Report in that inquiry. There is also no evidence or arguments in the parties' submissions to suggest that the process leading to Order F24-83 was tainted or unfair in any way. The Applicant did not dispute the fairness of the process leading to Order F24-83 or challenge the adjudicator's findings and conclusions in that order.

[43] There is also nothing in the parties' materials and submissions to suggest new evidence was recently discovered that would be relevant for the issues addressed in Order F24-83. The Applicant recently provided the OIPC with evidence about the credentials of the External Investigator, but it is unclear and the Applicant does not sufficiently explain how those materials would impact the decision made in Order F24-83 about the College's redaction of the Report.[40]

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[39] *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII) at para. 53 (and the cases cited therein); *Saskatoon Credit Union Ltd.* v. *Central Park Enterprises Ltd.*, 1988 CanLII 2941 (BC SC) at para. 33.

[40] Applicant's email to OIPC's registrar of inquiries dated April 20, 2026.

[44] To conclude, I find it would be an abuse of process to allow the Applicant to relitigate what is essentially the same issue that was already addressed and decided in Order F24-83. There is also nothing in the circumstances of this case that persuades me the relitigation of that issue is necessary to prevent an unfairness or an injustice between the parties.

What is the appropriate remedy for an abuse of process by relitigation?

[45] The usual remedy used by the Courts to prevent an abuse of process by relitigation is to dismiss the matter. For example, where there are several matters at issue between the parties, the relevant issue will be stricken from the pleadings.[41] I find that remedy is appropriate here and have decided the OIPC will not adjudicate the Board's refusal to provide the Applicant with access to the information at issue in the Report. Therefore, the Board's decision about the Report will not be considered as part of this inquiry.

[46] The remaining issues in this inquiry are whether the Board is required or authorized to refuse access to the information at issue in the Response under ss. 13(1), 19(1) or 22(1) of FIPPA. I will consider these issues below, starting with s. 22(1).

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

[47] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information that would unreasonably invade a third-party's personal privacy. A "third party" is defined in Schedule 1 of FIPPA as any person, group of persons or organization other than the person who made the access request or a public body. Numerous OIPC orders have considered the application of s. 22 and I will apply the same approach in this inquiry. I will explain that approach in my discussion and analysis below.

Personal information

[48] Section 22 applies only to personal information; therefore, the first step in the s. 22 analysis is to determine if the information at issue is personal information under FIPPA. As previously noted, the Board as the public body in this inquiry has the burden of proving the information at issue qualifies as personal information.

[49] "Personal information" is defined in Schedule 1 of FIPPA as "recorded information about an identifiable individual other than contact information." Information is about an identifiable individual when it is reasonably capable of

[41] For example, *Saskatoon Credit Union Ltd. v. Central Park Enterprises Ltd*., 1988 CanLII 2941 (BC SC).

identifying a particular individual, either alone or when combined with other available sources of information.

[50] Contact information" is defined in Schedule 1 of FIPPA 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." Whether information will qualify as contact information under s. 22 depends on the context in which the information appears in the records.[42]

[51] For a variety of reasons, the Board submits the information at issue in the Response is personal information. The Board describes some of the redacted information as the initials of individuals and the students' views and concerns about the Applicant's teaching style and behaviour.[43] The College also argues the redacted information is personal information.

[52] I find the Board withheld the following information from the Response:

- Several individuals' initials and an individual's surname.[44]
- Information about the students' concerns and their complaints.[45]
- Information about what a student submitted with their complaint.[46]
- The Internal Investigator's opinion about an aspect of the complaint.[47]
- Information that reveals what was said in a conversation between the Internal Investigator and the Applicant.[48]
- Information that reveals what was said in a meeting between two College employees and the Applicant.[49]
- Several individuals' observations or opinions about various matters related to the Student Complaint.[50]

[42] Order F21-35, 2021 BCIPC 43 (CanLII) at para. 164.
[43] Board's submission dated May 5, 2025 at para. 34.
[44] Initials at paras. 8, 10, 11, 14 of the Response and surname at para. 33 of the Response.
[45] Paras. 10-12, 14, 22, 20, 30, 41(a) of the Response.
[46] Information in para. 14 of the Response.
[47] Information in para. 33 of the Response.
[48] Information in para. 30 of the Response.
[49] Information in para. 35 of the Response.
[50] Information located at paras. 20, 21, 41(b), 41(d) of the Response.

[53] I find most of the redacted information in the Response is about multiple individuals, including the Applicant, students and College employees. I am satisfied that none of the withheld information about these individuals is contact information as defined under FIPPA and interpreted by past orders.

[54] Although most of the individuals are identified only by their initials or their surname, I am satisfied the Applicant can determine the identity of those individuals because of the Applicant's personal knowledge and interactions with the people involved in the Student Complaint and related events. For example, I find the Applicant would be able to identify a particular student from their initials because there were only eight students in the class and the Applicant taught the class.[51]

[55] Some of the redacted information is an individual's opinion or comment about the Applicant or about matters related to the Applicant. An individual's opinion or comment is their personal information, but only if their identity is known or can be accurately inferred.[52] For the relevant information, the College disclosed the identity of those individuals in the Response so the Applicant would know who provided those opinions or comments.[53] Therefore, I find this information is both the Applicant's personal information, because it is about the Applicant, and a third party's personal information because it is an identifiable individual's opinion or comment about the Applicant or matters related to the Applicant.

[56] The Board redacted some information in the Response that references or discusses a group of people or that describes the comments, views and opinions of a group.[54] Past OIPC orders have found that a description or summary of a group's comments or opinions, or information that is about a group of people, is not personal information if it cannot be linked to identifiable individuals.[55] On the other hand, if the access applicant or others can identify the individual members of the group based on other available information or their own personal knowledge, then the information about the group and the group's opinions and comments are personal information under FIPPA.[56]

[57] In this case, I can see the Board has disclosed information in the Response that would allow the Applicant to identify the individual members of the group referenced or discussed in the Response.[57] Therefore, I am satisfied the

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[51] Board's submission dated May 5, 2025 at para. 37.
[52] Order F20-13, 2020 BCIPC 15 (CanLII) and the orders cited in footnote 51.
[53] For example, information located in paras. 20, 30, 33 and 35 of the Response.
[54] For example, information located at paras. 10, 12, 14, 22, and 41 of the Response.
[55] Order F17-51, 2017 BCIPC 56 (CanLII) at para. 14; Order F05-30, 2005 CanLII 32547 (BCIPC) at para. 36; and Order F23-27, 2023 BCIPC 32 (CanLII) at para. 33.
[56] Order F05-30, 2005 CanLII 32547 (BCIPC) at para. 33-35.
[57] I have not identified where this information is located in the Response since it may disclose some of the information at issue.

redacted group information in the Response is personal information under FIPPA.

[58] For all those reasons, I conclude the information at issue in the Response is personal information under FIPPA.

Section 22(4) – disclosure not an unreasonable invasion

[59] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information or circumstances listed in s. 22(4). If it does, then the disclosure of the personal information is not an unreasonable invasion of a third party's personal privacy, and the information cannot be withheld under s. 22(1).

[60] The Board and the College argue none of the provisions under s. 22(4) apply. The Applicant did not identify any s. 22(4) provisions that may be relevant. I have reviewed the provisions under s. 22(4) and, based on the materials before me, I find none of the provisions under ss. 22(4) are relevant to this inquiry.

Section 22(3) – disclosure presumed to be an unreasonable invasion

[61] The third step in the s. 22 analysis is to determine whether any of the presumptions set out in s. 22(3) apply. Section 22(3) creates a presumption that the disclosure of certain types of personal information or in certain circumstances would be an unreasonable invasion of third-party personal privacy. These presumptions can be rebutted in the last stage of the s. 22 analysis.

[62] The Board argues the presumptions under ss. 22(3)(d) and 22(3)(h) apply.[58] The College agrees with the Board that ss. 22(3)(d) and 22(3)(h) are relevant presumptions but also argues the presumption under s. 22(3)(a) applies. The Applicant did not address the Board or the College's submissions about s. 22(3). The parties did not identify any other s. 22(3) presumptions to consider, and I am satisfied there are no other s. 22(3) presumptions that may be relevant.[59] I will consider ss. 22(3)(a), 22(3)(d) and 22(3)(h) below.

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[58] The Board initially argued the presumptions under ss. 22(3)(d) and 22(3)(g) apply; however, it later revised its position to argue that ss. 22(3)(d) and 22(3)(h) apply. Subsections 22(3)(d) and 22(3)(h) are marked on a corrected version of the Response sent by the Board to the OIPC on January 29, 2026.

[59] At para. 78 of its submission dated May 2, 2025, the College argued s. 22(3)(b) applies to information in the Report; however, I do not need to consider s. 22(3)(b) and the College's arguments about that presumption since I found it would be an abuse of process to consider the Report as part of this inquiry.

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

[63] Section 22(3)(a) 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 relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[64] The College argues the presumption under s. 22(3)(a) applies to any information that reveals a third party's emotional or mental health or would reveal the kind of information listed under s. 22(3)(a).[60] The College did not identify where this information is located in the Response, but describes some of the redacted information as "information about the impact of the Applicant's conduct on the Students, including emotional and mental health impacts."[61]

[65] In Order F25-78, Adjudicator Vranjkovic concluded the presumption under s. 22(3)(a) did not apply to information which relates to or discloses the emotional or mental health of third parties in the context of a workplace investigation.[62] Adjudicator Vranjkovic found s. 22(3)(a) did not apply because, although the personal information at issue concerned the emotions of third parties, none of those emotions related to an actual psychological history, diagnosis, condition, treatment or evaluation.[63]

[66] I find the reasoning in Order F25-78 applicable here. I can see some of the information redacted in the Response describes or reveals what students felt at the relevant time about the Applicant's conduct and related events; however, none of those feelings or emotions are related to a third party's actual psychiatric or psychological history, diagnosis, condition, treatment or evaluation.[64] This information only reveals what the students felt at the relevant time without divulging any details about a student's psychiatric or psychological history diagnosis, condition, treatment or evaluation. In short, none of the information at issue is related to, nor does it reveal, the kind of information listed under s. 22(3)(a). Therefore, I conclude the presumption under s. 22(3)(a) does not apply to any of the information in the Response withheld under s. 22(1).

Educational and employment history - s. 22(3)(d)

[67] Section 22(3)(d) creates a presumption against disclosure where the personal information relates to the employment, occupational or educational history of a third party. Both the Board and the College argue some of the information at issue relates to a third party's employment or educational history.

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[60] College submission dated May 2, 2025 at para. 77.
[61] College's submission dated May 2, 2025 at para. 60(b).
[62] Order F25-78, 2025 BCIPC 91 (CanLII).
[63] Order F25-78, 2025 BCIPC 91 (CanLII) at paras. 33-34.
[64] For example, information located on paras. 12, 20 and 22 of the Response.

I will first consider whether any of the information at issue relates to a third party's educational history.

[68] The Board argues s. 22(3)(d) applies to the following information because it would reveal the educational history of the students who complained about the quality of the Applicant's instruction for a particular College program:

> Disclosure of the students' identities, concerns and views would reveal their views of and interactions with College personnel, as well as information about the courses in which they were enrolled, the quality of instruction, and their acknowledged health and safety concerns within the education environment.[65]

[69] The College also argues some of the information at issue relates to the educational history of third parties because it reveals "information about students' courses, academic activities and concerns, degrees and their interactions with the College about such matters" and "third party identifying information that links those individuals to the College."[66]

[70] Previous OIPC orders have found educational history under s. 22(3)(d) includes information that reveals what educational institution an individual attended, details about their programs, courses and academic activities, as well as details about an individual's educational concerns and their interactions with a post-secondary institution's employees within the context of an investigation into a complaint about an academic supervisor or faculty member.[67]

[71] The information at issue in the Response reveals the identities of the students who complained about the Applicant, their educational concerns about the Applicant's teaching style and behaviour and the students' interactions and discussions with College employees about their complaint.[68] Therefore, consistent with previous orders, I find the presumption under s. 22(3)(d) applies to the information that both the Board and the College have identified as falling under s. 22(3)(d).

[72] I will now consider whether any of the information at issue in the Response relates to a third party's employment history. Citing past OIPC orders about workplace investigations, the Board argues some of the information redacted in the Response is employment history because it is about the investigator and the College employees who participated in the investigation of

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[65] Board's submission dated May 5, 2025 at para. 58. The Board submits this information is located at paras. 10, 11, 12, 14, 20, 22, 30, 33, 41(b) of the Response.
[66] College submission dated May 2, 2025 at para. 83. The College submits this information is located at paras. 8, 10, 11, 12, 14, 20, 22, 30, 33, 41(b) of the Response.
[67] Order F23-101, 2023 BCIPC 117 (CanLII) at para. 160; Order F18-19, 2018 BCIPC 22 (CanLII) at para. 53; and Order F20-06, 2020 BCIPC 7 (CanLII) at paras. 35-36.
[68] For example, information located in paras. 8, 10 and 14 of the Response.

the Student Complaint.[69] Likewise, the College argues employment history includes information about an individual's participation in a workplace complaint or investigation process, including witness accounts.[70]

[73] Under s. 22(3)(d), the focus is on whether the personal information at issue relates to a third party's employment history and not whether the information relates to a workplace investigation, as argued by the Board and the College. The fact that the information withheld under s. 22(1) may relate to an investigation, dispute or review that occurs at a third party's workplace does not mean s. 22(3)(d) automatically applies.

[74] Instead, when it comes to workplace investigations, previous OIPC orders have provided the following guidance about what type of information does or does not qualify as "employment history" under s. 22(3)(d):

- Employment history includes descriptive or qualitative information about a third party who is being investigated as part of a workplace matter or dispute, including a description of the third party's workplace behaviour or actions.

- Employment history does *not* include a third party's description, comments or opinions provided as part of a workplace investigation where the third party was not the subject of the investigation, such as descriptive information about what a third party observed, said or did regarding workplace interactions with the people who were the subject of the investigation.

- Employment history includes information in third party witness statements that reveals information such as the effect that the matter under investigation has had on a third party's work performance or that reveals details about a third party's work history.[71]

[75] I find none of the information redacted in the Response qualifies as employment history as interpreted by past OIPC orders under s. 22(3)(d). For example, some of the redacted information is about the students who complained about the Applicant.[72] However, none of the students worked for the College at that time and it is not apparent to me that any of the redacted information reveals anything about the students' work history.

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[69] Board submission dated May 5, 2025 at paras. 62-69.
[70] College submission dated May 2, 2025 at paras. 80-82 and 84.
[71] Order F20-13, 2020 BCIPC 15 (CanLII) at paras. 52-55; Order F23-56, 2023 BCIPC 65 (CanLII) at paras. 75-77 and Order F24-83, 2024 BCIPC 95 (CanLII) at para. 38.
[72] For example, information located at paras. 10, 12, 14, 21, 30, and 33 of the Response.

[76] As another example, some of the redacted information is about certain College employees who were involved in events related to the dispute between the students and the Applicant, such as other College faculty and the Internal Investigator. However, those College employees were not being investigated as part of the students' complaint and their workplace conduct was not subject to any scrutiny, criticism or investigation.

[77] Instead, the information at issue reveals the College employees' comments and opinions about the workplace behaviour of the Applicant.[73] Similarly, some of the redacted information is the students' comments and opinions about the Applicant's performance and conduct as an instructor.[74] Therefore, I find this information is about the Applicant's employment history and not a third party's employment history as intended under s. 22(3)(d).[75] For all those reasons, I conclude none of the information at issue is related to a third party's employment history.

Personal or personnel evaluation - s. 22(3)(h)

[78] Section 22(3)(h) states the disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the disclosure would reveal:

> (i) the identity of a third party who supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, or
>
> (ii) the content of a personal recommendation or evaluation, character reference or personnel evaluation supplied, in confidence, by a third party, if the applicant could reasonably be expected to know the identity of the third party.

[79] The Board submits the presumption under s. 22(3)(h) applies to some of the information at issue and identified that information in the Response.[76] However, the Board did not identify whether it is relying on s. 22(3)(h)(i) or s. 22(3)(h)(ii); therefore, I will consider both provisions.

[80] Sections 22(3)(h)(i) and 22(3)(h)(ii) each protect different information and have different requirements, but a shared requirement for both provisions is that the information at issue must be related to a personal recommendation, a

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[73] For example, information located at paras. 20, 21, 35 and of the Response.
[74] For example, information located at paras. 10, 11, 14, 22 of the Response.
[75] For a similar conclusion, see Order F20-13, 2020 BCIPC 15 (CanLII) at para. 55.
[76] The Board cited s. 22(3)(h) for paras. 10-12, 14, 20-22, 30, 33, 35 and 41 of the Response on a copy of the Response that the Board sent to the OIPC on January 29, 2026. The College did not argue s. 22(3)(h) is a relevant provision in this case.

personal evaluation, a character reference or a personnel evaluation that was supplied in confidence by a third party. The Board did not specify which type of record listed in s. 22(3)(h) applies here. However, based on my review of the materials before me, I conclude none of the information at issue is related to a "personal recommendation" or a "character reference." Therefore, my analysis under s. 22(3)(h) will consider whether the information at issue is related to a "personal evaluation" or "personnel evaluation" supplied in confidence by a third party.

[81] For information to be considered a personal evaluation or a personnel evaluation, there must be a formal evaluation of an individual's performance.[77] For example, previous OIPC orders have found that s. 22(3)(h) applies to workplace performance reviews and to an investigator's evaluative comments of an individual who is the subject of a workplace complaint investigation.[78] However, s. 22(3)(h) does not apply to witness statements created or obtained as part of a workplace complaint investigation and that were recorded, for example, in interview notes or in a report.[79] Previous OIPC orders have also found that s. 22(3)(h) does not apply to an employee's allegations about a fellow employee, employee comments or complaints about workplace attitudes and behaviour, or employee feedback and opinions about other employees on workplace issues.[80]

[82] I will first consider s. 22(3)(h)(i) and whether any of the information at issue in the Response reveals the *identity* of a third party who supplied in confidence a "personal evaluation" or "personnel evaluation" about another individual. The Board withheld information that would reveal the identity of the students who complained about the Applicant.[81] There is no dispute that the students in this case qualify as third parties as defined in FIPPA. Therefore, the question at this point is whether those students supplied, in confidence, a "personal evaluation" or "personnel evaluation" about another individual in accordance with s. 22(3)(h)(i).

[83] The Response contains a summary of the students' concerns about the Applicant and other details, including the students' observations and allegations about the Applicant.[82] Past OIPC orders have consistently found that this type of

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[77] Order 01-07, 2001 CanLII 21561 (BCIPC) at paras. 21-22 and Order F20-13, 2020 BCIPC 15 (CanLII) at para. 61.
[78] Order F06-11, 2006 CanLII 25571 (BCIPC) at para. 53; Order F05-30, 2005 CanLII 32547 (BCIPC) at paras. 41-42; Order 01-07, 2001 CanLII 21561 (BCIPC) at para. 21.
[79] Order F10-08, 2010 BCIPC 12 (CanLII) at para. 34 and Order 01-07, 2001 CanLII 21561 (BCIPC) at paras. 21-22.
[80] Order F06-11, 2006 CanLII 25571 (BCIPC) at paras. 52-54; Order 01-07, 2001 CanLII 21561 (BCIPC) at paras. 21-22, Order F05-30, 2005 CanLII 32547 (BCIPC) at paras. 41 and 42; Order F10-08, 2010 BCIPC 12 (CanLII) at paras. 33-35.
[81] For example, information located on paras. 8, 10, 11, 14 and 33 of the Response.
[82] Information withheld in paras. 10, 11, 12, 14, 22, 30 and 41 of the Response.

information does not qualify as a "personal evaluation" or "personnel evaluation" because it lacks the formal evaluative quality which is required for the type of information covered under s. 22(3)(h).[83] I agree with that reasoning. Therefore, consistent with past orders, I find the students' allegations and comments about the Applicant do not qualify as a "personal evaluation" or "personnel evaluation" for the purposes of s. 22(3)(h)(i). As a result, I conclude the presumption under s. 22(3)(h)(i) does not apply to the *identity* of the students who complained about the Applicant.

[84] I will now consider whether any of the information at issue in the Response reveals the *contents* of a "personal evaluation" or "personnel evaluation" supplied in confidence by a third party under s. 22(3)(h)(ii). I found the students' allegations and comments about the Applicant do not qualify as a "personal evaluation" or "personnel evaluation" as interpreted by past OIPC orders. Therefore, I conclude the presumption under s. 22(3)(h)(ii) also does not apply to this information because it would not reveal the contents of a "personal evaluation" or "personnel evaluation" in accordance with s. 22(3)(h)(ii).

[85] The Board also redacted information that reveals several individual's personal comments, observations or opinions about the Applicant or the students or about the Applicant's interactions with the students in the relevant course.[84] There is no dispute that the individuals who provided their comments about the Applicant and the students qualify in this case as third parties under FIPPA. However, as I will explain, I am not satisfied that their comments, observations or opinions are a formal evaluation of the Applicant or the students.

[86] One of the individuals who made comments about the Applicant and about the students is a College instructor whom I will refer to as the Support Instructor. There is information in the Response that indicates the Support Instructor volunteered "to support and mentor" the Applicant, as part of an "informal resolution process" to address the students' concerns, which included having the Support Instructor sit in on a class taught by the Applicant.[85] The Support Instructor's comments, observations and opinions recorded in the Response came from watching the Applicant interact with the students in that class. There is also information in the Response that specifically says, "The role of the support instructor is not evaluative, but to provide support and assistance."[86] Therefore, given the Support Instructor's role, I am not satisfied that the Support Instructor's comments, observations and opinions are a formal evaluation of the Applicant.

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[83] For example, Order F06-11, 2006 CanLII 25571 (BCIPC) at paras. 53-54, Order F20-13, 2020 BCIPC 15 (CanLII) at paras. 58-61 and Order F10-08, 2010 BCIPC 12 (CanLII) at paras. 34-35.
[84] Information withheld in paras. 20-21 and 41 of the Response.
[85] Information disclosed at paras. 15 and 18-20 of the Response.
[86] Information disclosed at para. 15 of the Response.

[87] Moreover, I find it important to note that all the information at issue is part of the College's response to the Harassment Complaint that the Applicant filed with the Board.[87] As discussed previously, the College prepared and provided the Response to the Board as part of the Board's investigation into the Harassment Complaint. Furthermore, both the College and the Board refer to some of the third parties as witnesses.[88] For example, the College describes some of the disputed information in the Response as "information, evidence and statements provided by witnesses in the course of the Student Complaint Investigation."[89]

[88] Taking all this into account, I find the Support Instructor's comments, observations and opinions that the College included in the Response and then provided to the Board are more like a witness statement given as part of a workplace investigation rather than a formal evaluation. As noted previously, past OIPC orders have found this type of information is not a "personal evaluation" or "personnel evaluation" under s. 22(3)(h).

[89] I find this same reasoning also applies to the comments and opinions of the other individuals that the Board redacted in the Response.[90] This information reveals what those individuals saw, did or thought about certain matters relevant to the Student Complaint and are like witness statements. There is no evidence that those individuals were required to formally evaluate the Applicant or the students and provide their comments and opinions to the College in confidence. As a result, I conclude the presumption under s. 22(3)(h)(ii) does not apply to any of this information.

[90] The Board also submits the presumption under s. 22(3)(h) applies to information that reveals the Internal Investigator's assessment of the Student Complaint and their evaluation of the Applicant.[91] Although I find some of the Internal Investigator's comments would qualify as a formal evaluation, I am not satisfied the Internal Investigator supplied this information to the College in confidence. There is no evidence about confidentiality from the Internal Investigator, and it is also not obvious from the comments themselves or from the other information in the Response.

[91] I note that as part of its submissions on s. 22(2)(f) (supplied in confidence), the Board says the College conducts workplace investigations in confidence and cites several polices to prove the confidentiality of the College's processes.[92] However, there is information disclosed in the Response that shows the Internal Investigator or other College employees directly shared the

[87] College's submission dated May 2, 2025 at para. 60(b).
[88] For example, Board submission dated May 5, 2025 at paras. 34-37.
[89] College's submission dated May 2, 2025 at para. 60(b).
[90] Information withheld in para. 41 of the Response.
[91] Information located in paras. 30, 33 and 35 of the Response. There is no dispute that the Internal Investigator qualifies in this case as a third party under FIPPA.
[92] For example, Board's submission dated May 5, 2025 at paras. 78-80.

information at issue here with the Applicant and others or that similar information has already been disclosed in the Response itself.[93] The fact that the Internal Investigator shared their evaluative comments directly with the Applicant undermines any assertion that their evaluations were supplied to the College in confidence. Therefore, I find not all the requirements under s. 22(3)(h)(ii) have been met for this information and the presumption does not apply in this case.

[92] To conclude, I find the presumptions under ss. 22(3)(h)(i) or 22(3)(h)(ii) do not apply to any of the information that the Board has identified as falling under s. 22(3)(h).

Section 22(2) – relevant circumstances

[93] The final step in the s. 22 analysis is to consider all relevant circumstances to assess the impact of disclosing the personal information at issue. Section 22(2) requires a public body to consider the circumstances listed under ss. 22(2)(a) to (i) and any other relevant circumstances to determine whether disclosing the personal information at issue would be an unreasonable invasion of a third party's personal privacy. One or more of these circumstances may rebut the presumption under s. 22(3)(d) (educational history) that I found applies to some of information redacted in the Response.

[94] The Board submits ss. 22(2)(f) (supplied in confidence) and 22(2)(h) (unfair damage to reputation) are relevant circumstances that weigh in favour of withholding the information at issue.

[95] The College agrees with the Board on the relevance of s. 22(2)(h) (unfair damage to reputation), but it also argues s. 22(2)(e) (unfair exposure to harm) is a relevant circumstance that weighs in favour of withholding the information at issue. It submits, however, that s. 22(2)(a) (public scrutiny) is a factor that does not weigh in favour of disclosure.

[96] The Applicant did not identify any circumstances, including those under s. 22(2), that may be relevant to consider.

[97] I have considered whether there are any other circumstances, including those listed under s. 22(2), that may apply. I find there are two additional factors to consider: 1) most of the redacted information is about the Applicant; and (2) the Applicant already knows some of the information at issue because it was disclosed to them.[94]

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[93] For example, information located in paras. 30 and 35 of the Response.

[94] The College identified this factor as relevant for the Report but not for the Response: College's submission dated May 2, 2025 at paras. 98-99. I have, however, considered its general arguments under this factor in my analysis under s. 22(2).

[98] I will consider all the above-noted circumstances below in my s. 22(2) analysis, starting with the s. 22(2) circumstances identified by the parties. There were no other relevant circumstances for consideration.

Subjecting a public body's activities to public scrutiny – s. 22(2)(a)

[99] Section 22(2)(a) considers whether disclosing the personal information 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, then this may be a relevant circumstance that weighs in favour of disclosing the information at issue.[95]

[100] The College submits s. 22(2)(a) does not weigh in favour of disclosure because the information at issue relates to "work place disputes and investigations between individuals" and not issues that are of broader public interest.[96] The College also argues disclosure is not desirable for the purpose of subjecting its activities to public scrutiny because it has already been subjected to considerable scrutiny by the OIPC in Order F24-83 and by another administrative tribunal. It submits, therefore, that disclosure of the information at issue would serve no "further oversight purpose."[97] Neither the Board nor the Applicant made any submissions about s. 22(2)(a) and its relevance to the information at issue in the Response.[98]

[101] One of the purposes of s. 22(2)(a) is to make public bodies more accountable.[99] Therefore, for s. 22(2)(a) to apply, the disclosure of the information at issue must be desirable for subjecting the public body's activities to public scrutiny as opposed to subjecting an individual third party's activities to public scrutiny.[100] I find most of the redacted information is about the actions of the Applicant and other individuals such as the students who complained about the Applicant. It is not apparent how disclosing the information at issue would assist in holding the College, the Board or another public body accountable for its actions.

[102] Moreover, the Board disclosed information in the Response that shows what actions the College took in relation to the Student Complaint, how the College attempted to resolve the dispute between the Applicant and the students and the College's interactions with the Applicant during this time. I find this information, which has already been disclosed to the Applicant, sufficiently reveals the College's activities in relation to the Student Complaint. Therefore,

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[95] Order F05-18, 2005 CanLII 24734 (BCIPC) at para. 49.
[96] College submission dated May 2, 2025 at para. 96.
[97] College submission dated May 2, 2025 at para. 96.
[98] The Applicant's submissions are about the Report and the External Investigator who conducted the investigation leading to the Report.
[99] Order F18-47, 2018 BCIPC 50 (CanLII) at para. 32.
[100] Order F16-14, 2016 BCIPC 16 (CanLII) at para. 40.

the disclosure of the information at issue, which is about the Applicant and other individuals, would not be desirable for the purpose of subjecting the College activities to public scrutiny. For all those reasons, I conclude s. 22(2)(a) is not a circumstance that favours disclosing the information at issue.

Unfair exposure to financial or other harm – s. 22(2)(e)

[103] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm. Previous OIPC orders have held that "other harm" for the purposes of s. 22(2)(e) consists of "serious mental distress or anguish or harassment" and that the unfair exposure to harm must relate to the disclosure of the information at issue.[101] For s. 22(2)(e) to apply though, the mental harm must go beyond embarrassment, upset or a negative reaction to someone's behaviour.[102] Moreover, a public body's assertions alone about harm is not sufficient to establish that s. 22(2)(e) applies.

[104] The College submits disclosing the information at issue would expose several third parties to harm such as "stress, worry and anxiety that would be caused by retaliatory or other harassing behaviours by the Applicant."[103] The College has identified those third parties as "third party complainants and witnesses" who participated in its complaint and investigation process.[104] The College says disclosure would expose those third parties to "[heightened] or renewed stress and anxiety in anticipation of retaliation by the Applicant or out of concern for their safety."[105] Neither the Board nor the Applicant made any submissions about s. 22(2)(e).

[105] Based on the materials before me, I am not persuaded that disclosing the personal information at issue will unfairly expose a third party to the type of harm contemplated under s. 22(2)(e). First, I am not satisfied that stress, worry and anxiety qualify as serious mental distress or anguish as required under s. 22(2)(e). Instead, I find those types of potential reactions equate to being upset or experiencing a negative reaction to someone's behaviour which other OIPC orders have found does not fit within the meaning of "other harm" under s. 22(2)(e).

[106] Second, I understand the College is arguing that disclosing the information at issue to the Applicant could motivate the Applicant to retaliate against or harass the complainants and witnesses. However, some of the redacted information has already been disclosed to the Applicant either in the Response

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[101] For example, Order F15-29, 2015 BCIPC 32 at para. 33 and the orders cited there.
[102] Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 49.
[103] College's submission dated May 2, 2025 at para. 92.
[104] College's submission dated May 2, 2025 at para. 61(a).
[105] College's submission dated May 2, 2025 at para. 94.

itself or to the Applicant directly during the relevant events. For example, the Board withheld certain information about the identities of the students who complained about the Applicant and some of their comments and concerns and what others had observed.[106] However, I can see that the same information or similar information has already been disclosed in the Response[107] or was verbally communicated to the Applicant during the relevant events.

[107] As another example, the Board withheld information that reveals what was said in a conversation between the Internal Investigator and the Applicant and what was said in a meeting between two College employees and the Applicant.[108] However, the Applicant clearly already knows this information because they participated in those conversations and was present at both of those meetings.

[108] It is unclear, and the College does not sufficiently explain, how a subsequent disclosure of this information now would unfairly expose any of the relevant third parties to the harms contemplated under s. 22(2)(e), including harassment. It seems reasonable to conclude that any potential exposure would have already occurred when that information was first communicated or disclosed to the Applicant. Therefore, for all those reasons, I am not satisfied that s. 22(2)(e) is a circumstance that favours withholding the information at issue.

Supplied in confidence - 22(2)(f)

[109] Section 22(2)(f) requires a public body to consider whether the personal information was supplied in confidence.[109] For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information to another and, at the time the information was provided, it was done so under an objectively reasonable expectation of confidentiality.[110]

[110] The Board submits all the information redacted in the Response was supplied in confidence under s. 22(2)(f) for two reasons. First, the Board argues the College supplied the Response in confidence to a Board prevention officer as part of the Board's investigation of the Harassment Complaint and, therefore, s. 22(2)(f) applies.[111] However, the College is a public body and s. 22(2)(f) requires a *third party*, not a public body, to have supplied the personal

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[106] Information withheld in paras. 14, 33 and 41 of the Response.
[107] I have not identified where this information is in the Response since it may disclose some of the information at issue.
[108] Information withheld in paras. 30 and 35 of the Response.
[109] The Applicant did not make any identifiable arguments about s. 22(2)(f) or address the other parties' arguments about s. 22(2)(f).
[110] Order F23-28, 2023 BCIPC 32 (CanLII) at paras. 78-83 and Order F11-05, 2011 BCIPC 5 (CanLII) at para. 41, citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26 regarding s. 21(1)(b).
[111] Board's submission dated May 5, 2025 at paras. 81-83.

information in confidence.[112] Therefore, I am not persuaded by the Board's first argument that the information at issue in the Response was supplied in confidence under s. 22(2)(f).

[111] Second, the Board argues the adjudicator's reasoning in Order F24-83 about s. 22(2)(f) and the Report applies to the information at issue here in the Response. In Order F24-83, the adjudicator found s. 22(2)(f) applied to the information at issue in that inquiry because "a witness would generally provide information to an investigator who is conducting a workplace investigation in confidence" and because of "the nature of the information in dispute and the College's evidence that it treats workplace investigations as confidential and has a policy to that effect."[113]

[112] Although the College did not identify s. 22(2)(f) as a circumstance that favours withholding the information at issue in the Response,[114] the College says it has policies in place that govern investigations and which "provides that the investigation processes and information and materials generated therefrom, are confidential in nature."[115] As a result, the Board argues s. 22(2)(f) applies because the College treats workplace investigations as confidential in accordance with its policies which means the "witnesses" expected the College to keep the information that they shared with the investigator confidential.[116]

[113] The Board identified the relevant "witnesses" as the students who complained about the Applicant's teaching style and behaviour, but it did not identify the relevant investigator.[117] I note, however, that the only investigator mentioned in the Response is the Internal Investigator who the College assigned to investigate the Student Complaint. Therefore, I understand the Board is arguing s. 22(2)(f) applies to information in the Response that reveals the students' comments or complaints about the Applicant to the Internal Investigator.

[114] As I will explain, I find only some of the information redacted in the Response was supplied in confidence under s. 22(2)(f). Previous OIPC orders have typically found that complainant information is usually supplied in confidence.[118] The Board withheld information that reveals the identities of

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[112] Order F24-80, 2024 BCIPC 91 (CanLII) at paras. 62-64.
[113] Board's submission dated May 5, 2025 at paras. 78-80. Order F24-83, 2024 BCIPC 95 (CanLII) at para. 48.
[114] The College's submission about s. 22(2)(f) focuses on the Report which I found was not a record at issue in this inquiry: College submission dated May 2, 2025 at para. 88.
[115] College's submission dated May 2, 2025 at para. 88.
[116] Board's submission dated May 5, 2025 at paras. 78-83.
[117] Board's submission dated May 5, 2025 at paras. 34, 37, 46 and 80.
[118] For example, Order F20-13, 2020 BCIPC 15 (CanLII) at para. 70 and Order F15-29, 2015 BCIPC 32 at para. 43.

certain students who complained about the Applicant.[119] There is nothing before me that indicates this information was widely shared with others who were not involved in addressing or responding to the students' complaints and concerns. I, therefore, find the fact that some of the information at issue reveals the identities of specific third-party complainants weighs in favour of non-disclosure.

[115] The Board also withheld information in the Response that reveals the students' comments or complaints about the Applicant to College personnel or to the Internal Investigator.[120] However, there is information disclosed in the Response that indicates the students concerns were shared with the Applicant as part of the College's informal resolution process or during the College's internal investigation of the Student Complaint.[121] Similarly, the Board withheld information that reveals the Internal Investigator's findings about the Student Complaint, but there is information disclosed in the Response that indicates this information was shared with the Applicant during a meeting.[122]

[116] I find the fact that the College shared that information with the Applicant conforms to its policy and procedures under *F1002 – Concerns About Instruction and Course Delivery*. I find that policy and those procedures indicate the following actions are expected to occur and did occur in this case: the students' concerns will be discussed with the instructor during the informal process; the internal investigator will meet with the instructor to review the allegations if there is a formal internal investigation; and the internal investigator's conclusions will be shared with the student and the instructor.[123]

[117] The College's policy also indicates "All parties involved with a concern, *including the instructor*…will respect the privacy of those involved" and that "When a concern is brought forward, information will not be disclosed by *any person involved* except as necessary to respect due process."[124] I interpret those provisions to mean that the information given or exchanged as part of a concern will be confidential against any individuals who were not involved in addressing or responding to the complaint and concern. The Applicant was a party involved in the Student Complaint; therefore, the relevant information was shared with the Applicant, and they were expected to maintain the confidentiality of that information.

[118] I find it makes sense that the College's informal resolution process and internal investigation would require the Applicant to know and understand the students' concerns so the Applicant could work on resolving or responding to

[119] Information withheld in paras. 8, 10, 11, 14, and 33.
[120] Information located in paras. 10, 11, 12, 14, 22, 30 and 35 of the Response.
[121] Information located in paras. 15, 16, 19, 21, 25, 29, 30, 31, 35, 40 and 43(b), 43(c)(ii) of the Response.
[122] Information located in para. 35 of the Response.
[123] Appendix A of College's submission dated May 2, 2025.
[124] Appendix B of College's submission dated May 2, 2025 at clause 3.2 (my emphasis).

those concerns. I also find it logical that the Internal Investigator's findings would be shared with the Applicant at the end of the College's internal investigation process, especially when those findings impact the Applicant's employment with the College. As a result, I do not find the College's policy and procedures regarding the Student Complaint sufficiently supports the Board's arguments under s. 22(2)(f).

[119] Therefore, for all those reasons, I am not persuaded s. 22(2)(f) is a factor that favours withholding this information from the Applicant. In the circumstances of this case, I conclude s. 22(2)(f) does not apply to the information that the Board says was supplied in confidence because I find the Applicant was informed of this information in accordance with the College's relevant policy and procedures and was personally involved in the relevant events. The evidence does not support the Board's position that when the third parties supplied the relevant information to the College, they expected this information to be kept in confidence from the Applicant.

[120] I have also considered the rest of the information at issue in the Response and I am not persuaded that s. 22(2)(f) applies to this information.[125] For example, s. 22(2)(f) requires a third party to have supplied the personal information at issue to a public body and not have been created or generated by the public body.[126] The Board withheld information that reveals a general description of certain things related to the Student Complaint.[127] I find the disclosure of this information would reveal information created or generated by the College as part of its response to the allegations in the Harassment Complaint rather than any information supplied in confidence by one of the relevant students. Therefore, I am not satisfied this information was supplied in confidence as required under s. 22(2)(f).

[121] The Board also withheld information that reveals the Support Instructor's comments and observations about the students, the Applicant and matters related to the informal resolution of the Student Complaint.[128] As previously noted, the Support Instructor's comments, observations and opinions recorded in the Response came from watching the Applicant interact with the students in that class. However, there is insufficient evidence about the Support Instructor's expectations of confidentiality at the time that they provided this information to the College, nor can I infer an expectation of confidentiality from the Support Instructor's comments or views.

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[125] For the reasons to follow, and for some of the same reasons given under my analysis of s. 22(3)(h)(ii), I am not persuaded all the redacted information in the Response was supplied in confidence under s. 22(2)(f).
[126] Order F18-38, 2018 BCIPC 41 (CanLII) at para. 88.
[127] Information withheld in para. 41 of the Response.
[128] Information withheld in paras. 20, 21, 41(b) and 41(d) of the Response.

[122] Instead, there is information in the Response that specifically says, "The role of the support instructor is not evaluative, but to provide support and assistance" to the Applicant as a mentor.[129] Therefore, given the Support Instructor's supportive role, I am not persuaded the Support Instructor was expected to, and had agreed to, observe the Applicant and then confidentially report their opinions and observations to the College. As a result, I am not satisfied this information was supplied in confidence as required under s. 22(2)(f).

[123] To conclude, I find s. 22(2)(f) is a factor that favours withholding a small amount of information in the Response.

Unfair damage to reputation – s. 22(2)(h)

[124] Section 22(2)(h) requires a public body to consider whether disclosure of the personal information at issue may unfairly damage the reputation of a person referred to in the requested records.

[125] The Board submits the disclosure of the students' names and concerns would damage their reputations in accordance with s. 22(2)(h) for the following reasons: (1) it would reveal "details about their health and safety concerns;" (2) it would cause "stigma and embarrassment"; and (3) "witness anonymity is essential to prevent unfair retaliation against the students which could lead to reputational harm of the students involved."[130]

[126] The Board also argues disclosure of the information redacted in the Response would unfairly damage the College's reputation because it would "reveal details regarding the quality of instruction related to the College" and would make individuals not trust the College's confidentiality policies and feel unsafe to "report issues to the College, fearing retaliation or negative consequences."[131]

[127] The College submits s. 22(2)(h) applies because the fact that the Applicant has been accused of workplace misconduct carries the potential to expose the individuals who complained about the Applicant to "stigma and reputational harm."[132] The College argues the disclosure of what it says are "Witness Accounts"[133] would expose third parties to attacks on their reputations and heighted or renewed stress and anxiety in anticipation of retaliation by the Applicant or out of concern for their safety.[134] The College defines the term

[129] Information disclosed at paras. 15 and 18-20 of the Response.
[130] Board's submission dated May 5, 2025 at paras. 85-89.
[131] Board's submission dated May 5, 2025 at paras. 90-91.
[132] College's submission dated May 2, 2025 at para. 93. The College made the same arguments in Order F24-83.
[133] College's submission dated May 2, 2025 at para. 71.
[134] College's submission dated May 2, 2025 at paras. 93-94. The College made the same arguments in Order F24-83.

"Witness Accounts" as "third party opinions, observations and perceptions of the conduct of the Applicant and of key issues related to the complaints and allegations."[135]

[128] I note the College's submissions on s. 22(2)(h) (unfair damage to reputation) were combined with its submissions on s. 22(2)(e) (unfair exposure to harm) even though the two provisions are different. Under s. 22(2)(e), it is the *exposure* to harm and not the likelihood of harm that matters.[136] Whereas s. 22(2)(h) requires establishing that the disclosure of the personal information at issue *may* unfairly damage the reputation of a person referred to in the record requested by the applicant.

[129] Moreover, the Board and the College argue the disclosure of the personal information at issue would start a series of negative and harmful events, such as the Applicant retaliating against the students or result in a decrease of reported issues to the College. However, s. 22(2)(h) is about what the personal information at issue would reveal about a person referred to in the requested record and whether the disclosure of this information may unfairly damage that person's reputation.

[130] Applying the standard under s. 22(2)(h) and based on my own review of the information at issue, it is unclear how disclosing any of the personal information at issue may unfairly damage the College's reputation or a third party's reputation such as the students, the Internal Investigator or the Support Instructor. In my opinion, none of the personal information at issue reflects poorly on any third parties mentioned in the Response or on the College.

[131] Instead, the personal information at issue is mostly about the Applicant and their behaviour. Therefore, I find the disclosure of the personal information may have an impact on the Applicant's reputation but not on the College's reputation or the reputation of any of the third parties referred to in the Response. Moreover, in this case, I conclude any potential reputational harm to the Applicant that may result from disclosure would not be unfair because the Applicant is the one seeking access to the Response.

[132] To conclude, I am not satisfied that s. 22(2)(h) is a circumstance that favours withholding the personal information at issue in the Response from the Applicant.

Applicant's personal information

[133] I find a relevant factor to consider is that most of the information at issue is the Applicant's personal information because it identifies the Applicant by name

[135] College's submission dated May 2, 2025 at para. 71.
[136] Order 01-37, 2001 CanLII 21591 (BCIPC) at para. 42.

or as the "Complainant" and describes their interactions and discussions with others.[137] Previous OIPC orders have stated that it would only be in rare circumstances where disclosure to an access applicant of their own personal information would be an unreasonable invasion of a third party's personal privacy.[138]

[134] I note that some of the disputed information is a combination of the Applicant and a third party's personal information, for example, some of the information at issue is a third party's comments and observations about the Applicant. However, in Order 01-53, former Commissioner Loukidelis noted that "an applicant will relatively rarely be refused access to an entire record containing her or his own personal information in order to protect someone else's personal privacy."[139] I agree and adopt that approach. Therefore, I find the fact that some of the information at issue in the Response is the Applicant's personal information is a factor that weighs in favour of disclosing that information.

Applicant's knowledge about the information at issue

[135] An applicant's knowledge of the personal information at issue may be a factor that weighs in favour of disclosure where there is evidence, or the circumstances indicate, that an access applicant already knows or likely knows the information at issue.[140]

[136] The College submits an applicant's personal knowledge should not weigh in favour of disclosure because disclosure under FIPPA is "disclosure to the world" and FIPPA does not restrict what an access applicant can do with information obtained from an access request.[141] The College argues, therefore, that any confidentiality obligations the Applicant has under the College or the Board's processes does not apply when the Applicant obtains a record under FIPPA and could result in risks and harms such as the broad or public dissemination of the information at issue.

[137] I find the Board redacted some information in the Response which the Applicant already knows. In several places, the Board was inconsistent in its severing of the Response, so it withheld information on certain pages but then

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[137] For example, information disclosed in para. 8 and information withheld in para. 14 of the Response.
[138] For example, Order F14-47, 2014 BCIPC 51 at para. 36, citing Order F10-10, 2010 BCIPC 17 at para. 37.
[139] Order F01-53, 2001 CanLII 21607 (BCIPC) at para. 83.
[140] Order F23-13, 2023 BCIPC 15 (CanLII) at para. 184 and Order F17-05, 2017 BCIPC 6 (CanLII) at paras. 54-60.
[141] College submission dated May 2, 2025 at para. 99. The College made these arguments for the information at issue in the Report and not for the Response; however, I have considered it in my analysis.

disclosed the same or similar information elsewhere in the Response.[142] The Board did not explain this inconsistency in its severing; nevertheless, it is clear to me that the Applicant already knows this information since they were given a copy of the Response with the relevant information unredacted.

[138] It is also apparent that the Applicant would know some of the information at issue because that information was already provided to them or they were personally involved in the relevant events mentioned in the Response. For instance, the Board withheld information in the Response that reveals what was said in meetings between the Applicant and others such as the Internal Investigator and College employees.[143] The Applicant clearly knows what was said at those meetings because they participated in those conversations and were present at those meetings. The Board also withheld information that reveals the students concerns and complaints about the Applicant.[144] However, the College says in the Response that "the students concerns were brought to the attention of the [Applicant] in a timely manner"[145] and were communicated to the Applicant in an "investigation letter."[146]

[139] The Board also notes, and I find it reasonable to conclude, that the Applicant is "already aware of or can discern the identities of at least some, if not all, of the students who submitted complaints or participated in the investigations" because the College conducted informal and formal investigations of the students' concerns and removed the Applicant from teaching the relevant course.[147] There were also only eight students in the class so there are a limited pool of complainants and the Applicant would be familiar those individuals since the Applicant taught the class.[148] Therefore, I find a relevant factor in favour of disclosure is the fact that the Applicant already knows or can determine some of the information redacted in the Response.

[140] I am also not persuaded by the College's argument that an access applicant has an unrestricted right to use or disclose the information that they obtain in an access request under FIPPA. There is no provision in FIPPA that grants an access applicant an unrestricted use of the information obtained under an access request, nor in my view does the absence of such a provision mean access applicants are free to do whatever they want with the information and ignore any external restrictions or legal obligations. For example, in Order P-1281, Ontario's former Assistant Commissioner recognized that under Ontario's

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[142] Information withheld in paras. 14, 33, 35 and 41 of the Response that is the same or similar to information disclosed elsewhere in the Response.
[143] Information located in paras. 30 and 35 of the Response.
[144] Information located in paras. 10, 11, 12, 14, 22, 30 and 35 of the Response.
[145] Para. 40 of the Response.
[146] Paras. 29-30 of the Response. Also information disclosed in para. 43 that shows the Applicant was informed of the students' concerns.
[147] Board's submission dated May 5, 2025 at para. 57.
[148] Board's submission dated May 5, 2025 at para. 37.

FIPPA, "The public has a right to use any information obtained from the government under the Act, within the limits of the law, such as laws relating to libel and slander, passing off and copyright…"[149] I conclude that assessment also applies to BC's FIPPA.

[141] I recognize that previous OIPC orders have said that FIPPA does not place any restrictions on what an access applicant can do with the information that they obtain in response to an access request;[150] however, I am not persuaded that just because there is no applicable provision in FIPPA means other laws or legal requirements do not apply. In my opinion, the right to access a record and the right to use information in that record are two different things. FIPPA gives applicants a right of access to records in the custody or control of a public body, including a record containing personal information about the access applicant, subject to any exceptions or exclusions under FIPPA.[151] However, the use or disclosure of that information may be subject to or restricted by other laws or legal obligations.

[142] Moreover, the assumption that disclosure of information through an access request under FIPPA is disclosure to the world (which I will refer to as the public disclosure assumption) comes from the following quote by former Commissioner Loukidelis in Order 03-35:

> As I have held before – notably, in Order 01-52, [2001] BCIPCD No. 55, at para. 73 – the disclosure of information through an access request under the Act, other than personal information relating to an access applicant, is to be approached on the basis that it is disclosure to the world. This is because it would be a contradiction to treat the right of access under the Act to information (other than personal information relating to an applicant) as a right that is limited to particular applicants or purposes when it is – as s. 2(1) of the Act affirms – a public right that is not restricted to particular purposes.[152]

[143] In that order, former Commissioner Loukidelis was deciding whether s. 17(1) (harm to a public body's financial or economic interests) could apply to information that had already been inadvertently disclosed by a public body, and his comments were about assessing the probable expectation of harm under s. 17(1).[153] Former Commissioner Loukidelis specifically said, in the above-noted quote, that the public disclosure assumption does not apply to personal information relating to an access applicant.

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[149] Order P-1281, 1996 CanLII 7705 (ON IPC) at p. 11 of the pdf.
[150] Order F22-31, 2022 BCIPC 34 (CanLII) at para. 80.
[151] Sections 3 and 4 of FIPPA.
[152] Order 03-35, 2003 CanLII 49214 (BCIPC) at para. 31, my emphasis.
[153] Order 03-35, 2003 CanLII 49214 (BCIPC) at para. 34.

[144] In Order 01-52, former Commissioner Loukidelis explained why the public disclosure assumption applies to harms-based exceptions under FIPPA such as s. 18(b) but not to personal information relating to an access applicant:

> …the s. 18(b) analysis should be approached on the working assumption that disclosure to the applicants amounts to public disclosure. With the exception of access by individuals to their own personal information, Part 2 of the Act is an instrument for public access to information and is not an instrument for selective or restricted disclosure. The idea of an applicant being bound to make only restricted use of non-personal information disclosed through an access request under the Act is inconsistent with the objective of public access articulated in s. 2(1) of the Act.[154]

[145] I interpret former Commissioner Loukidelis' comments to mean the public disclosure assumption for harms-based exceptions is consistent with the public access to information objectives set out under s. 2(1) of FIPPA, specifically s. 2(1)(a) which states that one of FIPPA's purposes is to give the public a right of access to records. However, those public access objectives under s. 2(1) of FIPPA do not apply to an access applicant seeking access to their own personal information under FIPPA.

[146] I agree with that distinction. An access applicant seeking access to their own personal information will have personal objectives and motives that align better with s. 2(1)(b) of FIPPA, which states in part that one of FIPPA's purposes is to give individuals a right of access to personal information about themselves. Moreover, an access applicant seeking access to personal information about themselves typically does not intend to widely, indiscriminately or publicly disseminate their own personal information. Therefore, I am not persuaded that the public disclosure assumption discussed in Order 03-35 applies when an access applicant is seeking access to their own personal information, as is the case here. The Applicant asked the Board to provide them with access to records related to a bullying and harassment complaint that the Applicant submitted to the Board about their former employer and as previously discussed, I find most of the information in the Response is about the Applicant.

[147] I also note that the College's concerns such as the public disclosure of information that involves third-party personal information and the impact of that disclosure is already addressed or inherent in the s. 22(2) analysis by considering, in this case, whether the disclosure would unfairly expose a third party to financial or other harm under s. 22(2)(e), whether the personal information was supplied in confidence under s. 22(2)(f), or whether the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant under s. 22(2)(h).

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[154] Order 01-52, 2001 CanLII 21606 (BC IPC) at para. 73, my emphasis.

[148] The analysis under s. 22(2) also allows the parties to raise any other circumstances that may be relevant. There may be evidence in a particular case that an access applicant intends to publicly disseminate the personal information at issue. In that scenario, this factor would be a relevant to consider as part of the s. 22 analysis, alongside other factors and circumstances such as an applicant's pre-existing knowledge. In the present case, I have no evidence that the Applicant intends to widely and publicly disseminate any of the information in the Response or that they have done so with the information that was already disclosed to them or known to them from their participation in the relevant events.

[149] Therefore, for all those reasons, I find the Applicant's existing knowledge of some of the information at issue in the Response is a factor that weighs in favour of disclosing that information to the Applicant.

Conclusion on s. 22(1)

[150] I am satisfied the information withheld in the Response by the Board is the personal information of several people, including the Applicant, students and College personnel. I found there were no circumstances under s. 22(4) that would apply to this information.

[151] Considering all the relevant circumstances, I find it would unreasonably invade a third party's personal privacy to disclose the identities of certain students. I found this information was subject to the presumption under s. 22(3)(d) since it is related to the students' educational history. I conclude there are no circumstances that would rebut the s. 22(3)(d) presumption for this information or that favoured disclosing this information to the Applicant, especially since I found it was supplied in confidence in accordance with s. 22(2)(f).

[152] However, I find it would *not* be an unreasonable invasion of a third party's personal privacy to disclose the rest of the information withheld by the Board under s. 22(1). I found some of this information was subject to the presumption under s. 22(3)(d) since it is related to the students' educational history. However, I find this presumption is rebutted because the information at issue is also the Applicant's personal information and has already been disclosed to the Applicant in the Response or was provided to the Applicant in accordance with the College's relevant policy and processes.

[153] There were also no circumstances that favored withholding the rest of the information at issue from the Applicant. Specifically, I am not persuaded that disclosing the information at issue to the Applicant would unfairly expose or may result in harm to any third party under ss. 22(2)(e) or 22(2)(h), or that this information was supplied in confidence under s. 22(2)(f). As a result, I conclude it

would not unreasonably invade a third party's personal privacy to disclose the rest of the information at issue in the Response to the Applicant.

Disclosure harmful to individual safety or health – s. 19(1)(a)

[154] I found the following information in the Response could not be withheld under s. 22(1): 1) information that reveals details about the students' concerns and complaint; 2) the Support Instructor's comments and observations about the Applicant and the students; 3) what was said in a meeting between the Internal Investigator and the Applicant; and 4) the Internal Investigator's conclusion about an aspect of the Student Complaint.[155] The Board also withheld this information under s. 19(1)(a), therefore, I will consider s. 19(1)(a) next.[156]

[155] 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. It is well-established that the language "could reasonably be expected to" in access to information statutes means that in order to rely on the exception, a public body must establish that there is a "reasonable expectation of probable harm."[157] The Supreme Court of Canada has described this standard as "a middle ground between that which is probable and that which is merely possible."[158]

[156] The public body does not need to show on a balance of probabilities that harm will occur if the information is disclosed, but it must demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative.[159] There needs to be a reasonable basis for believing the harm will result, but the standard does not require proof of actual harm or a demonstration that harm is probable.[160] Instead, the probability of harm need only be reasonably expected.[161]

[157] The determination of whether a reasonable expectation of probable harm has been established is contextual, and the amount and quality of evidence needed to meet this standard will ultimately depend on the nature of the issue

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[155] Information withheld in paras. 10, 11, 12, 14, 20, 21, 22, 30, 33 and 41(a) of the Response.
[156] The Board cited s. 19(1)(a) for this information in a corrected copy of the Response provided to the OIPC on January 29, 2026.
[157] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.
[158] *Ibid*.
[159] *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 206.
[160] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 59 and *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 (CanLII) at paras. 88 and 93.
[161] *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 (CanLII) at para. 88.

and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences."[162] Previous OIPC orders have said general speculative or subjective evidence will not suffice.[163]

[158] Furthermore, it is the release of the information itself which must give rise to a reasonable expectation of harm.[164] The public body must provide evidence establishing "a direct link between the disclosure and the apprehended harm and that the harm could reasonably be expected to ensue from disclosure."[165]

[159] The Board submits there is a reasonable risk that the disclosure of the information at issue would threaten the safety or the mental and physical health of the students who complained about the Applicant or the other third parties who participated in the investigations of the Student Complaint.[166] The Board did not identify those other third parties, but based on the information at issue, I understand the Board is arguing that disclosing the information at issue would threaten the safety or the mental and physical health of the students, the Support Instructor and the Internal Investigator. The Board alleges the Applicant will retaliate against or seek to intimidate or harass those individuals and has previously attempted to intimidate students and was retributive against the students because they complained about the Applicant's teaching style and conduct.

[160] The College submits there is a reasonable expectation of threatened harm in this case because there is information in the Response that shows the impacts of the Applicant's conduct on the students and on staff. The College also says the Applicant has an "ongoing pattern" of making complaints and allegations against the College and its students and employees which it says, "can reasonably be expected to give rise to various categories of stress, anxiety and mental and emotional harms."[167]

[161] I have carefully considered the materials before me, and I am not persuaded there is a direct link between the disclosure of the information at issue here and the threat of harms specified in s. 19(1)(a). As I explained in my analysis under s. 22, most of the information at issue here has already been disclosed to the Applicant either in the Response itself or to the Applicant directly during the relevant events. It is unclear, and the College and the Board do not sufficiently explain, how a subsequent disclosure of this information now could

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[162] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)***,** 2014 SCC 31 at para. 54.
[163] For example, Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 27.
[164] *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner),* 2012 BCSC 875 at para. 43.
[165] *Merck Frosst Canada Ltd. v Canada (Health),* 2012 SCC 3 at para. 219.
[166] Board's submission dated May 5, 2025 at paras. 110-113.
[167] College's submission dated May 2, 2025 at para. 111.

reasonably be expected to threaten the safety or mental or physical health of the students or the Internal Investigator.

[162] For example, the Board withheld information that reveals the students' concerns and complaints about the Applicant.[168] However, there is information disclosed in the Response that indicates the students' concerns were shared with the Applicant as part of the College's attempted informal resolution or internal investigation of the Student Complaint.[169] The Board also withheld information that reveals the Internal Investigator's findings about the Student Complaint, but there is information disclosed in the Response that indicates this information was shared with the Applicant during a meeting.[170] I find the disclosure of all this information now would only provide the Applicant with information that is already known to the Applicant. There is insufficient explanation or evidence for me to conclude that the Applicant would engage in behaviours such as retaliation, intimidation or harassment against the students or the Internal Investigator, as alleged by the Board and the College, if the Applicant were to receive all this information again.

[163] I am also not persuaded that disclosing the Support Instructor's comments and observations or the Internal Investigator's conclusion about an aspect of the Student Complaint could reasonably be expected to threaten the safety or mental or physical health of any of the relevant third parties. I find those comments and observations reiterate or affirm some of the information already disclosed in the Response or that was previously discussed in meetings between the Applicant and others. In my opinion, none of this redacted information would reveal anything new to the Applicant about their behaviour or how others viewed that conduct.[171]

[164] The College alleges the Applicant will continue with their ongoing pattern of making complaints to various administrative tribunals about the students and the College employees involved in the Student Complaint, which could reasonably be expected to cause those third parties stress, anxiety and mental and emotional harms. However, the parties' materials indicate the Applicant has already made and submitted a variety of complaints against the College or some of the individuals involved in the Student Complaint.[172] It is unclear, and the College and the Board do not sufficiently explain, how the Applicant can use the information at issue here in the Response to relitigate those same complaints or make new allegations or complaints against the relevant individuals. Therefore, I am not satisfied that the disclosure of the information at issue would arm the

[168] Information located in paras. 10, 11, 12, 14, 22, 30 and 35 of the Response.
[169] Information located in paras. 15, 16, 19, 21, 25, 29, 30, 31, 35, 40 and 43(b), 43(c)(ii) of the Response.
[170] Information located in para. 35 of the Response.
[171] For example, information withheld in paras. 20-21 of the Response.
[172] College's submission dated May 2, 2025 at paras. 12, 19-21 and 30-32.

Applicant with new information that could reasonably be expected to threaten the mental health of any of the relevant third parties, as argued by the College.

[165] To conclude, I am not satisfied s. 19(1)(a) applies to any of the information at issue here in the Response.

Advice or recommendations – s. 13

[166] The Board relied on s. 13(1) to refuse access to a small amount of information in the Response.[173] Section 13(1) authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister. A public body is authorized to refuse access to information under s. 13(1) when the information itself directly reveals advice or recommendations or when disclosure would permit accurate inferences about any advice or recommendations.[174]

[167] Moreover, previous OIPC orders recognize that s. 13(1) protects "a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations."[175]

[168] The analysis under s. 13(1) involves two stages. To determine whether s. 13(1) applies, I must first decide if disclosure of the withheld information would reveal advice or recommendations developed by or for a public body or minister. If so, then the next step is to determine whether any of the categories or circumstances listed in ss. 13(2) or 13(3) apply to that information.

[169] Subsections 13(2) and 13(3) identify certain types of records and information that may not be withheld under s. 13(1), such as factual material under s. 13(2)(a) and information in a record that has been in existence for 10 or more years under s. 13(3). If the information falls under a s. 13(2) category or s. 13(3) applies, then the public body must not refuse to disclose that information under s. 13(1).

Step one: would disclosure reveal advice or recommendations?

[170] To determine whether s. 13(1) applies, I must first decide if disclosure of the information at issue would reveal advice or recommendations developed by or for a public body or minister. The term "recommendations" includes material

[173] Information withheld in para. 39 of the Response. The Board did not apply any other FIPPA exceptions to this information.
[174] Order 02-38, 2002 CanLII 42472 at para. 135. See also Order F17-19, 2017 BCIPC 20 (CanLII) at para. 19.
[175] For example, Order 01-15, 2001 CanLII 21569 at para. 22.

that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be express or inferred.[176]

[171] The term "advice", however, has a distinct and broader meaning than the term "recommendations."[177] "Advice" usually involves a communication, by an individual whose advice has been sought, to the recipient of the advice, as to which courses of action are preferred or desirable.[178] The term "advice" also includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision for future action.[179]

[172] The Board submits the information at issue is advice or recommendations because it relates to the workplace investigation conducted by the investigator and the College. The Board says the Response is "inherently advisory in nature"[180] as it contains advice and recommendations relating to the complaints made and was "created as part of [the] College's deliberative process leading to the provision of an expert advice to be given by an Investigator to the College for the purpose of a workplace complaint."[181] The Board did not identify the relevant investigator; however, I understand the Board is arguing the information at issue under s. 13(1) would reveal the Internal Investigator's advice to the College about the Student Complaint because that is the only investigator mentioned in the Response.

[173] The College describes the information at issue in the Response as "some opinions and advice about the fairness of the [Student Complaint investigation] process."[182] It says this information was "developed by investigators through the Harassment Investigation and the internal investigation into the Student Complaints."[183] Among other things, the College argues s. 13(1) applies because it "engaged these investigators to identify, collect, assess and provide advice to it on whether the allegations in the Harassment Complaint and/or the Student complaint were substantiated by the evidence, and if so, whether the alleged conduct amounted to the breach of any law or policy."[184] Therefore, I understand the College is arguing the disclosure of the information at issue would reveal advice that one or more investigators developed for the College.

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[176] *John Doe v. Ontario (Finance)*, 2014 SCC 36 at paras. 23-24.
[177] *Ibid* at para. 24.
[178] Order 01-15, 2001 CanLII 21569 at para. 22.
[179] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para. 113.
[180] Board's submission dated May 5, 2025 at para. 96.
[181] Board's submission dated May 5, 2025 at para. 105.
[182] College submission dated May 2, 2025 at para. 60(b).
[183] College's submission dated May 2, 2025 at para. 68. I note the College's submission about s. 13 is misnumbered as paras. 62-72 instead of continuing from the previous paragraph numbered para. 111. For consistency and to avoid confusion, I have relied on the College's numbering of its submissions.
[184] College's submission dated May 2, 2025 at para. 68 under its arguments on s. 13.

[174] I find there is insufficient evidence or explanation about how the disclosure of this information would reveal advice or recommendations developed by or for the College or another public body. The information that the Board redacted in the Response under s. 13(1) does not reveal any comment made by the Internal Investigator who is mentioned in the Response or the External Investigator who conducted the investigation leading to the Report.

[175] I find it important to note that all the information at issue in the Response is part of the College's response to the Board about the Harassment Complaint.[185] The College prepared the Response and provided it to the Board as part of the Board's investigation of the Applicant's complaint about the College. There is information disclosed in the Response that shows the Applicant is referred to as the "Complainant" and other individuals are referred to as the "Respondents."[186] In the Response the College also says, "The College's evidence establishes that the process was [thorough], compliant with the Concern for Instruction Policy and fair to the Complainant."[187] Considering this context and the contents of the Response, I find the information redacted under s. 13(1) would only reveal the College's position to the Board about the appropriateness of its actions. I find the entire Response is essentially the College's arguments and submissions to the Board about how it properly investigated the Applicant's allegations underlying the Harassment Complaint.

[176] It is unclear to me, and neither the College nor the Board sufficiently explain, how a party's submission and arguments to an oversight body such as the Board would qualify as advice or recommendations for the purposes of s. 13(1). There is no evidence that the Board sought advice from the College about the appropriateness of the College's actions, nor would a party under investigation be expected to provide advice or recommendations to the decision-maker who is reviewing the appropriateness of that party's conduct. I also find it would be inconsistent with the Board's role as an independent and impartial oversight body to seek advice from an employer who is being investigated under the Board's *Occupational Health and Safety Policy for Workplace Bullying and Harassment*.

[177] For all those reasons, I am not satisfied the information at issue under s. 13(1) would reveal advice or recommendations developed by or for the College or another public body.

Step two: sections 13(2) and 13(3)

[178] The next step in the s. 13(1) analysis is to consider whether any of the circumstances under ss. 13(2) and 13(3) apply to the information that I found

[185] College's submission dated May 2, 2025 at para. 60(b).
[186] For example, information disclosed in paras. 5, 10 and 25 of the Response.
[187] Information disclosed in para. 46 of the Response.

would reveal advice or recommendations developed by or for a public body. As previously noted, ss. 13(2) and 13(3) identify certain types of records and information that a public body may not withhold under s. 13(1). However, I found the information withheld by the Board under s. 13(1) would *not* reveal any advice or recommendations developed by or for a public body. Therefore, it is not necessary for me to consider ss. 13(2) and 13(3).

CONCLUSION

[179] For the reasons discussed above, I conclude the Board is required to refuse access under s. 22(1) to only some of the redacted information at issue, and I make the following orders:

1. Under s. 58(2)(c) of FIPPA, and subject to items 2 and 4 below, I require the Board to refuse access under s. 22(1) to some of the information redacted in the Response.

2. The Board is not required, under s. 22(1), to refuse access to some of the information that the Board withheld under s. 22(1). Therefore, under s. 58(2)(a) of FIPPA, I require the Board to give the Applicant access to this information.

3. The Board is not authorized to refuse the Applicant access to the information that it withheld under ss. 13(1) or 19(1)(a). Therefore, under s. 58(2)(a) of FIPPA, I require the Board to give the Applicant access to this information.

4. I have highlighted in green, in a copy of the Response that will be provided to the Board with this order, the information that the Board is not required or authorized to withhold under ss. 22(1), 13(1) or 19(1)(a).

5. Under s. 58(4) of FIPPA, I require the Board to provide the Registrar with a copy of the records that it sends to the Applicant in compliance with items 1-4 of this order, along with any attached or relevant correspondence.

[180] Under s. 59(1) of FIPPA, the Board is required to comply with the terms of this order by June 9, 2026.

[181] In accordance with s. 58(5)(c), the Registrar will provide the College with a copy of this order because it was an appropriate person given notice under s. 54(b).

April 27, 2026

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F22-91566