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Order F14-22

**MINISTRY OF JUSTICE (CIVIL FORFEITURE OFFICE)**

Elizabeth Barker  
Adjudicator

July 23, 2014

Quicklaw Cite: [2014] B.C.I.P.C.D. No. 25

CanLII Cite: 2014 BCIPC No. 25

**Summary:** The applicant requested information regarding the Civil Forfeiture Office. The Ministry withheld the names of the Civil Forfeiture Office's employees because it believed that disclosure would endanger their lives or physical safety (s. 15(1)(f)) and disclosure could reasonably be expected to threaten their safety or mental or physical health (s.19(1)(a)). The adjudicator found that neither s. 15(1)(f) nor s. 19(1)(a) authorized refusing to disclose the names of the employees. The Ministry also withheld the résumé of the Civil Forfeiture Office's former director because it believed that disclosure would be an unreasonable invasion of his personal privacy (s. 22). The adjudicator found that the former director's résumé must be withheld under s. 22.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(f), 19(1)(a), 22(1), 22(2)(a) and (f), 22(3)(d).

**Authorities Considered:** B.C.: Order 00-28, 2000 CanLII 14393 (BC IPC); Order 01-15, 2001 CanLII 21569 (BC IPC); Order 00-01, 2000 CanLII 9670 (BC IPC); Order 00-10, 2000 CanLII 11042 (BC IPC); Order F07-15, 2007 CanLII 35476 (BC IPC); Order 01-53, 2001 CanLII 21607 (BC IPC); Order 00-18, 2000 CanLII 7416 (BC IPC); Order 01-18, 2001 CanLII 21572 (BC IPC); Order F09-24, 2009 CanLII 66956 (BC IPC); Order 04-06, 2004 CanLII 34260 (BC IPC); Order No. 117-1996, 1996 CanLII 1046 (BC IPC).

**Cases Considered:** *R v. Mohan*, [1994] 2 S.C.R. 9; *British Columbia Lottery Corporation v. Skelton*, 2013 BCSC 12.

## INTRODUCTION

[1] This inquiry concerns a request for information about the director and employees of the Civil Forfeiture Office (“CFO”). The CFO is a program within the Ministry of Justice (“Ministry”).

[2] The applicant requested the name and professional background of the director of the CFO, a complete list of CFO personnel and their titles, the organizational structure of the CFO and a complete list of CFO policies and procedures.

[3] The Ministry provided the applicant with all of the requested information with the exception of the employees’ names, which were withheld under ss. 15(1)(f) and 19(1)(a) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), and the information about the director’s professional background, which was withheld under s. 22 of FIPPA.

[4] The applicant disagreed with the Ministry’s response and requested the Office of the Information and Privacy Commissioner (“OIPC”) conduct a review. The matters in dispute were not resolved, and the applicant requested they proceed to an inquiry under Part 5 of FIPPA.

[5] Both parties provided initial and reply submissions. The Ministry sought and received prior approval to submit parts of its two supporting affidavits *in camera*.

## ISSUES

[6] The issues in this inquiry are:

1. Is the Ministry authorized by s. 15(1)(f) of FIPPA to refuse access to the Civil Forfeiture Office’s employees’ names because disclosure would endanger their life or physical safety?
2. Is the Ministry authorized by s. 19(1)(a) of FIPPA to refuse access to the Civil Forfeiture Office’s employees’ names because disclosure could reasonably be expected to threaten their safety or mental or physical health?
3. Is the Ministry required by s. 22 of FIPPA to refuse access to the information about the director’s professional background because disclosure would be an unreasonable invasion of his personal privacy?

[7] Section 57(1) of FIPPA imposes the burden on the Ministry to establish that it is authorized to withhold the information requested under ss. 15 and 19. Section 57(2) places the burden on the applicant to establish that disclosure of any personal information would not be an unreasonable invasion of third party personal privacy under s. 22.

## DISCUSSION

[8] **Background**—The *Civil Forfeiture Act* provides a mechanism whereby the CFO's director (also known as the executive director) may apply to the BC Supreme Court for an order forfeiting to the Province property that is the proceeds of unlawful activity or is an instrument of unlawful activity. The CFO's director reports to the Assistant Deputy Minister for the Ministry's Community Safety and Crime Prevention Branch.

[9] Part 3.1 of the *Civil Forfeiture Act* provides for an “administrative forfeiture” process that does not require that forfeiture commence by way of court proceedings, if the property in question is valued at \$75,000 or less and is not real estate. In the case of administrative forfeiture, if a notice of dispute is received within the requisite time period, the director must either commence court proceedings or withdraw the administrative forfeiture proceedings.

[10] Whether forfeiture proceedings are initiated in court or administratively, they are not reliant on criminal charges or convictions arising from the alleged unlawful activity.

[11] The individual designated as the director under the *Civil Forfeiture Act* changed shortly after the applicant made his request for information.

[12] **Information at Issue**—The information in dispute is as follows:

- A one page record called “Civil Forfeiture office Personnel list at OCT 2012” (“personnel list”), which provides the names and job titles of six individuals. The Ministry has disclosed to the applicant the names of both the past and the current director (who was promoted from within the CFO). The remaining four names are withheld under both s. 15 and s. 19. No job titles are withheld. Therefore, only the names of the assistant deputy director, the program manager, the executive assistant and the program assistant have been withheld.<sup>1</sup>

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<sup>1</sup> The Ministry confirms in its reply submission that it did not apply s. 22 to withhold the names. In any case, such information is clearly “contact information”, so would be excluded from the definition of “personal information” in FIPPA.

- A four page résumé of the individual who was the director of the CFO at the time of the applicant's request for information. It has been withheld in its entirety under s. 22.

## PRELIMINARY MATTERS

### *Expert opinion evidence*

[13] The Ministry's submission includes an affidavit from its strategic lead of Corporate Security and Risk ("strategic lead") who provides security and risk assessment services to the Ministry, including security for the Ministry's Criminal Justice Branch employees involved in the prosecution of organized crime and terrorism offences. The Ministry submits that the strategic lead is an "expert on security in the context of the justice community in British Columbia" and that his affidavit "is the type of expert evidence relating to s. 19 [sic] should be accorded deference".<sup>2</sup>

[14] As a general rule, a witness may not give opinion evidence but may only testify as to matters within her or his knowledge, observation or experience. Expert evidence is an exception to this general rule. Experts are allowed to provide opinions in regard to matters that are likely to be beyond the fact-finder's knowledge or experience.<sup>3</sup> The four criteria for expert opinion evidence were set out by the Supreme Court of Canada in *R v. Mohan*<sup>4</sup> as:

- (a) relevance;
- (b) necessity in assisting the trier of fact;
- (c) the absence of any exclusionary rule;
- (d) a properly qualified expert.

[15] If the evidence meets the four part test, then it is admissible as "expert evidence". If it does not, I may still admit it, given the flexible rules of evidence in administrative proceedings.

[16] The Ministry did not provide the strategic lead's résumé, but I have gleaned information about his professional background from his affidavit, in particular exhibit C which contains a brief biography. Based on that, I find he has specialized knowledge and experience regarding the security situation of the Ministry. I also find that the strategic lead's opinions are relevant to the question of whether disclosure of the CFO employees' identities could reasonably be

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<sup>2</sup> Ministry's initial submissions, paras. 5.38 and 5.14.

<sup>3</sup> *British Columbia Lottery Corporation v. Skelton*, 2013 BCSC 12, at para. 55.

<sup>4</sup> [1994] 2 SCR 9. See para. 17.

expected to threaten their safety or mental or physical health (s. 19) or endanger the life or physical safety of a law enforcement officer or any other person (s. 15). Regarding the third criteria in *R. v. Mohan*, if I find that the evidence is admissible as expert evidence, there is no exclusionary rule that would otherwise render it inadmissible.

[17] However, I do not find that this opinion evidence meets the criteria of "necessity" which is explained in *R. v. Mohan* as follows:

This pre-condition is often expressed in terms as to whether the evidence would be helpful to the trier of fact. The word "helpful" is not quite appropriate and sets too low a standard. However, I would not judge necessity by too strict a standard. What is required is that the opinion be necessary in the sense that it provide information "which is likely to be outside the experience and knowledge of a judge or jury": as quoted by Dickson J. in *R. v. Abbey*, *supra*. As stated by Dickson J., the evidence must be necessary to enable the trier of fact to appreciate the matters in issue due to their technical nature. In *Kelliher (Village of) v. Smith*, [1931] S.C.R. 672 at p. 684, this Court, quoting from Beven on Negligence (4th ed. 1928), at p. 141, stated that in order for expert evidence to be admissible, "[t]he subject-matter of the inquiry must be such that ordinary people are unlikely to form a correct judgment about it, if unassisted by persons with special knowledge" ...<sup>5</sup>

[18] There is nothing scientific, technical or particularly complex about the matters in this inquiry, so I do not consider the strategic lead's opinions to be necessary to my deliberations or understanding of the evidence. I will be able to draw my own inferences and reach my own conclusions based on the facts as I find them after considering all of the evidence and argument.

[19] In support of its submission that the strategic lead should be viewed as providing expert evidence, the Ministry also points to Order No. 117-1996.<sup>6</sup> In that case, the Commissioner deferred to the opinion of a psychiatrist when deciding that disclosure of an applicant's medical records could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health, under s. 19(2). The Commissioner explained that he was "strongly inclined to defer to professional expertise in matters such as this one...". In my view, he was referring to complex medical or psychiatric matters, which clearly require medical study and expertise to properly understand. I do not take Order No. 117-1996 as suggesting that similar deference must be given in a case of this nature, which deals with a very different subject matter. I simply am not persuaded that an expert opinion is necessary or that I should defer to the strategic lead's opinion on the very matters at the heart of this case.

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<sup>5</sup> *Ibid.*, at para. 22.

<sup>6</sup> 1996 CanLII 1046 (BC IPC).

[20] In conclusion, I do not find that the strategic lead's opinions qualify as expert evidence. However, I recognize that he is very knowledgeable in the area of security and risk within the Ministry and that his evidence is relevant and useful to my analysis. So, I will consider his evidence but will give no weight to his opinions on the actual issues that I must decide, namely, whether disclosure of the CFO employees' identities could reasonably be expected to threaten their safety or mental or physical health (s. 19) or endanger the life or physical safety of a law enforcement officer or any other person (s. 15).

[21] **Threat to Safety or Mental or Physical Health**—The Ministry relies on the more fulsome submissions it made in relation to s. 19(1)(a) to support its refusal to disclose CFO employee names under s. 15.<sup>7</sup> For that reason, I will address s. 19 first.

[22] Section 19(1)(a) of FIPPA authorizes a public body to refuse to disclose information to an applicant if the disclosure could “reasonably be expected to threaten anyone else’s safety or mental or physical health”. In Order 00-28 the Commissioner said the following about the burden that rests on a public body seeking to apply s. 19(1)(a):

As I have said in previous orders, a public body is entitled to, and should, act with deliberation and care in assessing – based on the evidence available to it – whether a reasonable expectation of harm exists as contemplated by the section. In an inquiry, a public body must provide evidence the clarity and cogency of which is commensurate with a reasonable person’s expectation that disclosure of the information could threaten the safety, or mental or physical health, of anyone else. In determining whether the objective test created by s. 19(1)(a) has been met, evidence of speculative harm will not suffice. The threshold of whether disclosure could reasonably be expected to result in the harm identified in s. 19(1)(a) calls for the establishment of a rational connection between the feared harm and disclosure of the specific information in dispute.

It is not necessary to establish certainty of harm or a specific degree of probability of harm. The probability of the harm occurring is relevant to assessing whether there is a reasonable expectation of harm, but mathematical likelihood is not decisive where other contextual factors are at work. Section 19(1)(a), specifically, is aimed at protecting the health and safety of others. This consideration focusses on the reasonableness of an expectation of any threat to mental or physical health, or to safety, and not on mathematically or otherwise articulated probabilities of harm...<sup>8</sup>

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<sup>7</sup> Ministry's initial submission, para. 5.67.

<sup>8</sup> 2000 CanLII 14393 (BC IPC), p. 2.

[23] I agree with the above statement of the law and apply it to the facts in this case.

[24] **Ministry's Submissions**—The Ministry refuses to disclose the identity of the CFO staff because it believes disclosure in response to the applicant's FIPPA request would amount to disclosure to the world at large, and “there are some very dangerous people that could use that information in order to threaten the health and safety of the [staff] given the types of CFO files they are involved with”.<sup>9</sup> The Ministry explains:

The individuals that the CFO deals with may have a vast network and unlimited resources at their disposal and could use those resources to determine where a CFO staff member resides or could locate the whereabouts of the civil forfeiture office if the names were to become public knowledge”.<sup>10</sup>

#### *Director's evidence*

[25] The Ministry provides an affidavit from the current director of the CFO. He explains that as the CFO's spokesperson, his identity is already publicly known, so he does not object to being identified in response to the applicant's request. He has been provided with enhanced security due to his high level of public exposure.

[26] The director explains that in many of the forfeiture cases the individuals claiming ownership of the property in question are members of organized crime groups that engage in violence and criminal activity to control drug territories. An individual whose property is in dispute can be very angry with the CFO and this “creates real security concerns for CFO staff given the types of people involved”.<sup>11</sup> The CFO has dealt with files that involve individuals charged or convicted with violent offences, such as murder, kidnapping, assaults, extortion, criminal harassment, uttering threats and weapons possession.

[27] He explains that, since its inception, the CFO has followed the advice of the Ministry's corporate security office including: not revealing the identity of its staff or the location of its office in any of its communications or in the internal or public provincial government directories, giving staff security training, and having its own physical and electronic security arrangements that are separate and/or in addition to the normal government security systems. He explains that CFO employees have been directed not to provide callers with their names or information about the location of the office under any circumstances. He predicts that if their identities are disclosed, “some staff may seriously consider leaving

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<sup>9</sup> Ministry's initial submission, para. 5.65.

<sup>10</sup> Ministry's initial submission, para. 5.57.

<sup>11</sup> Director's affidavit, para. 21.

the office and moving to a different office in Government unless extremely significant security enhancements were added".<sup>12</sup>

[28] The director explains that there "have been many occasions where CFO staff have taken calls from irate persons possessing significant criminal records".<sup>13</sup> He adds, "CFO staff can find it extremely challenging and sometimes very concerning to have to speak with persons involved in organized crime that may have also been convicted of drug and violent offences".<sup>14</sup> By way of illustration, he provides the following examples:<sup>15</sup>

- a) In June 2012, an individual who was involved in administrative forfeiture proceedings sent "threatening emails" to CFO staff and CFO legal counsel. The emails were referred to the BC Sheriff's Threat Assessment Unit. The individual was known to associate with a group called "Freedom of the Land", which is considered to be a risk to government employees. It is unclear if the director personally saw the contents of the emails. No detail was provided about what the emails actually said or how the Sheriff's office responded.
- b) In January 2013, a male who was involved in administrative forfeiture proceedings was "verbally angry on phone with a CFO employee and intimated that, as a native person, he was considering attending office to set up a protest". No further detail is provided.
- c) A male who was involved in administrative forfeiture proceedings was "verbally angry and threatening with staff". No detail is provided about what was actually said.

[29] The director explains that the CFO has particular concerns about identifying its employees in light of its administrative forfeiture process, which does not commence by way of court proceedings. For that process, CFO employees (instead of CFO legal counsel) deal with the individuals whose property is subject to forfeiture. He provides no detail, however, about the nature of the work tasks and who performs them, or if staff interact face-to-face with individuals who are involved in the administrative forfeiture process.

[30] The director also provides multiple examples of the safety-related experiences of the CFO's legal counsel including verbal threats and intimidation from defendants and their associates and the need for police and sheriff protection on more than one occasion both inside and outside of court.<sup>16</sup> The

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<sup>12</sup> Director's affidavit, para. 31.

<sup>13</sup> Director's affidavit, para. 20.

<sup>14</sup> Director's affidavit, para. 24.

<sup>15</sup> Director's affidavit, para. 24.

<sup>16</sup> Director's affidavit, para. 27.

director also states that he was told by the CFO's acting deputy director that some of the defendants in forfeiture proceedings against Hells Angels' BC clubhouses have been investigated for "intimidating witnesses and making threats against prosecutors".<sup>17</sup> Although he does not expand on this, I understand that by using the term "prosecutors" in that context he is referring to crown counsel, not CFO staff.

[31] Regarding his own personal safety-related experiences, the director provides two examples. In May 2012, a man who was the subject of administrative forfeiture "made an angry and threatening call and verbally advised me [i.e., the director] that the CFO had no right to initiate proceedings against seized cash and that CFO staff had better 'watch out'".<sup>18</sup> In addition, he and CFO legal counsel once had to conduct an examination for discovery in a location surrounded by a police SWAT team because the person being examined had recently been shot and was vulnerable to a further gun attack. He also adds, without elaborating, that some of the CFO cases require evaluation by the BC Sheriff's Threat Assessment unit.

#### *Strategic lead's evidence*

[32] As mentioned in the preliminary issues above, the Ministry's submissions also include an affidavit from the Ministry's strategic lead of Corporate Security and Risk. His evidence does not include examples or details of threats to the CFO and its staff. Instead, he refers to reports, news articles and his experiences regarding the safety risks to individuals working in the North American justice system in general, such as police, judges, prosecutors, lawyers, correctional officers and probation workers.

[33] Regarding the types of threats against such justice officials in British Columbia, in particular, he says that they include verbal abuse, intimidation within the courts, stalking, threats to rape and kill, suspicious mail, social engineering and assaults. He says that it also includes gang members appearing in court wearing bullet proof vests or arriving in armoured vehicles with their own security teams. For example, he relates how a prosecutor was told "you better watch your [expletive] back, you're [expletive] dead" after he helped convict two BC Hells Angels on drug charges. In the last two years the strategic lead has helped with the relocation of two prosecutors who received threats to their safety. He also explains that the Ministry's Criminal Justice Branch has seen an increase in "security related files" between 2007 and 2012; that in 2003 the Vancouver Courier published an article in which three "justice officials" spoke of the threats they received and the safety precautions they needed to take; that he has "60

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<sup>17</sup> Director's affidavit, para. 17.

<sup>18</sup> Director's affidavit, para. 24.

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justice personnel under protective services”; and an ICBC employee inappropriately accessed personal information and gave it to an individual who attempted to burn down a correctional officer’s house.<sup>19</sup>

[34] In recent years, he has made several recommendations to the Ministry to deal with safety risks to certain employees, including putting address blockers on BC Online,<sup>20</sup> delisting phone numbers, upgrading physical security on residences and providing police/sheriff escorts and protection for residences. He also explains how BC Online could be used to find out where an individual lives once their identity is known.

[35] Regarding the CFO employees specifically, he explains that he “dealt with the CFO in recent years in dealing with security issues relating to their staff,”<sup>21</sup> but provides no particulars. However, he does express the following opinions:

Based on my experience dealing with security issues for the Ministry of Justice, I believe that CFO staff are confronted with the same level of risk in relation to their personal safety as prosecutors. It is for that reason that the Ministry applies the same security measures to CFO staff whose identities are made public through the filing of their affidavits in court as it does to provincial prosecutors. However, CFO staff whose identities have not been made publicly [sic] do not enjoy the same security protection. As such, their health and safety will be threatened if their identities are revealed through a FOI request.

...

In my view, the safety risk to CFO staff in British Columbia may be higher than it is in relation to many other staff in the justice system. I say that because CFO staff are seen “going after” the clubhouses of organized crime, including the Hells Angels, and other assets, including cash, of known offenders. In the organized crime community, successfully committing a criminal act against CFO employees and going to jail for such an act may be seen as a badge of honour in that community. It would be a way of trying to climb the organization hierarchy of such organizations.<sup>22</sup>

[36] **Applicant’s Submissions**—The applicant submits that having public officials serve anonymously is fundamentally incompatible with the principles of open government and freedom of information. He writes:

In a government office tasked with combating organized crime, the potential for corruption is simply too great to allow decision makers, or even

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<sup>19</sup> Strategic lead’s affidavit, paras. 12, 7, 20, 9, 8, 25, 21.

<sup>20</sup> BC Online allows account holders web based access to provincial and municipal government information including land title information.

<sup>21</sup> Strategic lead’s affidavit, para. 22.

<sup>22</sup> Strategic lead affidavit, paras. 24 and 26.

administrative staff, to serve anonymously. Unless and until the people of British Columbia are allowed to know who the CFO employees are, there remains the very real possibility that the substantial powers of the *Civil Forfeiture Act* could be abused by an individual connection with a criminal organization. Any alleged threat to the physical or mental health of the CFO employees must be weighed against the legitimate interest of all British Columbians in ensuring the integrity of the justice system.<sup>23</sup>

[37] The applicant also submits that police forces, crown prosecution services and some of the civil forfeiture offices in other provinces publicly disclose the names of their employees. This, in his view, illustrates that the risk caused by disclosing the names of the CFO staff in this case would be no greater than what those individuals experience.

[38] In his reply, the applicant points out that the identity of the director and the staff who swear affidavits are already known or easily accessible. So in his view, the Ministry has not satisfactorily explained why disclosure of their names in response to his request would pose any greater threat to the safety or physical or mental health of CFO employees than the status quo.<sup>24</sup>

#### ***Analysis – s. 19(1)(a)***

[39] There are six names on the personnel list. The Ministry has disclosed two names on the list, those of the former director and of the current director (whose name appears next to his former job title). It refuses to disclose the remaining four names despite the fact that only two are not already in the public domain.

[40] The two employees whose identities have not remained anonymous are the individuals whose names appear on the list next to the job titles “assistant deputy director” and “program manager”. According to the evidence provided by the Ministry, these individuals are required to swear affidavits as part of their duties, so their names appear in records contained in court registry files. They also attend examinations for discovery and trials. Therefore, in cases where this occurs, their identities have been revealed to the very individuals from whom one might expect the risk of threats and intimidation to originate (i.e., defendants whose property is subject to forfeiture). In addition, there is nothing in the inquiry materials that suggests that the court files are sealed for CFO matters, so these employees’ names could be found in court registry files by anyone taking an interest in a particular forfeiture case.

[41] Although two of the names of the employees already appear in publicly accessible court records, the Ministry submits that they should not be disclosed in the context of this FIPPA request because there are no restrictions on what the

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<sup>23</sup> Applicant’s reply submission, paras. 12-13.

<sup>24</sup> Applicant’s reply submission, para. 6.

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applicant can do with them, including putting them on the internet.<sup>25</sup> I do not understand this argument because the potential for further disclosure of this sort already exists. It is possible if one obtains the names directly from a court registry file. It is also possible for civil forfeiture defendants, given that they have access to this same information through their own case paperwork. More importantly, the Ministry does not explain how further disclosure of these employees' names could reasonably be expected to result in the s. 19 harms.

[42] Section 19(1)(a) of FIPPA authorizes a public body to refuse to disclose information to an applicant if the *disclosure* could reasonably be expected to threaten anyone else's safety or mental or physical health. I am not satisfied that disclosure to the applicant of information which is already in the public domain qualifies for protection under s. 19(1)(a). That is because any threat that might flow from their identities being known already exists. Therefore, I find that the Ministry has failed to provide evidence that demonstrates a clear and rational connection between disclosure of the names of the "assistant deputy director" and "program manager" and a reasonable expectation of a threat to their safety or mental or physical health.

[43] The two names that are *not* already in the public domain appear next to the job titles "executive assistant" and "program assistant" on the personnel list. The Ministry explains that they are the CFO "support staff" and their names are not contained in any CFO related communications or court records.<sup>26</sup> They are also the only people on the personnel list that do not receive enhanced security of the type provided to prosecutors. Presumably, these are the individuals that the director meant when he said that if their identities are disclosed, "some staff may seriously consider leaving the office and moving to a different office in Government unless extremely significant security enhancements were added".<sup>27</sup>

[44] I have considered with great care the information provided in this inquiry both for and against disclosure of the identities of the CFO's employees. This was challenging due to the fact that a significant part of the Ministry's evidence is hearsay, namely the director's evidence about what he describes as threatening behaviour towards the CFO's employees and legal counsel. I expect that is the reason why detail of what was actually communicated is lacking in most of his examples involving CFO staff. The Ministry does not explain why it did not provide direct evidence from its other employees or from CFO legal counsel, even on an *in camera* basis. I have considered this hearsay, although

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<sup>25</sup> Ministry's initial submission, para. 5.61.

<sup>26</sup> Ministry's initial submission, para. 5.62.

<sup>27</sup> Director's affidavit, para. 30-31

I treat it with caution given its lack of detail and the questions that it leaves unanswered about the specifics of the work experiences of CFO staff.<sup>28</sup>

[45] It is evident that given the nature of the CFO's work there is anger directed at its staff. For example, on occasion defendants or other individuals involved in CFO proceedings have expressed their anger when communicating by phone and email with the CFO's staff. While dealing with angry individuals may not be uncommon when working with the public, I believe that the segment of the public that the CFO deals with would cause increased concern. For instance, as the director explains, some of the defendants involved in civil forfeiture proceedings have been convicted and/or suspected of committing dangerous crimes and others are involved in organized crime groups.

[46] The strategic lead's evidence provides context about the justice system environment in which the CFO carries out its activities. However, other than his observation that CFO employees deal with dangerous individuals, some of who may be involved in organized crime and drugs, he does not explain what information he used to conclude that CFO employees face the same level of risk as prosecutors. In fact, his evidence does not appear to recognize the differences between the various job functions within the CFO. There are no obvious similarities between the job duties of a prosecutor and those of the CFO employees, in particular the executive assistant and program assistant. The Ministry provided no information about the job functions or duties of the different CFO employees' jobs, so if there are similarities between their work and that of prosecutors or other justice system officials, for which he provides threat examples, it has not been explained in the inquiry materials. The only common thread that I see is that they all deal with a particular subset of the public: individuals who have been convicted of, or are suspected of having committed, serious crimes.

[47] The Ministry does not actually explain the nature of the feared threats to the safety or physical or mental health of the CFO employees if their identities are disclosed. However, I understand the Ministry to be arguing that they will be similar to what the CFO's legal counsel experiences or what the strategic lead describes other justice system participants have experienced. That being the case, one would expect to see similar evidence of threats to the CFO employees whose identities have not been kept anonymous, namely the former and current director and the assistant deputy director and the program manager. However, the Ministry provided no evidence that they experienced anything of a similar nature.

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<sup>28</sup> This is consistent with the approach taken by the Commissioner in earlier s. 19(1)(a) Orders, in which hearsay evidence was provided: Order 01-15, 2001 CanLII 21559 (BC IPC); Order 00-01, 2000 CanLII 9670 (BC IPC).

[48] In order to illustrate his concerns about the threats to CFO staff safety, the director gave four examples of communications which in his opinion were “threatening”. He provides detail of what was actually communicated in only two, however. In one, the caller told him directly that the CFO had no right to initiate proceedings against seized cash and that CFO staff had better ‘watch out’. In another, an angry caller “intimated” to another CFO staff member “that, as a native person, he was considering attending office to set up a protest.” While I agree that telling someone to “watch out” implies a threat to safety or physical wellbeing, I do not agree that the second example regarding a protest does. Also, without detail of what was said in the other two examples, and no explanation of who exactly was on the receiving end of the communication, those examples are not persuasive. Therefore, I am only convinced that the label “threatening” is appropriate to the “watch out” example.

[49] Although the director’s evidence about what the CFO’s legal counsel told him would have been preferable coming from that individual directly, it is useful in understanding the director’s opinion that the CFO legal counsel’s safety is at risk due to contact with convicted criminals and gang members. However, it is not evident that what legal counsel experiences in his face-to-face dealings in court as part of his prosecutorial role and while serving documents and inspecting properties is relevant or in any way parallels what CFO support staff experience at work. The Ministry provides no evidence to demonstrate any similarity. In fact the Ministry confirms that the administrative forfeiture process requires CFO staff to deal with known criminals by phone, not in person.<sup>29</sup>

[50] Therefore, in my view, the Ministry has failed to provide evidence that demonstrates a clear and rational connection between disclosure of the names of the two support staff and a reasonable expectation of a threat to their safety or mental or physical health.

[51] Finally, the submissions of the applicant and the Ministry both touched on the issue of whether crown prosecution offices, police departments and civil forfeiture agencies in other provinces publicly identify their staff. The information they provided about how this matter is handled by other public bodies, however, is lacking in specifics. In my view, the risk experienced by employees in any particular agency is influenced by many factors, not the least being whether they work in an environment like a court house or police station where there are sheriffs and police trained to deal with threats and dangerous situations. It is also influenced by the nature of the work the employees perform and the segment of the population with whom they work. The inquiry materials contain no information about the factors that influenced the other public bodies or provinces’ decisions regarding safety risks and disclosure of employee identities, so it was not particularly helpful in this analysis. I have decided this case on its own merits and on the information pertaining to the CFO and its staff.

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<sup>29</sup> Ministry reply submission, para. 5.

[52] In conclusion, I am not satisfied that disclosure of any of the names on the personnel list could reasonably be expected to threaten the safety or mental or physical health of the individuals identified. Therefore, the Ministry is not authorized by s. 19(1)(a) to refuse to disclose that information.

[53] **Disclosure Harmful to Law Enforcement**—The Ministry also relies on s. 15(1)(f) to withhold the names of the CFO employees on the personnel list. The relevant portions of FIPPA are as follows:

- 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
  - ....
  - (f) endanger the life or physical safety of a law enforcement officer or any other person....

[54] As is the case with s. 19(1)(a), in order to prove that s. 15(1)(f) applies, the Ministry must establish that there is a clear and direct connection between the disclosure of the information in question and the harm that is alleged. Although there is no need to establish certainty of harm, it is not sufficient to rely on speculation.<sup>30</sup>

[55] The Ministry explains that it relies on the submissions it made in relation to s. 19 to support its position that it was authorized by s. 15(1)(f) to refuse to disclose the names of the CFO employees.<sup>31</sup>

[56] For the same reasons as those given above regarding s. 19(1)(a), I find that the Ministry is not authorized under s. 15(1)(f) to refuse to disclose to the applicant the names of the CFO employees whose identities are already in the public domain. Further, regarding the identity of the two support staff, the evidence before me does not support the conclusion that disclosure of their names could reasonably be expected to “endanger” their lives or physical safety. Therefore, the Ministry is not authorized by s. 15(1)(f) to refuse to disclose any of the names on the personnel list.

[57] **Harm to Personal Privacy**—The Ministry relied on s. 22 to withhold the résumé of the former director of the CFO.<sup>32</sup> Section 22(1) states that 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. The test for determining whether disclosure would be an unreasonable invasion of privacy is contained in s. 22 of FIPPA. Numerous orders have considered the

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<sup>30</sup> Order 00-10, 2000 CanLII 11042 (BC IPC), at p. 10. Order F07-15, 2007 CanLII 35476 (BC IPC) at para. 17.

<sup>31</sup> Ministry's initial submission, para. 5.67.

<sup>32</sup> I note that the current director's professional background is summarized in his affidavit, para. 2.

application of s. 22, and the principles for its application are well established.<sup>33</sup> I have applied those principles here.

#### *Personal information*

[58] The first step in the s. 22 analysis is to determine if the information in the résumé is personal information. “Personal information” means recorded information about an identifiable individual other than contact information. “Contact information” means 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.<sup>34</sup>

[59] The applicant submits that the former director is not a “third party” for the purposes of s. 22 because he was the CFO’s spokesperson or representative. I understand this to be an argument that information in a résumé is not “personal information” if that individual is a public official. I disagree. I find that the former director meets the definition of “third party” in Schedule 1 of FIPPA which is:

“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;

[60] I find that all of the information in the résumé is the former director’s personal information.

#### *Section 22(4) factors*

[61] The next step is to decide if any of the factors listed in s. 22(4) apply. If so, disclosure of the personal information is not an unreasonable invasion of personal privacy. I find that none of the circumstances in s. 22(4) apply to the personal information in the résumé.

#### *Presumed Unreasonable Invasion of Privacy*

[62] The third step in a s. 22 analysis, is to consider whether any of the presumed unreasonable invasions of personal privacy listed in s. 22(3) apply. The Ministry relies on s. 22(3)(d), which states:

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<sup>33</sup> See for example, Order 01-53, 2001 CanLII 21607 (BC IPC) and Order 00-18, 2000 CanLII 7416 (BC IPC).

<sup>34</sup> Schedule 1 of FIPPA.

22(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

[63] I find that the personal information in the résumé clearly relates to the director's employment, occupational and educational history, so disclosure is presumed to be an unreasonable invasion of his personal privacy. This finding is consistent with other BC Orders where s. 22(3)(d) was found to apply to the personal information in résumés.<sup>35</sup>

*Has the s. 22(3)d presumption been rebutted?*

[64] In the fourth step, I have considered relevant circumstances, including those in s. 22(2), to determine if the presumption in s. 22(3)(d) has been rebutted. Although the Ministry and the applicant only refer to s. 22(2)(a) as a relevant factor, I also consider s. 22(2)(f) to be relevant.

22(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,

...

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

[65] The applicant submits that there is a very strong public interest in knowing who the people in positions of power are and whether their professional background justifies their position. I understand this to be an argument that disclosure is in the public interest because it would reveal whether there were any deficiencies in the CFO's hiring process when it comes to selecting a director. The applicant also submits that disclosing the former director's resume would be no different than the type of disclosure of personal information that takes place when the professional background of various cabinet ministers, provincial government directors and police chiefs are summarized on public websites.

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<sup>35</sup> Order 01-18, 2001 CanLII 7416 (BC IPC); Order F09-24. 2009 CanLII 66956 (BC IPC); Order 04-06, 2004 CanLII 34260 (BC IPC).

[66] In my view, the fact that some officials may have consented to the public disclosure of their personal information in the form of a brief biography does not mean that the former director's resume should be disclosed. Each case involving personal information and s. 22 must be decided on its own merits. In this case, there is nothing to suggest that the former director agreed to disclosure of his personal information. Further, although there are no submissions on this point, in my experience, most job applicants submit a résumé in confidence with the understanding that it will not be disclosed without their consent. Therefore, I find that s. 22(2)(f) weighs against disclosure in this case.

[67] The Ministry submits that the goal of subjecting the activities of the government to public scrutiny, under s. 22(2)(a), would not be furthered by releasing the personal information in the résumé because the individual is no longer working for the CFO. I agree, and for that reason I find that s. 22(2)(a) does not weigh in favor of disclosure of the former director's résumé.

[68] In conclusion, s. 22(3)(d) creates a presumption that disclosure of the former director's résumé would be an unreasonable invasion of his personal privacy. Having considered all relevant factors, I find that the presumption has not been rebutted.

[69] However, a few words regarding the fulfilling the purposes of FIPPA are apt in this case. In the future, the Ministry could easily demonstrate accountability in its selection of director without invading that individual's privacy. Whenever a new director is designated under the *Civil Forfeiture Act*, the CFO could prepare, with the director's input and consent, a brief biographical summary of his or her professional background to provide to the public.

## **ORDER**

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

1. The Ministry is not authorized under s. 15(1)(f) or s. 19(1)(a) of FIPPA to refuse access to the names which appear in the personnel list.
2. In accordance with s. 22(1), the Ministry is required to refuse access to all of the information in the résumé of the former director of the Civil Forfeiture Office.

3. The Ministry must provide the applicant a copy of the personnel list on or before **September 5, 2014**, and provide me a copy of its cover letter and the record sent to the applicant.

July 23, 2014

**ORIGINAL SIGNED BY**

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Elizabeth Barker, Adjudicator

OIPC File No.: F12-51223