OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F05-30

CORPORATION OF THE CITY OF NEW WESTMINSTER

Celia Francis, Adjudicator

September 6, 2005

Quicklaw Cite: [2005] B.C.I.P.C.D. No. 41
Document URL: http://www.oipc.bc.ca/orders/OrderF05-30.pdf
Office URL: http://www.oipc.bc.ca
ISSN 1198-6182

Summary: Firefighters' union requested copy of consultant's report on labour relations within City fire and rescue service. City disclosed report with portions severed under ss. 17 and 22. Section 17 does not apply. Section 22 applies to some but not all information. City ordered to disclose information to which s. 22 does not apply.

Key Words: Financial or economic information—personal privacy—unreasonable invasion — workplace investigation—opinions or views—submitted in confidence—employment history—public scrutiny—fair determination of rights—unfair exposure to harm—inaccurate or unreliable personal information—unfair damage to reputation.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 17(1), 22(1), 22(2)(a), (e), (f), (g), (h) and 22(3)(d), (g), (h).

Authorities Considered: B.C.: Order 02-50, [2002] B.C.I.P.C.D. No. 51; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order F05-02, [2005] B.C.I.P.C.D. No. 2; Order F05-14, [2005] B.C.I.P.C.D. No. 16; Order 01-07, [2001] B.C.I.P.C.D. No. 7.

Cases Considered: *B.C. Attorney General v. B.C. Information & Privacy Commissioner* (2004), 34 B.C.L.R. (4th) 298, [2004] B.C.J. No. 2534 (S.C.).

1.0 INTRODUCTION

[1] In January 2004, the City of New Westminster ("City") hired a consultant to conduct a review of labour-management relations within the City's Fire and Rescue

Service ("FRS"), with the aim of facilitating improvements to them, and to produce a report on that review. The New Westminster Firefighters Union (the applicant in this case) requested a copy of that report from the City and received a copy with information severed under ss. 17 and 22 of the *Freedom of Information and Protection of Privacy Act* ("Act"). The applicant requested a review of the City's decision.

[2] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the A/Information and Privacy Commissioner under s. 49(1) of the Act. The Office invited and received representations from the applicant, the City and a number of third parties (FRS managers, union members and City employees). Of these, the FRS managers and City employees participated in the form of affidavit evidence forming part of the City's initial submission.

2.0 ISSUE

[3] The issues before me in this case are:

1. Was the City authorized by s. 17 to refuse access to information?

2. Was the City required by s. 22 to refuse access to information?

[4] Under s. 57(1) of the Act, the City has the burden of proof regarding s. 17 while, under s. 57(2), the applicant has the burden of proof regarding third-party personal information.

3.0 DISCUSSION

[5] **3.1 Background**—The applicant and the City provided background information on the consultant's review, to set the request and record in context (applicant's request for review; paras. 1-23, applicant's initial submission; Murray affidavit; paras 1-22, City's initial submission; Holloway affidavit).

[6] As a result of what the City described as "difficulties in the working relationships" within the FRS, City staff met with a consultant with experience in "facilitating processes for resolving such difficulties". The City accepted the consultant's proposal for conducting a review of the situation (paras. 2-3, City's initial submission). The City provided a copy of this proposal with its initial submission.

[7] The applicant union says that it was asked for its co-operation and participation in this facilitation process, which it described as "a review of labour relations" between the City (as employer) and itself (as union). In January 2004, the union met with the consultant whom the City had retained to conduct the review. The purpose of the meeting, according to the applicant, was for the union to endorse its participation in the review and to discuss with the consultant, among other things, her qualifications and the process she would use to prepare her report.

[8] According to the applicant, the consultant told the union she would interview a cross-section of employees to identify themes and issues, compile a report identifying those themes and issues and provide recommendations. She would "deliver a complete unedited copy of the report simultaneously to all parties involved", it says. With the City's approval, there would then be a facilitation process bringing together a facilitator and the parties, with the goal of working towards fulfilling the report's recommendations. The applicant says the consultant assured it that the report would be written in such a way as not to identify participants.

[9] The review went ahead and the interviews took place, in which the consultant

> … obtained various personal comments and perspectives in the nature of references, evaluations and recommendations, by and about individuals as to their occupational history, work relationships with others, and characteristics of management or leadership style in relation to their own positions and that of other employees. [para. 7, City's initial submission]

[10] The consultant interviewed some people individually and some in a small group. She also conducted brief telephone interviews or meetings with certain City employees. She then prepared her report on the climate and working relationships, key themes, issues and recommendations, based on her interviews. In March and April 2004, the consultant presented the report at three different meetings involving the union executive, various City employees and management and union members of the fire department. Each time, she distributed copies of the report to the attendees.

[11] The applicant describes the consultant as having read the report out in its entirety on two of these three occasions and having "reviewed certain aspects" on the third (paras. 11, 14 & 15, applicant's initial submission), while the City says she "presented her findings" at the meetings (paras. 9 & 14, City's initial submission). The consultant deposes that she "did not read aloud precisely from the written Assessment. I passed over some statements in that document" (paras. 9 & 13, Holloway affidavit). (The consultant does not say which statements she "passed over" in her verbal presentations and whether they were the same in each case.) The City, the applicant and the consultant agree that the consultant collected all the copies of her report at the end of each meeting. The consultant says she kept one copy of the report and destroyed the others (para. 14, Holloway affidavit).

[12] The applicant says that, despite an earlier agreement that all involved would receive a full copy of the report (excluding the "supporting comments"), none was forthcoming, apparently due to a "concern" by management. The applicant says the "supporting comments were those that [the consultant] used as the basis to identify key themes and issues" (paras. 10 & 15, applicant's initial submission; para. 13, Murray affidavit).

[13] The City says that, after the consultant had read her findings, it was generally agreed, including by the union, that "personal comments" would be removed from any

final report that was distributed (para. 12, Nepstad affidavit; para. 9, Daminato affidavit). In response to written requests to City Council, the applicant received "an abbreviated summary of the recommendations made by [the consultant]", from which the City says the consultant removed personal information (as described at para. 7 of its initial submission), concentrating on the key issues and recommendations.

[14] The applicant then made a formal request under the Act for access to the report and received a severed copy, with portions withheld under ss. 17 and 22. During the inquiry, the City said it had decided to disclose more information, with the consent of some third parties. It attached the pages with the additional information to its reply submission (paras. 1-3, reply). The City included, perhaps through an oversight, copies of pp. 9 and 13 annotated "S A/Chiefs", possibly pages severed for the assistant chiefs to view. However, I take the other severed pages to be the versions the City disclosed to the applicant union and I have gone by these pages in considering my decision.

[15] **3.2 The Consultant's Work**—At p. 1 of her proposal to the City, the consultant said she would conduct interviews and then added this:

> Following the interview, I would prepare a written report identifying key themes, specific issues that are arising within those themes, and would make recommendations with respect to processes necessary to move you forward. I generally do a follow-up session in which I present the report in person to the interview participants and address any questions or concerns. At that time, I would write a proposal for any further work that were to result from this assessment and the recommendations that I have made.

[16] The consultant's report, the record in dispute in this case, is a 34-page document entitled "Assessment – Climate and Working Relationships – Key Themes, Issues and Recommendations Based on Information from Interviews Held January-February 2004". The preface says on p. 1 that:

> The purpose of this report is:
> - to identify the tension/conflict that exists within the New Westminster Fire and Rescue Services (NWFRS);
> - to create a shared understanding of the issues and different perspectives that have contributed to the tension/conflict; and
> - to begin the process of deciding together what we believe the solutions are that will alleviate the tension/conflict.

[17] In the "Information Gathering" section of the report, the consultant states:

> It was clear that there was a diversity of opinions and beliefs in the interviews that I conducted. Although there were several opinions, points of view, and issues raised, I have summarized those into key themes and underlying issues. I have not tried to reflect individual or one-off comments, but rather summarized opinions and beliefs that would be reflective of how several people responded to and saw the issues.

[18] The report continues with several sections on the results of the consultant's interviews, focusing on areas such as leadership, working climate, communication, decision-making, training and education, labour issues and the relationship with human resources, closing with recommendations and solutions. The City disclosed the majority of the report, withholding a number of portions describing things interviewees said about workplace issues.

[19] **3.3 Financial Harm**—The City argues that ss. 17(1)(c) to (e) apply to some of the withheld information. The relevant portions of s. 17(1) read as follows:

> **Disclosure harmful to the financial or economic interests of a public body**
>
> 17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information: …
>
> (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
>
> (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
>
> (e) information about negotiations carried on by or for a public body or the government of British Columbia.

[20] Numerous orders have dealt with the interpretation of s. 17(1) (see Order 02-50,[1] for example). I have applied here without repeating it the approach taken in those orders.

[21] The applicant points to the test for applying s. 17(1) in Order 02-50 and says it is difficult to imagine how the information to which the City applied s. 17(1) (a few phrases in the section on "Training and Education – Underlying Issues") could reasonably be expected to harm the City's economic or financial interests. It says that the application of s. 17 requires more than mere speculation and that the City has not provided an objective basis on which to conclude that financial harm may reasonably be expected from disclosure. The applicant also does not believe the withheld information is a "plan" and says there is no indication that there is anything "to implement" with regard to administration or personnel management within the City. There is also no "proposal" or "project" the disclosure of which may result in financial loss or gain to a third party, in its view (paras. 41-43, initial submission; paras. 13-15, reply).

[22] The City says that the report "clearly amounts to plans related to the management of personnel and administration of the City that had neither been implemented nor made public" (para. 51, initial submission). It says its evidence is not "contrived, fanciful or

[1] [2002] B.C.I.P.C.D. No. 51.

speculative" but "establishes a clear, direct link that would reflect the expectation of any reasonable person in their position that the City is likely to experience some harm to its financial and economic position as a result of disclosure" (para. 55, reply). The City also makes a number of general arguments to the effect that, if the information were disclosed, there would be a loss of confidence in the standard of fire service operation and training, it would have to spend more resources in alleviating concerns about fire safety, its ability to attract and maintain competent FRS staff would be compromised and there would be a loss of interest among businesses and developers in investing in the City, which would in turn have a negative impact on the city's economic development (paras 51-57, initial submission; paras. 21-24, Naylor affidavit; para. 14, Cook affidavit; paras. 51-56, reply; para. 21, Daminato affidavit; paras. 8-12, Brown affidavit). The City provided no specifics to support any of its assertions on financial or economic harm.

[23] The City severed perhaps eight lines of information under s. 17. The information relates principally to perceptions about training within the FRS. The City's arguments that s. 17 applies to this information are, to say the least, speculative and predict drastic results from disclosure that are on any reasonable assessment greatly out of proportion to the nature and quality of the information in question, viewed in light of the material before me. I cannot agree that there is any reasonable expectation of harm, financial or otherwise, within the meaning of the cited aspects of s. 17(1) from disclosure of this information. While the City might be sensitive about perceptions respecting FRS training (whether or not they are accurate), its sensitivity does not translate into a reasonable expectation of financial or economic harm. I certainly do not accept the City's arguments that its ability to attract employees, businesses or development would be compromised by disclosure of these perceptions.

[24] Nor is the City's contention that it would find itself spending more time and resources dealing with unspecified, hypothetical public concerns about training and safety within the FRS sufficient to establish the necessary reasonable expectation of harm under s. 17(1). Even if City staff did have to deal with public concerns or inquiries on these issues (and it has not shown how or why this might occur), this does not establish a reasonable expectation of harm from disclosure within the meaning of s. 17(1).

[25] Moreover, the information in question does not relate to a "plan", "proposal" or "project", nor to "negotiations", as contemplated by ss. 17(1)(c) to (e).

[26] The material before me does not establish that disclosure of the information in dispute could reasonably be expected to cause the City financial or economic harm and I therefore find that s. 17(1) does not apply to it.

[27] **3.4 Personal Privacy**—Numerous orders have considered the application of s. 22. See, for example, Order 01-53[2]. I have applied here, without repeating it, the approach taken in those orders. The relevant provisions read as follows:

[2] [2001] B.C.I.P.C.D. No. 56.

Disclosure harmful to personal privacy

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether …

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny, …

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable, and

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if …

(d) the personal information relates to employment, occupational or educational history, …

(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,

(h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, …

[28] **3.5 Does the Report Contain Personal Information?**—The applicant says that the report as read out and as seen in the full copies at the presentations "contained no personal information as defined in the *Freedom of Information and Protection of Privacy Act*." It says the report contains

> …a summary of comments which were not attributed to any individual and were not written such that an individual could be identified. Further, although [the consultant] placed certain turns of phrase in quotation marks, these were not attributed to or about an individual or one who could be identified.

[29] The applicant says the "supporting comments" were included in the presentations and distributed copies (paras. 9 & 14, applicant's initial submission; paras. 15-18, Murray affidavit).

[30] The applicant also points to p. 2 of the report, where the consultant states that the report reflects "summarized opinions and beliefs that would be reflective of how several

people responded to and saw the issues". In its view, these summaries of comments do not constitute information about identifiable individuals. The applicant says this is consistent with its knowledge of the report, which it gained through three readings of the report and reviewing a full copy of the unedited report. The applicant refers for support of its position to para. 35 of Order F05-02,[3] where I said that "information that is not personal" includes "aggregate references to students' activities and to their opinions and knowledge of school activities, policies and practices". Similarly, in this case, remarks about "management" or "the leadership team", in the applicant's view, are not information about identifiable individuals (paras. 24-34 & 37, initial submission; paras. 1-5, reply).

[31] In the City's view, a number of individuals are clearly identifiable throughout the report, either by name or title, by association with small groups or through various evaluative comments. It rejects the applicant's views on this point and says the individuals involved object to the disclosure of their personal information (paras. 27-32, initial submission; third parties' affidavits; paras. 4-6, reply).

[32] The City appears to contradict itself later when it suggests that the report does not clearly identify members of the union executive and the Assistant Chiefs and thus "concedes" that it is not "about" these individuals (para. 41, reply). The City's initial submission names the members of the union executive and the Assistant Chiefs (individuals who are, according to disclosed portions of the report, union members) and the applicant would obviously know who these people are. It is therefore not clear why the City takes this position. The City reiterates its position on personal information in its reply and refers me to a number of court cases in support of its views (paras. 4-22, reply).

Information that is personal

[33] Despite the applicant's insistence to the contrary, the report contains a number of comments and opinions about individuals who are identifiable by name or by title or because they belong to small groups of people—such as "Leadership", "Management Team", "Union Executive", "Assistant Chiefs" or "Human Resources". The applicant, as the union, is evidently aware of these individuals' identities.

[34] I considered this issue in Order F05-14,[4] a case dealing with a report on a review of the working relationships within the West Vancouver Police Department:

> [16] The first issue is whether aggregate or group references to the "executive" or "leadership" of the WVPD are "recorded information about an identifiable individual" and thus "personal information" under the Act. The terms "executive" and "leadership" refer to this organizational entity in the context of its role as responsible for running and overseeing the WVPD. However, it is clear from the material before me that the WVPA is aware of the identities of the police "executive" (and, by extension, the "leadership") or could easily determine them,

[3] [2005] B.C.I.P.C.D. No. 2.
[4] [2005] B.C.I.P.C.D. No. 16.

> as could the general public. I therefore conclude that the withheld aggregate information which refers to the executive and the leadership could readily be linked to identifiable individuals and is "personal information" as defined in the Act.

[35] Similarly, in this case, aggregate comments and opinions about or references to specified individuals or to small groups of people, such as the "leadership", "management team" or "human resources", are about known and identifiable individuals. The applicant takes the view that these references or opinions are not "personal information". I disagree. They are "recorded information about an identifiable individual". These types of information therefore constitute "personal information" as defined in the Act. Any personal opinions or comments about workplace issues that these identifiable individuals express, singly or in groups, are also "personal information".

Information that is not personal

[36] The report also contains many aggregate comments, views and opinions about workplace issues expressed by people referred to more generally in the report, for example, as "employees", "firefighters", "some individuals" or "many individuals. These references were apparently drawn from interviews with 29 people whom the consultant describes as "support staff, firefighters, Captains, Lieutenants and Assistant Chiefs". Nothing in the material before me indicates that there is any way of linking comments by or about these 29 unidentified interviewees to identifiable individuals. As regards this information, I agree with the applicant that aggregate references to views, actions, comments or opinions expressed by these unspecified groups of people are not "personal information". Similarly, views or opinions about these unspecified and unidentifiable individuals' behaviour or attitudes in the workplace are not "personal information".

[37] There are also general comments in the report about workplace issues which are not attributed to anyone, such as, "there is dissatisfaction with the process for XYZ" or "issues include a desire for ABC". These types of information are also not personal information.

[38] **3.6 Presumed Unreasonable Invasion of Privacy**—The applicant says that, even if the withheld information is personal, it does not fall into s. 22(3)(g) or (h) and its disclosure would thus not result in an unreasonable invasion of third-party privacy. The applicant refers to Orders 01-53 and F05-02 and their interpretations of ss. 22(3)(g) and (h), in support of its arguments. The applicant also does not believe that s. 22(3)(d) applies to information withheld under that section on p. 3 of the report (paras. 35-40, initial submission; paras. 6-7, reply).

[39] The City says there is a presumption of non-disclosure of the withheld information under ss. 22(3)(d), (g) and (h) (para. 59, initial submission; paras. 13-14, Brown letter). It does not explain how in its view the severed information falls under these sections. However, FRS employees provide affidavit evidence stating that they

consider the severed information to be "in the nature of personal evaluation and references related to my character, my position, and performance of my professional duties" (see, for example, para. 19, Nepstad affidavit, and para. 19, Naylor affidavit).

Employment history

[40] The withheld personal information consists of the views, opinions and perceptions of the FRS union executive and its members, the management team and, to a lesser extent, human resources staff, about a variety of workplace issues, including complaints about each other's attitudes, style and behaviour in the workplace. In various extracts from the report, the City annotated these types of information as falling under ss. 22(3)(g) and (h). However, past orders have found that this type of information falls under s. 22(3)(d) and I so find here. I made a similar finding at para. 21 of Order F05-14.

Personal evaluations

[41] I do not consider that the withheld information constitutes "personal recommendations or evaluations, character references or personnel evaluations" as described in s. 22(3)(g). Past orders have interpreted this section as referring, for example, to formal performance reviews, to job or academic references or to comments and views of investigators about a complainant's or respondent's workplace performance and behaviour in the context of a complaint investigation. See, for example, Order F05-02, at paras. 57-59, Order 01-53, at paras. 42-47, and Order 01-07,[5] at para. 21.

[42] In this context, where the information flows from an exploration of the reasons for tension and conflict between the FRS's management and its employees, employees' and managers' comments or complaints about each other's workplace attitudes or behaviour do not constitute this type of evaluative or reference material. Similarly, s. 22(3)(h) does not apply, since the purpose of that section is to protect the identity of someone who provided, in confidence, the type of evaluative information alluded to in s. 22(3)(g). See para. 47, Order 01-53, for a similar finding.

[43] **3.7 Relevant Circumstances**—The City says that the factors in ss. 22(2)(e) to (h) are all present in this case. This type of information is typically treated with confidentiality, the City says. It also does not consider s. 22(2)(a) to apply, as it believes it has released sufficient information from the report to make the City accountable to the public and to subject it to public scrutiny.

[44] The City says it considered whether the applicant, as the union which had been involved in the review, was entitled to an entire copy of the report. It concluded that the applicant's status and role "could not be the sole basis for disclosing the entire Assessment [report] to the Applicant". In the City's view, the applicant's right of access must be weighed against the privacy rights of third parties whose personal information

[5] [2001] B.C.I.P.C.D. No. 7.

was provided in confidence and is recorded in the report (paras. 37-39, initial submission; paras. 15-18, Brown letter).

Supply in confidence

[45] The City says the FRS employees expected confidentiality in the review and participated in the interviews on condition of confidentiality (paras. 23-29, reply). It continues as follows:

> 41. Statements made about other personnel were given with expectations of confidentiality and in the context of a confidential, internal personnel management plan. Many of the interviewed members of the Union are not identified or identifiable, so that their confidentiality is effectively preserved. Members of the Union Executive and the Assistant Fire Chiefs were not identified by name in the Assessment, however, their confidentiality is better preserved than that of non-union personnel in positions of management. There is thus an imbalance between the confidentiality afforded to Union members and that afforded to management personnel.

[46] The City does not explain how, in its view, the confidentiality of the FRS managers is not as well preserved as that of the union executive and assistant chiefs, when each of these groups has between four and five members, all of whose identities, as I discuss above, are evidently known to the applicant.

[47] A number of FRS management and City employees provide affidavit evidence[6] on their understanding of the review process, as follows:

- the interviews would be private,
- the consultant's review would be confidential,
- they would not be referred to in an identifiable manner in the report,
- their comments and opinions would not be attributed to them as individuals and
- the findings and recommendations – and any discussion of those findings and recommendations – would be confined to staff within the FRS and certain City staff, including City human resources employees.

[48] One employee deposes that he would not have participated in the review if he had thought that personal statements would be recorded in any form that might be available on request (para. 8, Naylor affidavit). Another said he understood that personal remarks by or about individuals would not be included. He also said he did not expect the consultant's report to include direct quotations from interviewees about the character and management style of identified individuals and that, before distribution, personal references and identifiers would be removed from any final report the consultant prepared (paras. 5 & 12, Woodbury affidavit). Another deposed that he understood that the consultant would present her findings primarily verbally and that any "personal information" would be removed from the report before distribution. This employee was

[6] Nepstad, Naylor, Cook, Westell, Woodbury, Mummuery and Daminato affidavits.

surprised to find that "many personal opinions and quotes gathered by the Consultant during the interviews were included in [the report] and described verbally in her presentation" (paras. 6 & 9, Daminato affidavit).

[49] The consultant says that she limited her presentation to a verbal discussion and ensured that the report would not be distributed at the end of each presentation of her findings, in order to "preserve a level of confidentiality appropriate to that stage of the facilitation process". She says she later prepared a summary of her recommendations, with all personal information removed (paras. 15-16, Holloway affidavit). Otherwise, the consultant says nothing about confidentiality. She does not, for example say what she told participants at the beginning of her interviews about the confidential nature of those interviews or the review. The cover page of the report is marked "confidential" but the consultant's proposal and the report do not otherwise illuminate this point.

[50] The applicant rejects the City's arguments on these points. It acknowledges that the participants provided information in confidence to the consultant but says again the report is not written so as to reveal anyone's identity or personal information. In addition, some participants were interviewed in groups, it says, and the report was distributed and read out to a large number of people who may or may not have participated in the interviews. There was thus no condition of confidentiality, in the applicant's view (paras. 8-10, reply).

[51] I accept from the affidavit evidence that the FRS and City employees participated in the interviews on understandings of confidentiality. The applicant itself acknowledges this but counters it by arguing that the report does not reveal personal information, an argument I dismiss above.

[52] Based on the material before me, I find that the relevant circumstance in s. 22(2)(f) is present. I would also say, however, that the confidential nature of the interviews was diminished by the consultant making verbal presentations which apparently included "supporting comments" and by her handing out copies of the report at these presentations which attendees were free to read in full. This does not mean that third-party privacy was completely lost, but it does to some degree affect the assessment of whether any invasion of privacy would, as s. 22(1) expressly requires, be unreasonable. I will return to this below.

Unfair damage to reputation and inaccurate or unreliable information

[53] The City says regarding ss. 22(2)(e), (g) and (h):

> 40. Statements included in the Assessment about the professional performance and character of third parties as individuals are recorded as subjective evaluations. The purpose of the interviews was to gather personal perspectives that would facilitate improving the workplace climate, and not objective evaluations. Being largely subjective in nature, the severed information is not reliable as to accuracy or truth of content.

> …
>
> 42. If made public, such statements may cause unfair damage to the reputations of individuals about whom the statements are made.

[54] In support of its arguments on these factors, the City provides open and *in camera* affidavit evidence from employees about the harm they foresee happening to their reputations, financial situations and to their current and future employment on disclosure. The City also refers to *B.C. Attorney General v. B.C. Information & Privacy Commissioner,*[7] where, it says, the BC Supreme Court stated that the right to a good reputation is a legal right. It argues that those in management positions "have a greater stake in maintaining a good reputation", as the employment of union members may not be "particularly affected by harm to reputation". (The City does not explain why it believes managers have a "greater stake in maintaining a good reputation" than union members. I do not see a distinction.) Harm to reputation is therefore likely to harm the financial position of a management employee, the City says (paras. 43-46, initial submission; employees' open affidavits; *in camera* exhibits to employees' affidavits). The City and third parties do not give specifics as to how disclosure of the disputed information might cause the harm they allege, nor how the predicted damage to anyone's reputation would be "unfair". Nor do they explain how the comments and perceptions are likely to be inaccurate or unreliable.

[55] The applicant rejects the City's arguments on these points as speculative and based on "hypothetical scenarios". The applicant goes on to reject the City's contention that the subjective comments about the management team might be inaccurate and unreliable, pointing to Order F05-14—a case with some similarities to this one—where I commented at para. 25 that such remarks would not be taken for anything but what they were—perceptions or opinions, whether well-founded or ill-founded (paras. 11-12, reply).

[56] The third parties speculate on a variety of negative consequences that they think are likely to flow from disclosure of the disputed information but provide no support for their position. I infer that they disagree or are unhappy with the comments about their leadership style, workplace behaviour or attitudes, but this does not mean the comments are unreliable nor that they are inaccurate. Nor does it mean that disclosure of information on the members' perceptions would lead to damage to their reputations, "unfair" or otherwise.

[57] The comments about the management team and others (including the union executive) are admittedly subjective, given the nature of the review. I do not, however, see them as anything more than perceptions and opinions, whether well-founded or ill-founded. The City suggests that it applied s. 22 in this applicant's case as it would for any applicant (para. 43, reply). Yet, I note in passing that the City disclosed most comments about the union executive's attitude and behaviour, albeit with consent or because there was no objection (paras. 1 and p. 13, reply). In doing so, the City evidently

[7] (2004), 34 B.C.L.R. (4th) 298, [2004] B.C.J. No. 2534 (S.C.).

did not have any concerns about potential harms flowing from disclosure, including to the union executive's reputation.

[58] I am unable to see how the alleged harms would follow on disclosure from the comments that remain withheld. The third parties predict drastic consequences to disclosure that have no real basis in the material before me and which, in my view, are greatly disproportionate to the nature of the disputed information and the circumstances at hand. I find that ss. 22(2)(e), (g) and (h) do not apply here.

Public scrutiny, purpose of review & other relevant circumstances

[59] The City says it considered as relevant the purpose of the report and the nature and context in which the severed information was compiled. Personnel and labour management relations matters are usually discussed at closed meetings of City Council, the City continues, and may be the subject of discretionary non-disclosure under ss. 13(1) and 17(1). It does not believe disclosure of the third-party personal information is likely to resolve or reduce labour management difficulties but rather, it asserts, would exacerbate them. There would also be loss of morale, emotional damage, damage to personal reputations and, potentially, loss of position, subsequent opportunities and associated income, and thus financial harm. The City says it is not normal practice in a workplace for employees to hold personal information "in reproducible form" about supervisors or other employees, especially when the information "would tend to harm the position of other employees and impact the reputation of their supervisors" (paras. 47-49, initial submission; para. 17, Daminato affidavit).

[60] The City adds (at paras. 58-64 of its initial submission) that it believes that balancing of the rights of the third parties should favour their privacy over the access rights of the applicant, where the third-party personal information consists of employment history, evaluations of their job performance, character references about them and statements supplied in confidence by them about others. It argues that privacy is particularly pertinent in the "labour-management relations process" and that

> 60. … the release of subjective personal comments from employees about management personnel, gathered as part of a plan to address internal workplace issues, on any request for access, would negatively impact any voluntary participation by personnel in processes of facilitation, and would severely erode the ability of a public body employer to effectively resolve issues of workplace climate.

[61] The City believes there would be no useful purpose to disclosing more information. To do so would erode the confidentiality of the interview process and be counterproductive, it argues (para. 14, Westell affidavit; para. 17, Daminato affidavit).

[62] The applicant says that, contrary to the City's argument that disclosure would have a negative impact on labour relations or the facilitation process, withholding the information would in fact create a negative impact. In its view, withholding information discourages rather than encourages voluntary participation in such processes.

The applicant points again to Order F05-14, where I found that it was desirable for accountability and transparency reasons to disclose more information and, further, found that aggregate references to management diluted individual privacy interests (paras. 17-21, reply). I also noted the purpose of the review in that case was to resolve longstanding issues among the members of the West Vancouver Police Department and that it was desirable to disclose most of the disputed information so that the "stakeholders" could have meaningful discussions about those issues. In that case, as well, the withheld information was similar in nature and content to the disclosed information.

[63] The City argues that the applicant's motives for asking for the report and its stated intentions for use of that report are not relevant to the issue of whether the applicant is entitled to full disclosure. The issue is whether disclosure to any applicant would be an unreasonable invasion of third-party privacy, the City says, without regard to further use. The City also says the applicant has produced no evidence to support its assertion that the consultant agreed to provide copies of her report containing personal opinions, evaluations and character references. It says its own evidence contradicts the applicant on this point. It says the summary recommendations contain all the information the City required the consultant to report on and that the applicant was not entitled to anything else under the agreement between the City and the consultant (paras. 38-39 & 44-50, reply)

[64] The affidavit evidence from FRS and City employees conflicts with the applicant's on the issue of whether individuals would be identifiable in the report and whether the applicant would receive a complete copy of the report, or at least reveals that they had a different understanding on these points. The consultant, notably, says nothing either way. Clearer communication at the beginning of the review both with the participants and the consultant—preferably in writing—on how these goals might best be accomplished might have prevented any misunderstandings.

[65] It also seems that it was not clear, at least to some participants, that records related to the review, including the report, might be requested under the Act. It is unfortunate if a review designed to improve labour-management relations has the opposite effect because of misunderstandings or inadvertent lapses in communications. Public bodies should be aware of such potential pitfalls when arranging for a review or investigation of internal workplace matters.

[66] In any case, I do not agree with the City's arguments on the applicant's motives and alleged intentions for use of the report. Nor, bearing in mind what I say below, do I agree that the report as the City has severed and disclosed it is the only information to which the applicant is entitled.

[67] The FRS review had a narrower, more internally-directed, focus than the review and report I considered in Order F05-14. There, the review focused on working relationships within the West Vancouver Police Department but also had the wider—and explicitly stated—aim of ensuring that the citizens of West Vancouver were receiving

adequate policing services. I took this into account in finding that s. 22(2)(a) was relevant. In this case, it is possible that an indirect aim of the review of the New Westminster FRS was to ensure that local citizens were receiving adequate fire fighting services, but this does not appear to have been an overt goal.

[68] It is nonetheless important that public bodies, as recipients of public funding, have, and be seen to foster, good labour-management relations. Moreover, there is little point in conducting a review of this kind of labour relations matters and then withholding the results from participants because some participants do not like what was said about them. Regardless of what the explicit or incidental purpose of the review was, from the City's perspective, I consider that public scrutiny of the City's activities is, as contemplated by s. 22(2)(a) a relevant factor here.

[69] It follows that I consider that the City was correct to consider accountability, the purpose of the review and the role of the applicant in deciding how to sever the disputed report. However, although it released most of the report (and I commend it for doing so), having regard for these factors, I conclude that the City severed and withheld more information than s. 22 required it to do.

[70] The City believes that protecting the privacy of those who have participated voluntarily in what it now describes as conflict resolution serves the privacy protection purposes of the Act, referring me to a number of court cases in support of its arguments (paras. 58-64, initial submission). With respect to the applicant's suggestion that, if the City was correct to withhold portions of the report, the consultant was wrong to disclose those portions in the meetings, the City argues that this disclosure was permitted by s. 33 of the Act, as it read at the time of the meetings (March and April 2004) (paras. 66-67, initial submission; para. 37, reply).

[71] The applicant in Order F05-14 raised a similar argument regarding whether s. 33 authorized disclosure of the disputed record to the West Vancouver Police Board. I dismissed it as not being before me and having no bearing on the issue of whether disclosure under Part 2 of the Act was appropriate. The situation here is different in that the disclosure in question (while apparently incomplete) occurred a number of times, to the applicant, its members and others. The City evidently considers that the consultant, acting on its behalf, was authorized by s. 33 of the Act, as it then read, to disclose the report in the circumstances described above, but now argues that s. 22 prohibits disclosure of information.

[72] The issue of whether s. 33 authorized the City to make this disclosure is not before me. I do however consider relevant the fact that the consultant read from her report, presented her findings verbally and provided copies of the report on three occasions to FRS and City employees so that they could follow her verbal presentations. Even though there is a difference of opinion as to how much of the report the consultant read out loud (and I accept what the consultant said on this point), the fact remains that the participants were also able to read the report during the presentations. The applicant and others are, the material before me establishes, as a result already familiar with much

if not all of the report's contents. As I remarked above, this diminishes to some extent any unreasonable invasion of third-party privacy.

[73] I also consider that aggregate references to comments and opinions about groups of individuals do not generally raise the same level of concern about privacy for s. 22(1) purposes as do comments and opinions that are clearly related to individuals. Moreover, the groups in question here are FRS managers and other City employees responsible for the smooth running of the FRS, as well as the FRS union executive. As I said in Order F05-14:

> [32] Moreover, as noted above, the executive (or leadership) are referred to as a group and not individually. The report was deliberately structured in this way to minimize the possibility of linking specific comments to particular individuals. The fact that the views are about the executive as a collective—the organizational group ultimately responsible for the management of the WVPD—heightens the need for accountability and transparency, while at the same time diluting individual privacy interests.

[74] In addition, I note that in this case the character and content of some of the withheld information is similar to some of the disclosed information (for example, the released portion at the top of p. 5 says much the same thing as the first withheld portion on p. 7). Since the City concluded —correctly, in my view—that it was appropriate to disclose the information it did, I find it difficult to understand how disclosure of information that is similar in content or character would lead to an unreasonable invasion of third-party privacy. In addition, the City withheld the odd comment about the union executive (for example, the second withheld item on p. 7), while disclosing others (for example, the phrase preceding the one mentioned on p. 7). I do not see how disclosure of comments about the union executive to the applicant (the union itself) would result in an unreasonable invasion of anyone's personal privacy.

[75] All of these factors combine to favour disclosure of more—though by no means all—of the withheld information. I consider it possible to sever the disputed information again to disclose aggregate comments and opinions about groups while, at the same time, protecting individual third-party privacy interests in cases where information falls under s. 22(3)(d), where s. 22(2)(f) favours withholding the information and no relevant circumstances favour disclosure. I have in line with my findings prepared a severed copy of the report for the City to disclose to the applicant.

4.0 CONCLUSION

[76] For the reasons given above, under s. 58 of the Act, I make the following orders:

1. I require the City to provide the applicant with the information it withheld under s. 17(1).

2. Subject to para. 3 below, I require the City to disclose the information it withheld under s. 22(1).

3. I require the City to withhold some information under s. 22(1), as shown in red ink on the copy of the relevant pages in dispute provided to the City with its copy of this order.

September 6, 2005

ORIGINAL SIGNED BY

Celia Francis
Adjudicator

OIPC File No. F04-22838