Order F26-96

# PROVINCIAL HEALTH SERVICES AUTHORITY

Allison J. Shamas
Adjudicator

November 4, 2026

CanLII Cite: 2026 BCIPC 121
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 121

**Summary:** An individual (applicant) asked the Provincial Health Services Authority (Health Authority) for access to certain workplace records. The Health Authority disclosed responsive records to the applicant but withheld some information from them under ss. 13(1) (advice or recommendations), 15(1)(l) (harm to security of property or system), and 22(1) (unreasonable invasion of third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act.* The adjudicator decided the Health Authority was authorized to withhold all the information at issue under ss. 13(1) and 15(1)(l), and that it was required to withhold some of the information at issue under s. 22(1). The adjudicator ordered the Health Authority to provide the applicant with access to the information that it was not required to withhold under s. 22(1).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 4(2), 13(1), 13(2)(a), 13(3), 15(1)(l), 22(1), 22(2)(c), 22(2)(f), 22(3)(d), 22(3)(h), and 22(5).

## INTRODUCTION

[1] An individual (applicant) asked the Provincial Health Services Authority (Health Authority) for access to certain workplace records.

[2] The Health Authority disclosed responsive records to the applicant but withheld some information from them under s. 13(1) (advice or recommendations), s. 15(1)(l) (harm to security of property or system), and s. 22(1) (unreasonable invasion of third party's personal privacy), of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Health Authority's decision.

[4] The OIPC's mediation process did not settle the matter and the applicant requested that it proceed to inquiry.

[5] In addition to the OIPC's ordinary schedule for submissions, the parties provided an additional round of submissions concerning s. 22(2)(c) of FIPPA. In order to ensure both parties received a full opportunity to be heard and to best ensure that the decision below is informed by the available evidence, I have considered all the submissions provided by the parties.

## ISSUES

[6] The issues in dispute are whether the Health Authority:

1. is required to refuse to disclose the information at issue under s. 22(1) of FIPPA or to give the applicant a summary of some of that information pursuant to s. 22(5), and
2. is authorized to refuse to disclose the information at issue under ss. 13(1), and 15(1)(l).

[7] Under s. 57(1) of FIPPA, the burden of proof is on the Health Authority to show that the applicant has no right of access to information under ss. 13(1) or 15(1)(l).

[8] Under s. 57(2), the applicant must prove that disclosure of a third party's personal information would not be an unreasonable invasion of that third party's personal privacy under s. 22(1). However, the Health Authority has the initial burden under s. 22(1) to establish that the disputed information is personal information.

## BACKGROUND

[9] The Health Authority is a provincial health authority responsible for the coordination and delivery of health care services in British Columbia. The BC Emergency Health Services (BCEHS) is a statutory body established under the *Emergency Health Services Act*, RSBC 1996, c 182. The BCEHS is part of, and falls under, the jurisdiction of the Health Authority.

[10] The applicant is an employee of BCEHS.

[11] The context for this inquiry is a workplace dispute between the applicant and BCEHS about a workplace policy (the workplace dispute). The workplace dispute led to several workplace issues and legal proceedings. Those described below are relevant to the issues in this inquiry.

[12] BCEHS directed the applicant to comply with a workplace policy. In response, the applicant filed a workplace complaint about that direction. In addition, other BCEHS staff filed workplace complaints about the applicant's conduct in connection with the workplace dispute (collectively the Complaints). BCEHS issued the applicant a letter of expectation about compliance with the workplace policy.

[13] BCEHS investigated the Complaints and issued the applicant a written warning. The applicant's union grieved the written warning but subsequently withdrew the grievance. Against that background, the applicant filed an application against his union with the Labour Relations Board for withdrawing the grievance, and two applications with WorkSafe BC against BCEHS in connection with how it dealt with his workplace complaint. All of these matters relate to the workplace dispute.

## RECORDS IN DISPUTE

[14] The responsive records are 118 pages of emails, letters, text messages, Microsoft Teams messages, and attachments to emails and letters relating to the workplace dispute. The Health Authority withheld information from 48 pages.

## SECTION 13 – ADVICE OR RECOMMENDATIONS

[15] Section 13(1) allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body.

### *Section 13(1) – Advice or Recommendations*

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

[17] "Recommendations" involve "a suggested course of action that will ultimately be accepted or rejected by the person being advised."[1]

[18] The term "advice" has a broader meaning than the term "recommendations,"[2] and includes:

- an opinion that involves exercising judgment and skill to weigh the significance of matters of fact;[3]

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[1] *John Doe v Ontario (Finance),* 2014 SCC 36 [*John Doe*] at para 24.
[2] *Ibid* at para 23.
[3] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 [*College*] at para 113, endorsed *in Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [*PHSA*] at para 80.

- opinion on matters of fact on which a public body must make a decision;[4]
- opinions that are obtained to provide background explanations or analysis necessary to the deliberative process of a public body;[5] and
- factual information compiled and selected by an expert, using their expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.[6]

[19] Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences to be drawn about advice or recommendations.[7]

[20] While s. 13(1) applies to some drafts, the provision does not automatically apply to a document simply because it is a draft.[8] A public body can withhold only those parts of a draft that would reveal or allow accurate inference about advice or recommendations within the meaning of s. 13(1).[9]

*Parties' submissions – s. 13(1)*

[21] The Health Authority says the information it withheld under s. 13 relates to the letter of expectation BCEHS sent to the applicant, and to BCEHS' investigations into the workplace complaints made against the applicant.

[22] The BCEHS Manager who signed the letter of expectation (Manager 1) provided evidence in the inquiry. Manager 1 explains that in preparing the letter of expectation, they consulted with a human resources representative (HR Rep 1). Manager 1 also explains that another manager (Manager 2) handled the investigations into the complaints against the applicant, and that in doing so, Manager 2 consulted with another human resources representative (HR Rep 2) who advised Manager 2 about the complaints.[10]

[23] The Health Authority submits that the information it withheld under s. 13(1) is limited to those aspects of the records that would reveal or allow inferences about the advice and recommendations developed by and provided to BCEHS.

[24] The applicant states that he does not object to withholding genuine human resources advice or recommendations.

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[4] *College ibid* at para 113, endorsed in *PHSA ibid* at para 80.
[5] *College supra* note 3 at para 111, endorsed in *PHSA supra* note 3 at para 80.
[6] *PHSA supra* note 3 at para 94. See also *College supra* note 3 at para 110.
[7] *John Doe supra note 1* at para 24.
[8] Order 00-27, 2000 CanLII 14392 at p 6; Order F17-13, 2017 BCIPC 14 at para 24; Order F17-39, 2017 BCIPC 43 at para 37; Order 03-37, 2003 CanLII 49216 at paras 59-60.
[9] Order 00-27, 2000 CanLII 14392 at p. 6 and Order 03-37, 2003 CanLII 49216 at para 60.
[10] Health Authority's initial submission, affidavit of Manager 1, at para 21.

*Findings and analysis – s. 13(1)*

[25] For the reasons below, I find that s. 13(1) applies to all the information the Health Authority withheld on that basis.

[26] The information the Health Authority withheld under s. 13(1) relates to the letter of expectation and BCEHS' investigation into the complaints against the applicant. It is:

- excerpts from draft copies of the letter of expectation (Draft LOE);[11]
- excerpts from draft letters notifying the applicant of BCEHS' intention to investigate the complaints against him (Draft Investigation Letters),[12]
- HR Rep 1's views about, and a suggested edit to, the Draft LOE;[13]
- HR Rep 2's suggested edits to Draft Investigation Letters[14] and suggestions about how BCEHS should proceed with the investigations into the complaints against the applicant.[15]

[27] Section 13(1) applies only to information that would reveal advice or recommendations *developed by or for a public body*. The Health Authority is a public body under FIPPA. Based on the information the Health Authority provided about its relationship with BCEHS, I accept that BCEHS is part of the Health Authority. As a result, I accept that advice or recommendations developed by or for BCEHS were developed by or for the Health Authority.

[28] From the records, I can see that HR Rep 1 advised Manager 1 about human resources matters relating to the letter of expectation, and that HR Rep 2 advised Manager 2 about the human resources issues relating to the investigation into the complaints against the applicant.

[29] In this context, I accept that HR Rep 1's views about the Draft LOE are an opinion prepared for BCEHS and that HR Rep 1's suggested edits to the Draft LOE are recommendations prepared for BCEHS. I also accept that HR Rep 2's suggested edits to the Draft Investigation Letters[16] and suggestions about how Manager 2 should proceed with the investigations into the complaints against the applicant[17] are recommendations prepared for BCEHS. Therefore, I find that disclosing this information would reveal advice and recommendations within the meaning of s. 13(1).

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[11] Records pages 19, 20, 21, 23, 24, 27, 31, 37, and 41.
[12] Records page 50, and 51.
[13] Records page 25.
[14] Records page 99.
[15] Records page 49 and 99.
[16] Records page 99.
[17] Records page 49 and 99.

[30] I also find that s. 13(1) applies to the excerpts the Health Authority withheld from the Draft LOE and Investigation Letters. I come to this conclusion because when the excerpts from the Draft LOE and Investigation Letters are considered in light of their final versions and the edits suggested by HR Reps 1 and 2, it is clear that the changes the Managers made to the letters are consistent with the HR Reps' suggested edits to the Draft LOE and Investigation Letters. For this reason, I accept that disclosing the information the Health Authority withheld from the Draft LOE and Investigation Letters would allow accurate inferences about the HR Reps' recommendations within the meaning of s. 13(1).

### *Section 13(2) - Exceptions*

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

#### *Section 13(2)(a) – factual material*

[32] Section 13(2)(a) provides that a public body must not refuse to disclose "any factual material" under s. 13(1).

[33] The term "factual material" is not defined in FIPPA. However, in distinguishing it from "factual information" which may be withheld under s. 13(1), the courts have interpreted "factual material" to mean "source materials" or "background facts in isolation" that are not necessary to the advice provided.[18] Thus, where facts are an integral component of advice and recommendations, they are not "factual material" within the meaning of s. 13(2)(a).

[34] The applicant requests that the Health Authority be required to disclose factual material, final or non-deliberative wording, record metadata, and factual issue descriptions that do not reveal advice or recommendations.

[35] The public body asserts that the exception for "factual material" in s. 13(2)(a) does not apply to any of the information it withheld on the basis of s. 13(1) because the information at issue is not discrete factual material.

[36] The information to which I have found s. 13(1) applies is opinions, suggestions about how to proceed, suggested edits provided to BCEHS by two human resources professionals, and draft language that I found would reveal the human resource professionals' suggested edits. This information is not factual, and s. 13(2)(a) does not apply to it.

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[18] *PHSA supra* note 3 at para 94.

[37] No other categories in s. 13(2) apply to the information I found would reveal advice or recommendations.

*Section 13(3) – information in existence for 10 or more years*

[38] The third step is to consider whether the information has been in existence for more than 10 years under s. 13(3). Information that has been in existence for more than 10 years cannot be withheld under s. 13(1).

[39] The workplace disputes which caused the responsive records to be created occurred in 2024. I find that the information at issue has not been in existence for more than 10 years.

*Section 13 – conclusion*

[40] I found that all the information the Health Authority withheld under s. 13(1) would reveal advice or recommendations if disclosed, and that ss. 13(2) and (3) did not apply to any of this information. Accordingly, I find that the Health Authority is authorized to withhold all of that information under s. 13(1).

## SECTION 15(1)(L) - HARM TO HARM SECURITY OF PROPERTY OR SYSTEM

[41] Section 15(1)(l) provides that a public body may refuse to disclose information when disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[42] The standard of proof under s. 15(1)(l) is whether there is a reasonable expectation of probable harm. A reasonable expectation of probable harm has been described as "a middle ground between that which is probable and that which is merely possible."[19]

### *Parties' submissions*

[43] The Health Authority describes the information it withheld under s. 15(1)(l) as an ID number, passcode, and conference ID for a Microsoft Teams teleconference call, and a department ID code used by its financial management system.

[44] The Health Authority's Information Manager explains that department ID codes are used for payroll and expense claims. They explain that in the past, Health Authority staff have identified fraudulent payroll and expense claims based on deficiencies in the fabricated claims including the absence of a

[19] *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner),* 2014 SCC 31 at para 54.

legitimate department ID code. Thus, the Information Manager submits that disclosure of the ID code could allow a fraudulent actor to fabricate more credible fraudulent invoices.

[45] Relying on past orders in which the OIPC held that disclosing teleconference information and ID codes from financial management systems could reasonably be expected to harm the security of systems under s. 15(1)(l),[20] the Health Authority asserts that s. 15(1)(l) applies to this information because there is no principled basis to depart from the findings in those past orders.

[46] In his submission, the applicant writes "I do not meaningfully contest the [Health Authority's] reliance on s. 15(1)(l) for Department ID Codes, financial management codes, or Microsoft Teams access information, provided those severances are limited to genuine system-security information. If the adjudicator is satisfied that s. 15 is used only for those narrow technical items, I do not ask for an order varying those severances."[21]

***Findings and analysis***

[47] I have reviewed the information the Health Authority withheld under s. 15(1)(l). I confirm that some of it is a Microsoft Teams ID number, passcode, and conference ID. The applicant does not dispute that s. 15(1)(l) applies to this information, and past orders have consistently held that disclosing teleconference information, including Microsoft Teams access information, could reasonably be expected to harm the security of teleconferencing systems due to the risk of unauthorized access.[22] I accept that s. 15(1)(l) applies to this information.

[48] The remaining information is a number. Based on the Health Authority's evidence, I accept that it is a department ID code used by its financial management system. Again, the applicant does not dispute that s. 15(1)(l) applies to this kind of information and based on the Health Authority's evidence about fraudulent actors, I accept that disclosure of the ID code could harm the Health Authority's financial management system by making fraudulent invoices more difficult to detect. Thus, I also accept that s. 15(1)(l) applies to the department ID code.

[49] For the reasons above, I find that s. 15(1)(l) applies to all the information withheld on that basis.

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[20] Order F25-40, 2025 BCIPC 48 (CanLII) and Order F23-56, 2023 BCIPC 65 (CanLII).
[21] Respondent's response submission at page 7.
[22] Order F23-56, 2023 BCIPC 65 (CanLII) at para 123 and the orders cited therein.

## SECTION 22 – UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY

[50] Section 22 of FIPPA requires a public body to refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy.[23]

[51] There are four steps in the s. 22(1) analysis and I will apply each step under the subheadings below.

### *Personal Information*

[52] As s. 22(1) only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information within the meaning of FIPPA.

[53] Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." Information is "about an identifiable individual" when it is "reasonably capable of identifying an individual, either alone or when combined with other available sources of information."[24]

[54] "Contact information" is defined in 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."[25]

[55] Under s. 22(1), the Health Authority withheld:

- The information found in the body of three emails from BCEHS staff members describing interactions they had with the applicant and providing their opinions about the applicant's conduct, which form the substance of workplace complaints made against the applicant (Complaint Emails); [26]
- Dates on which the Complaint Emails were sent;
- Names, initials, email addresses of third parties; and

[23] Schedule 1 of FIPPA provides that a "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.
[24] Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.
[25] Schedule 1.
[26] Records pages 59-61, 62-63, 81-83, 86, 92-94, 99-102, and 109-110. Many of these records are duplicates of one another.

- Subject lines and file names of attachments to various emails referencing the general nature of emails that are not names or initials.[27]

[56] I find that the Complaint Emails and the dates on which they were sent are personal information. The Complaint Emails are detailed and specific and discuss workplace issues in which the applicant was involved. I find that the applicant could easily connect them to identifiable individuals. Furthermore, because the dates on the Complaint Emails closely align with the workplace issues discussed in them, I also find that disclosing the dates could allow the applicant to infer who made the complaints against him. Neither the Complaint Emails nor their dates are contact information. Therefore, I find they are personal information.

[57] I also find that the names, initials, and email addresses are personal information. The individuals associated with this information are easily identifiable from the information itself. Sometimes such information is considered contact information, but whether information is "contact information" depends on the context in which it appears.[28] In this case, the names and email addresses are found in emails discussing workplace issues and complaints. Given this context, I find that it would reveal much more than how to contact the individuals at their place of business. It would also reveal information about the affected individuals' involvement in various workplace issues. Thus, I conclude that this information is not contact information and is, therefore, personal information.

[58] I am not persuaded the subject lines and file names of attachments to emails referencing the general nature of those emails are personal information. This information is general and discloses only the topic of the emails in the most general sense. The Health Authority does not say, and I cannot see that this information could be reasonably capable of identifying an individual. However, I note that some of this information references employee names. Consistent with my finding above, those names are personal information.

[59] In summary, I find that the Complaint Emails and the dates on which they were sent, as well as individuals' names, initials, and email addresses are personal information, but that the subject lines and file names of attachments to emails are not (except to the extent that they contain names).

### *Section 22(4) – disclosure is not an unreasonable invasion of a third party's personal privacy*

[27] This information is located in email subject lines and the file names of attachments to emails - both the emails the Health Authority withheld in full and other emails. See records pages 59, 63, 80, 81, 85, 86, 92, 98, 99, and 109).
[28] Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

[60] Section 22(4) lists circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. The second step in the s. 22 analysis is to consider whether the circumstances described in s. 22(4) apply to any of the information that I have found is personal information. If information falls into one of the circumstances enumerated in s. 22(4), the public body is not required to withhold it under s. 22(1).

[61] Neither party suggested that any of the circumstances described in s. 22(4) applies to the information in dispute. Having considered those circumstances, I find that none apply to the personal information at issue.

***Section 22(3) – disclosure is presumed to be an unreasonable invasion of third-party personal privacy***

[62] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The third step in the analysis is to consider whether any of the presumptions against disclosure in s. 22(3) apply to any of the personal information that is not excluded under s. 22(4).

[63] The Health Authority asserts that ss. 22(3)(d) (employment history) and 22(3)(h) (identity of third party who supplied a personnel evaluation in confidence) apply to some of the information in dispute.

*Employment, Occupational or Educational History – s. 22(3)(d)*

[64] Section 22(3)(d) states that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the employment … history of a third party.

[65] The Health Authority submits that s. 22(3)(d) relates to all of the personal information at issue because it is the personal information of individuals who initiated and were the subject of workplace complaints. In support of this position, the Health Authority relies on Order F24-81 for the proposition that s. 22(3)(d) applies to information about individuals who initiate workplace complaints.

[66] Past orders provide that "employment history" includes personal information about individuals who initiate workplace complaints.[29] I agree with and adopt this interpretation here because, in my view, initiating a workplace complaint is a significant employment matter that forms part of an individual's employment history.

[67] The Complaint Emails reveal the identity of the BCEHS employees who made workplace complaints about the applicant, and substance of those

[29] Order F26-68, 2026 BCIPC 86 (CanLII) at para 84, Order F22-07, 2022 BCIPC 7 (CanLII) at paras 42-44, and Order F24-48, 2024 BCIPC 56 (CanLII) at para 93.

complaints. The names, initials, and email addresses of these employees also reveal their identities as complainants. For the reasons I have explained above, the dates on which the Complaint Emails were sent would also reveal the complainants' identities. I find that s. 22(3)(d) applies to all of this information.

[68] The remaining personal information is other individuals' names and email addresses. The Health Authority does not say, and I cannot see, how s. 22(3)(d) might apply to this information. I find that it does not apply.

*Identity of third party who supplied in confidence a personnel evaluation - s. 22(3)(h)*

[69] Section 22(3)(h) provides that disclosure 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,

[70] The Health Authority characterises the Complaint Emails as confidential personnel evaluations and submits that if disclosed, the applicant would know the identity of the authors.

[71] The applicant challenges the Health Authority's characterization of the Complaint Emails as confidential personnel evaluations and submits that the emails are too broad to be considered confidential personnel evaluations. According to the applicant, a factual account of an interaction is not necessarily a confidential personnel evaluation in its entirety.

[72] Past orders have consistently held that to be considered a personnel evaluation, there must be some formal evaluation of an individual's performance.[30] In this regard, past OIPC orders have also found that s. 22(3)(h) applies to workplace performance reviews and to an investigator's evaluative comments about an individual who is the subject of a workplace complaint investigation,[31] but not to an employee's allegations about a fellow employee,

[30] Order 01-07, 2001 CanLII 21561 at paras 21-22; Order F20-13, 2020 BCIPC 15 (CanLII) at para 61; and Order F26-32, 2026 BCIPC 40 (CanLII) at para 81.
[31] 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.

employee comments or complaints about workplace attitudes and behaviour, or employee feedback and opinions about other employees on workplace issues.[32]

[73] The Complaint Emails provide narrative accounts of the applicant's conduct and the complainants' opinions about that conduct. Furthermore, I can see from the records that BCEHS did not simply accept the allegations and opinions but rather initiated a formal investigation into them. In light of the above, I conclude that the Complaint Emails are not themselves formal evaluations of the applicant's conduct, but rather workplace complaints which led BCEHS to conduct formal investigations into the applicant's conduct (and presumably reach formal evaluations about it). In substance, they are staff members' complaints to BCEHS' management about another staff member. They lack the requisite formality or evaluative content to be personnel evaluations. Consistent with prior orders, I find that s. 22(3)(h) does not apply to them.

[74] The Health Authority does not assert, and I do not find that s. 22(3)(h) applies to any of the other information at issue.

*Summary – s. 22(3)*

[75] Having considered the remaining sections of s. 22(3), I find that no others apply to the information at issue.

[76] In summary, I find that s. 22(3)(d) applies to Complaint Emails, the dates they were sent, and the names, initials, and email addresses of the complainants, but not to the names, initials, or email addresses of any other third parties. I also find that s. 22(3)(h) does not apply to any of the information at issue.

### *Section 22(2) – All relevant circumstances*

[77] 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 in s. 22(2), 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. It is under s. 22(2) that the presumption under s. 22(3)(d) can be rebutted.

[78] The Health Authority argues that s. 22(2)(f) (supplied in confidence) favours withholding the information at issue, while the applicant argues that ss.

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[32] 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 (CanLI) at paras 33-35.

22(2)(c) (fair determination of the applicant's rights) favours disclosing the information at issue.

*Fair determination of the applicant's rights – s. 22(2)(c)*

[79] Section 22(2)(c) applies to personal information that is relevant to a fair determination of the applicant's rights. Previous OIPC orders have said that all four parts of the following test must be met for s. 22(2)(c) to apply:

> 1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
>
> 2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
>
> 3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
>
> 4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[33]

[80] I will address each part of the test in turn.

Parts 1 and 2 – legal right related to a proceeding that is underway or contemplated

[81] The applicant identifies three legal proceedings that he says are ongoing and relevant under s. 22(2)(c):

- an application to the Labour Relations Board challenging his union's decision to withdraw the grievance (LRB Application);
- an application to WorkSafe BC's review division concerning BCEHS' handling of his workplace complaint (the WorkSafeBC Review); and
- an appeal to the Workers' Compensation Appeals Tribunal (WCAT) concerning whether BCEHS unlawfully retaliated against the applicant for making his workplace complaint (the WCAT Appeal).

[82] The Health Authority accepts that the first two steps of the test are met with respect to the three proceedings.

[83] Based on the parties' submissions, I accept that the three legal proceedings raise legal rights and are underway. Therefore, I accept that parts 1 and 2 of the test are met with respect to each of the three legal proceedings.

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[33] Order 01-07, 2001 CanLII 21561 at para 31.

Part 3 - bearing on, or significance for, determination of the right

[84] Under part 3, the personal information sought by the applicant must have some bearing on, or significance for, a determination of the right in question. That is, the applicant must prove there is a "demonstrable nexus" or "connection" between the withheld information and the legal right. In other words, the personal information at issue must have some significance for the determination or implementation of the legal right.[34]

[85] The applicant submits that the Complaint Emails are relevant to the LRB Proceeding, because an issue in that proceeding is whether his union obtained the source records or simply accepted the employer's summaries without adequate investigation. He says that the Complaint Emails are necessary to explain how the union's failure to obtain the source records affected its decision to withdraw the applicant's grievance.

[86] The applicant asserts that the Complaint Emails are also relevant to the WorkSafeBC Review and WCAT Appeal because issues in those matters include how BCEHS treated and characterized his workplace complaint. He submits that this information is necessary so he can respond to BCEHS' characterization of its response to his complaint.

[87] Broadly, I understand the applicant's position to be that when BCEHS investigated the complaints against the applicant, it summarized them but did not disclose the actual complaints to the applicant. The applicant believes that the Complaint Emails, and in particular the difference between how BCEHS summarized the complaints and the actual language of the Complaint Emails is relevant and necessary to the three legal proceedings.

[88] The Health Authority submits that the applicant has not satisfactorily established the significance of the information at issue to a determination of any of the proceedings. The Health Authority emphasizes that the focus of the LRB Application is the union's handling of the grievance. It submits that the issue in the WorkSafeBC Review is whether WorkSafeBC has jurisdiction over the applicant's complaint, and that, in any event, the submission process is complete in that matter. Finally, with respect to the WCAT Appeal, the Health Authority states that the initial decision maker determined that the evidence failed to establish that the applicant's complaint was a protected activity under the relevant legislation. Given that determination, the Health Authority says it is unclear why the applicant needs the source documents to establish his case. I

[34] See for example Order F24-17, 2024 BCIPC 23 (CanLII) at para 153; Order F24-48, 2024 BCIPC 56 (CanLII) at paras 122-124, Order F23-65, 2023 BCIPC 75 (CanLII) at para 145, Order F16-36, 2016 BCIPC 40 (CanLII) at paras 52 and 62 and Order F16-36, 2016 BCIPC 40 (CanLII).

will refer to the issues the Health Authority describes as being before WorkSafeBC and WCAT as the "scope issues."

[89] Broadly, I understand the Health Authority's position to be that the Complaint Emails are not relevant to the issues that are actually in dispute in the three proceedings, and that the applicant has not satisfied the burden to establish that it is.

[90] In reply the applicant makes clear that the scope issues described by the Health Authority remain in dispute in the proceedings.

[91] For the reasons that follow, I accept that the Complaint Emails have bearing on, or significance for, the applicant's position in all three legal proceedings.

[92] In coming to this conclusion, I recognize that all three legal proceedings relate to how BCEHS responded to the applicant's complaint, and they are not about the complaints against the applicant. However, the Complaints are highly inter-related, concern the same workplace dispute, and arise from the same group of facts. Although I am constrained in what I can say for fear of revealing the information in dispute, I can see a connection between the Complaints made by and against the applicant.

[93] I also understand the Health Authority's position is that the difference between its summaries of the Complaints and the actual complaints are not relevant to the scope issues currently before WorkSafeBC and WCAT. However, neither has been decided. Should the applicant be successful in his appeal and/or review, these matters will be decided on their merits. In considering whether information has significance for or bearing on a right under part 3, I do not think it is appropriate for the OIPC to prejudge the outcome of ongoing proceedings. The applicant has identified a legal right, in ongoing proceedings, and, as I will discuss below, I can see a connection between the information at issue and that right. That is sufficient under part 3 of the test.

[94] I begin with the LRB Proceeding. I accept the applicant's submission that an issue in dispute in the LRB Proceeding is whether his union's decision to rely on BCEHS' description of the complaints against him without reviewing the source documents violated s. 12 of the *Labour Relations Code.*[35] Given the interrelatedness of the Complaints, I accept that the ability to review the Complaint Emails and identify potential differences between the allegations in the Complaint Emails and BCEHS's summaries could have some bearing on or significance for the applicant's ability to establish that his union erred in failing to obtain the source documents in the LRB Proceeding. Accordingly, I find step three is satisfied with respect to the LRB Proceeding.

[35] RSBC 1996, c 244.

[95] I come to the same conclusion about the WorkSafeBC Review and WCAT Appeal. I accept that both matters ultimately concern how BCEHS treated the applicant's complaint. Again, given the interrelatedness of the Complaints, and in particular having reviewed the information at issue, I can see a connection between the Complaint Emails and how BCEHS interpreted the applicant's complaint. For this reason, I accept that the ability to review the Complaint Emails and identify potential differences between the allegations in the Complaint Emails and BCEHS's summaries could have some bearing on or significance for the applicant's position in the WorkSafeBC and WCAT proceedings. Accordingly, I find step three is satisfied with respect to the WorkSafeBC Review and WCAT Appeal.

Part 4 - Necessary to prepare for the proceeding or to ensure a fair hearing

[96] Regarding step 4, the Health Authority submits that the applicant has requested disclosure of the information in dispute in each of the proceedings described above, and that those proceedings are the appropriate forums in which to decide whether that information is necessary in order to prepare or ensure a fair hearing in those proceedings. Thus, according to the Health Authority, because the applicant can obtain any relevant information through those proceedings, it is not necessary to obtain the information through this inquiry.

[97] In response, the applicant submits that the OIPC has rejected this type of argument in a number of past orders[36] and, relying on those past orders, asserts that the fourth part of the test asks whether the information itself is necessary to prepare for the proceeding or ensure a fair hearing, rather than whether FIPPA is the only means of obtaining it.

[98] Most past orders hold that to satisfy this part of the s. 22(2)(c) test, the applicant need only prove that the personal information itself is necessary to prepare for the proceeding or to ensure a fair hearing, not that the FIPPA process is the only way they can access the information.[37] In Order F16-36, the adjudicator rejected the argument raised by the Health Authority but explained that in some circumstances the availability of information through other means may be relevant to the weight of s. 22(2)(c). The circumstances listed in that order include the time and costs to get it through other proceedings, the timing (such as whether it may be valuable to the applicant to receive the information before commencing the other proceeding), and the amount of information available through the other processes.[38]

[36] Order F24-48, 2024 BCIPC 56 (CanLII) and Order F25-24, 2025 BCIPC 30 (CanLII).
[37] See for example Order F16-36, 2016 BCIPC 40 (CanLII) at para 56,
[38] Order F16-35, 2016 BCIPC 39 (CanLII) at paras 58 and 59.

[99] I agree with and adopt this approach. I find that the appropriate question under part 4 of the test is whether the information itself is necessary to prepare for the proceeding or to ensure a fair hearing in the three proceedings, not whether the applicant may be able to obtain the information through another proceeding. I accept that the Complaint Emails are necessary to ensure a fair hearing in all three proceedings. I come to this conclusion because, as I have explained above, I can see a clear nexus between them and the applicant's ability to support his position that BCEHS' summary of the Complaints does not reflect the actual complaints in all three proceedings. Thus, I find that part 4 of the test is satisfied and s. 22(2)(c) weighs in favour of disclosure of the Complaint Emails.

[100] However, I also find that in the circumstances of this case, the weight of the s. 22(2)(c) factor is diminished by the applicant's ability to obtain access to relevant information through the three proceedings. In this case, the applicant has been able to initiate all three proceedings without the Complaint Emails. There is no dispute that the LRB, WorkSafeBC, and WCAT have processes for production of relevant documents, and it appears that the applicant has requested information like the Complaint Emails in at least some of those proceedings. Finally, the circumstances of all three proceedings and their connection to the Complaint Emails is complex, and the information before me about those proceedings is limited. As a result, my ability to assess the necessity of the Complaint Emails to the three proceedings is limited. This too diminishes the weight I assign to s. 22(2)(c).

Summary – s. 22(2)(c)

[101] For the reasons above, I find that s. 22(2)(c) weighs in favour of disclosure of the Complaint Emails, but that the weight of this factor is diminished.

*Section 22(2)(f) - Supplied in confidence*

[102] Section 22(2)(f) requires a public body to consider whether the personal information was supplied in confidence. For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information and, that at the time the information was supplied, it was supplied under an objectively reasonable expectation of confidentiality.[39]

[103] The Complaint Emails are composed of allegations and opinions about the applicant's conduct and were used to support a workplace complaint against the applicant. Relying on the findings in a past order, in which the adjudicator

[39] 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).

concluded that information supplied in workplace harassment complaints was supplied in confidence,[40] the Health Authority submits that the Complaint Emails were supplied in confidence.

[104] In support of this proposition, Manager 1 deposes that BCEHS workplace investigations are generally considered to be confidential, and that BCEHS attempts to protect the identities of complainants to the extent possible.

[105] The applicant does not address s. 22(2)(f).

[106] While it is clear that third parties supplied the information in the Complaint Emails, I am not persuaded that they were supplied under an objectively reasonable expectation of confidentiality.

[107] Manager 1's evidence is that workplace investigations are considered to be confidential and that BCEHS attempts to protect the identity of complainants where possible. The Health Authority does not, however, explain how the complainants or any BCEHS staff member might be aware of BCEHS' approach to confidentiality in these respects. Nor does it explain its approach to confidentiality over allegations made in a workplace complaint – which is the majority of the information supplied in this case.

[108] It is not self-evident that workplace complaints are supplied under a reasonable expectation of confidentiality. Certainly, disclosure of at least some of the details of such complaints is necessary to provide to the person being complained about in order to conduct an investigation. There is insufficient evidence to suggest that BCEHS employees in general or the complainants specifically held an objectively reasonable expectation that BCEHS would keep their complaints confidential at the time they supplied those complaints. Therefore, I am not persuaded that the Complaint Emails were supplied in confidence.

[109] In arriving at this conclusion, I note that the circumstances before me differ from those in Order F24-81, which the Health Authority cites. In that case, the public body provided affidavit and documentary evidence to support its position that the complainant who filed the complaint did so under an objectively reasonable expectation of confidentiality. The Health Authority did not provide such evidence in this case.

[110] Accordingly, I find that s. 22(2)(f) does not apply to any of the information in dispute.

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[40] Order F24-81, 2024 BCIPC 93 (CanLII).

*Applicant's personal information*

[111] Past OIPC decisions have recognized that where the information at issue is also the applicant's personal information, it weighs in favour of disclosure.[41] However, past orders also recognize that where the applicant's personal information is interwoven with the personal information of third parties, this factor carries less weight.[42]

[112] The Complaint Emails are about both the applicant and the complainants. Consistent with past orders, I find that this factor weighs in favour of disclosure of this information but assign it limited weight.

[113] Having considered all other relevant circumstances, I find that none apply.

*Conclusion – s. 22(1)*

[114] I found that the subject lines and file names of attachments to emails are not (except to the extent that they contain names) personal information. The Health Authority is not required to withhold this information under s. 22(1).

[115] I found that the s. 22(3)(d) presumption against disclosure of information that relates to employment history applied to the Complaint Emails. I also found that s. 22(2)(c) (fair determination of the applicant's rights) and the applicant's personal information factors favoured disclosure of this same information, though the weight of these two factors was diminished. Given their diminished weight and for the reasons I have outlined above, I am not satisfied that the factors favouring disclosure are sufficient to rebut the presumption against disclosure in s. 22(3)(d). I find, therefore, that the Health Authority is required to withhold the Complaint Emails under s. 22(1).

[116] I also found that the presumption against disclosure of information that relates to the employment history in s. 22(3)(d) applied to the dates of the Complaint Emails and to the names, email addresses, and initials of the complainants, and that no factors favoured disclosure of this information. I find the Health Authority is required to withhold this information under s. 22(1).

[117] What remains is the names, email addresses, and initials of third parties other than the complainants. This information is not directly relevant to the complaints against the applicant, and in some instances, concerns matters that do not relate to the applicant at all. I found that no presumptions or factors applied to this information. As it is personal information, the onus is on the applicant to establish that it would not be an unreasonable invasion of the third parties' personal privacy to disclose it. I am not persuaded that the applicant has

[41] Order F14-47, 2014 BCIPC 51 at para 36.
[42] Order F14-47, 2014 BCIPC 51 at para 36.

done so. Consequently, I find that disclosing the remaining names, email addresses, and initials would be an unreasonable invasion of their personal privacy, and therefore that the Health Authority is required to withhold this information under s. 22(1).

***Section 22(5) – Summary of applicant's personal information***

[118] Section 22(5) requires a public body to provide a summary of information that was supplied in confidence about an applicant in some circumstances. The relevant parts of s. 22(5) provide

> On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless
>
> (a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, or

[119] The applicant requests that I require the Health Authority to provide a summary of his personal information. The Health Authority argues that such summary cannot be prepared without disclosing the identity of the person who supplied the personal information.

[120] As discussed under s. 22(2)(f) I am not satisfied that the information at issue was supplied in confidence. Accordingly, s. 22(5) does not apply.

[121] However, for completeness, I add that even if s. 22(5) did apply, I would not order the Health Authority to provide the applicant a summary of his personal information. The applicant's personal information is found in the Complaint Emails, in which the authors describe specific workplace incidents involving the applicant. Given the context and nature of the information, I can see no way that the Health Authority could summarize that information without revealing the identities of the complainants.

**SECTION 4(2) – SEVERANCE**

[122] Under s. 4(2), the applicant's right of access to a record does not extend to information that is excepted from disclosure. However, if that information can reasonably be severed from a record, then the applicant has a right of access to the remainder of the record.

[123] The applicant asks that I require the Health Authority to sever the records to provide him with factual and other information. The Health Authority submits that it has reasonably severed the records.

[124] The term "reasonably be severed" means that after the excepted information is removed from a record, the remaining information is both intelligible and responsive to the request. If the remainder of a severed record consists of disconnected words or snippets of sentences that cannot reasonably be considered intelligible, then the excepted information is not reasonable to sever under s. 4(2).[43]

[125] With the exception of the Complaint Emails, the Health Authority performed word-by-word severing, withholding only the information to which one of the exceptions to disclosure applied. I can see no way for the Health Authority to disclose more information to the applicant from these records without revealing information I found it was authorized or required to withhold.

[126] The Health Authority withheld the entirety of the Complaint Emails. As I have said, due to the nature of the Complaint Emails and the applicant's familiarity with the circumstances described in them, disclosing any meaningful part of the Complaint Emails would allow the applicant to infer the author of the email and its general substance. While it is possible that the Health Authority could disclose small snippets from these emails without revealing the information that is in dispute would only reveal unintelligible information. For this reason, I do not find that the Complaint Emails can be reasonably severed.

## CONCLUSION

[127] For the reasons given above, I make the following order under ss. 58(2) and 58(4) of FIPPA:

1. I confirm the public body's decision to refuse access to the information it withheld under ss. 13(1) and 15(1)(l).

2. Subject to item 3 below, I require the public body to refuse access to the information it withheld under s. 22(1).

3. I require the public body to give the applicant access to the information I found the public body was not required to withhold under s. 22(1). That information is found on pages 59, 63, 80, 81, 85, 86, 92, 98, 99, and 109 of the records and is highlighted in green in a copy of the record

4. I require the public body to copy the OIPC's registrar of inquiries with a copy of the records that it sends to the applicant in compliance with item 3 above, along with any attached correspondence such as the accompanying cover letter.

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[43] Order 03-16, 2003 CanLII 49186, at paras 53 and 54; Order F24-40, 2024 BCIPC 48 (CanLII), at para 58.

[128] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by December 17, 2026.

November 4, 2026

**ORIGINAL SIGNED BY**

Allison J. Shamas, Adjudicator

OIPC File No.: F25-00463