



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

Order F10-32

SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY

Jay Fedorak, Adjudicator

September 27, 2010

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Summary: The applicant requested salary and consulting fees paid to a TransLink employee. These payments are considered remuneration of an employee of a public body for the purpose of s. 22(4)(e). Disclosure would not be an unreasonable invasion of the personal privacy of the third party, and, therefore, TransLink must disclose the requested information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(4)(e) and 22(4)(f).

Authorities Considered: B.C.: Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order No. 46-1995, [1995] B.C.I.P.C.D. No. 19; Order No. 303-1999, [1999] B.C.I.P.C.D. No. 16; Order 01-25, [2001] B.C.I.P.C.D. No. 26; Order 02-56, [2002] B.C.I.P.C.D. No. 58; F10-05, [2010] B.C.I.P.C.D. No. 8; F09-15, [2009] B.C.I.P.C.D. No. 20; Order No. 173-1997, [1997] B.C.I.P.C.D. No. 34.

1.0 INTRODUCTION

[1] This order arises from a request to the South Coast British Columbia Transportation Authority (“TransLink”) for information about wages, fees and other payments to the third party, a former management-level employee, during a one-year period. After receiving the request, TransLink notified the third party about the request, in accordance with s. 23 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), because it believed that disclosure might be an unreasonable invasion of his personal privacy. TransLink invited him to make representations with respect to the disclosure of his information. He responded objecting to the disclosure, without providing reasons. TransLink considered his response but decided that s. 22 of FIPPA did not apply to the information and, in

accordance with s. 24 of FIPPA, informed him and the applicant of its intention to release the information. The third party requested a review by the Office of the Information and Privacy Commissioner (“OIPC”) of this decision.

[2] Mediation did not resolve the matter and the OIPC held a written inquiry and issued a notice to TransLink, the third party and the applicant.

2.0 ISSUE

[3] The issue in this case is whether TransLink is required to withhold the requested records under s. 22(1) of FIPPA.

[4] Section 57(2) of FIPPA provides that the applicant bears the burden of proving that disclosure of personal information of a third party contained in the records in question would not be an unreasonable invasion of the third party’s privacy.

3.0 DISCUSSION

[5] **3.1 Record in dispute**—The only record at issue is a one-page memorandum between two TransLink employees that outlines the total wages and consulting fees that TransLink paid to the third party during the requested time period.

[6] **3.2 Unreasonable invasion of personal privacy**—The relevant portions of s. 22 of FIPPA read as follows:

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.

(4) A disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if

...

(e) the information is about the third party’s position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister’s staff,

(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,

[7] The definition of “employee” is also relevant:

“employee”, in relation to a public body, includes

- (a) a volunteer, and
- (b) a service provider;

[8] In Order 01-53,¹ the Commissioner discussed the application of s. 22, and I have applied that decision and other relevant decisions without elaboration.

[9] **3.3 Is the information “personal information”?**—TransLink submits that the information at issue is financial information of the third party and, therefore, his personal information.² The applicant and third party do not dispute this. The information at issue is about an identifiable individual, and, therefore, I find that it is personal information.

[10] **3.4 Section 22(4)**—Determining whether the disclosure of personal information would be an unreasonable invasion of third-party personal privacy next requires reference to the application of s. 22(4). If any part of this provision applies, disclosure of the personal information would not be an unreasonable invasion of privacy and the information may not be withheld under s. 22.

Is the information about the remuneration of an employee of a public body?

[11] The applicant submits that disclosure of the information he is requesting would not be an unreasonable invasion of the third party’s personal privacy because the third party was an employee of TransLink during the period of the request.³ The applicant’s request was for remuneration paid to the third party, and the applicant submits there have been many orders that confirm that s. 22(4)(e) applies to the remuneration of employees of public bodies.⁴ He believes: “General taxpayers and users of the Skytrain system have a right to expect information about the salaries, disbursements, fees and benefits provided at public expense to employees of Skytrain.”⁵ The applicant also notes that he has requested the same information about 97 other TransLink employees and TransLink has disclosed to him all of the information about those employees.⁶

[12] TransLink agrees with the applicant that the information at issue is information about remuneration paid to the third party, in accordance with s. 22(4)(e). It submits that a number of orders support this interpretation.⁷

¹ Order 01-53, [2001] B.C.I.P.C.D. No. 56, paras. 22-24.

² TransLink’s initial submission, para. 13.

³ Applicant’s initial submission, Summary, p. 1.

⁴ Applicant’s initial submission, paras. 12-16; the applicant referred to these orders: Order No. 46-1995, [1995] B.C.I.P.C.D. No. 19; Order No. 303-1999, [1999] B.C.I.P.C.D. No. 16; Order 01-25, [2001] B.C.I.P.C.D. No. 26; Order 02-56, [2002] B.C.I.P.C.D. No. 58; and Order F10-05, [2010] B.C.I.P.C.D. No. 8.

⁵ Applicant’s initial submission, para. 18.

⁶ Applicant’s initial submission, para. 10.

⁷ TransLink’s initial submission, paras. 16-17; TransLink referred to these orders: Order F09-15, [2009] B.C.I.P.C.D. No. 20; Order No. 173-1997, [1997] B.C.I.P.C.D. No. 34; and Order F10-05, [2010] B.C.I.P.C.D. No.8.

[13] The third party submits that disclosure of the information would be an invasion of his privacy. He claims that disclosure would damage his reputation and cause him financial harm.⁸ He also makes allegations against the applicant and asserts that the purpose of the request is vexatious.⁹ He provides additional information *in camera*, which I am unable to discuss without revealing information he does not want disclosed.

Analysis

[14] The matter at issue is straightforward and unambiguous. The applicant has requested the wages, fees and other payments made to an employee of a public body. The only personal information about the third party that the record at issue discloses is the wages and consulting fees that the public body paid to the third party as an employee and service provider of the public body. Previous orders have established that salary (or wages) of a public body employee is “remuneration” in accordance with s. 22(4)(e) and its disclosure would, therefore, not be an unreasonable invasion of the third party’s privacy.¹⁰ As the definition of “employee” under FIPPA includes a “service provider”, s. 22(4)(e), in my view, also applies to the consulting fees that the third party received under contract with TransLink. None of the parties raised the applicability of s. 22(4)(f) to the information about the consulting fees. Nevertheless, as they are part of the details of a contract to supply services, s. 22(4)(f) would also apply to the information on consulting fees. Therefore, the public body may not withhold the requested information under s. 22(1).

CONCLUSION

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

1. I require that TransLink give the applicant access to information he has requested.
2. I require that TransLink give the applicant access to this information within 30 days of the date of this order, as FIPPA defines “day”, that is, on or before November 5, 2010 and, concurrently, to copy me on its cover letter to the applicant, together with a copy of the records.

⁸ Third party’s initial submission, p. 2.

⁹ Third party’s initial submission, p. 3

¹⁰ For example, in Order 02-56, Adjudicator Francis (as she then was) confirmed that information about job duties, functions and remuneration, including salary and benefits, fell under s. 22(4)(e). See also Order F10-05, [2010] B.C.I.P.C.D. No. 8 and Order 303-1999, [1999] B.C.I.P.C.D. No. 16.

September 27, 2010

ORIGINAL SIGNED BY

Jay Fedorak,
Adjudicator

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