



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

Order F10-33

SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY

Jay Fedorak, Adjudicator

September 27, 2010

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Summary: The applicant requested salary information for all union-exempt employees for a two-year period and other payment information concerning a former union-exempt 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; F09-15, [2009] B.C.I.P.C.D. No. 20; Order No.173-1997, [1997] B.C.I.P.C.D. No. 34; F10-05, [2010] B.C.I.P.C.D. No. 8; Order 02-56 [2002] B.C.I.P.C.D. No. 58; Order No. 303-1999, [1999] B.C.I.P.C.D. No. 16.

1.0 INTRODUCTION

[1] This order arises from a request to the South Coast British Columbia Transportation Authority (“TransLink”) for salary information of all union-exempt employees for a two-year period and, for one of those employees (“the third party”), information about payment for services he provided after he retired. TransLink disclosed to the applicant the salary information for all of the union-exempt employees, other than the third party. 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 the 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 it. 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. The OIPC therefore 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 Records in dispute**—There are two records at issue. The first is a one-page memorandum between two TransLink employees that outlines the total wages and other remuneration that TransLink paid to the third party during the requested time period. The second is a copy of a contract between TransLink and the third party for consulting services.

[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 I therefore 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 takes the position that the disclosure of the requested information would not be an unreasonable invasion of the third party’s personal privacy, because s. 22(4)(e) applies to the information.³ He believes: “I believe as Taxpayers we have the right to know where and how our money is spent and who receives it and why.”⁴ The applicant also notes that he made multiple requests for the same information about other union-exempt employees and TransLink has disclosed to him all of the information.⁵ He points out that this includes salary and severance information ordered disclosed to him by Adjudicator McEvoy in Order F09-15.⁶

[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, p. 1.

⁴ Applicant’s initial submission, p. 2.

⁵ Applicant’s initial submission, p. 1.

⁶ Order F09-15, [2009] B.C.I.P.C.D. No. 20.

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 remuneration paid to an employee of a 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. Although none of the parties raised the applicability of s. 22(4)(f) to the information about the consulting fees, as they are part of the details of a contract to supply services and 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 TransLink to 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.

September 27, 2010

ORIGINAL SIGNED BY

Jay Fedorak,
Adjudicator

OIPC File No. F09-38433

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

⁹ Third party’s initial submission, p. 3.

¹⁰ For example, in Order 02-56, [2002] B.C.I.P.C.D. No. 58, 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 No. 303-1999, [1999] B.C.I.P.C.D. No. 16.