



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

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Order F15-32

CITY OF VANCOUVER

Hamish Flanagan
Adjudicator

August 12, 2015

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Summary: A journalist requested a copy of the City Manager's Agenda for a period spanning approximately three months. The City of Vancouver disclosed most of the Agenda, but withheld small excerpts on the basis that disclosure would harm the security of a communications system (s. 15(1)(l)) or be an unreasonable invasion of the personal privacy of third parties (s. 22 of FIPPA). The adjudicator determined that apart from telephone numbers that comprised contact information, the withheld information in the Agenda was appropriately withheld by the City.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(l) and 22.

Authorities Considered: Order F13-07, 2013 BCIPC 8 (CanLII); Order 00-10, 2000 CanLII 11042 (BC IPC); Order F07-15, 2007 CanLII 35476 (BC IPC); Order F14-45, 2014 BCIPC 48 (CanLII).

Cases Considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31(CanLII); *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII); *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 (CanLII).

INTRODUCTION

[1] This inquiry relates to an applicant's request to the City of Vancouver ("City") for a copy of the City Manager's Agenda ("Agenda") for the period from April 19 to July 11, 2013.

[2] The City disclosed most of the responsive records in the Agenda, but withheld some information in the Agenda on the basis that the *Freedom of Information and Protection of Privacy Act* ("FIPPA") exempts it from disclosure. Specifically, it withheld information on the basis that disclosure would harm the security of a communications system (s. 15(1)(l)) and that disclosure would be an unreasonable invasion of a third party's personal privacy (s. 22 of FIPPA).

[3] The applicant requested that the Office of the Information and Privacy Commissioner ("OIPC") review the City's decision to withhold the information. OIPC mediation did not resolve the matter, and the applicant asked that this matter proceed to an inquiry.

ISSUE

[4] The issues in this inquiry are whether:

1. the City is authorized to withhold information because disclosure could reasonably be expected to harm the security of a communications system under s. 15(1)(l) of FIPPA;
2. disclosure of personal information would be an unreasonable invasion of personal privacy of a third party under s. 22(1) of FIPPA.

[5] The burden is on the City to establish that s. 15(1)(l) applies to the information withheld under that section.¹ Section 57(2) of FIPPA places the burden on the applicant to establish that the disclosure of personal information would not be an unreasonable invasion of third party personal privacy.

DISCUSSION

[6] **Information in Dispute** — The responsive record comprises a printout of the City Manager's electronic Agenda. The printed record contains one page for each week of the time period requested. The information withheld in the records under s. 15(1)(l) comprises telephone numbers, meeting ID numbers and passwords necessary to attend teleconferences listed in the Agenda ("Teleconference Information"). Some of the information reoccurs in the records because the teleconferences are recurring meetings. The information withheld under s. 22 comprises three telephone numbers appearing in specific

¹ Section 57(1) of FIPPA.

appointments in the Agenda, details of appointments which the City says are personal and not related to the City Manager's work ("Personal Appointments"), and information the City submits is about certain City employees ("Employee Information").

Harm the security of property— s. 15(1)(l)

[7] The relevant portions of s. 15(1) of FIPPA for this inquiry are:

- 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
- ...
- (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[8] The standard of proof applicable to harms-based exceptions like s. 15 is whether disclosure of the information could reasonably be expected to cause the specific harm.² Although there is no need to establish certainty of harm, it is not sufficient to rely on speculation.³ In Order F07-15, former Commissioner Loukidelis outlined the evidentiary requirements to establish a reasonable expectation of harm:

...there must be a confident and objective evidentiary basis for concluding that disclosure of the information could reasonably be expected to result in harm... Referring to language used by the Supreme Court of Canada in an access to information case, I have said 'there must be a clear and direct connection between disclosure of specific information and the harm that is alleged'.⁴

[9] This approach to harms-based exceptions, which are found in federal and provincial access to information statutes across Canada, was applied by the Supreme Court of Canada in two recent decisions.⁵ In those decisions the Court described the exception as requiring a reasonable expectation of probable harm from disclosure of the information.⁶ As the Court noted, the wording of a provision requiring a "reasonable expectation of harm" tries to mark out a middle ground between that which is probable and that which is merely

² Order F13-07, 2013 BCIPC 8 (CanLII).

³ Order 00-10, 2000 CanLII 11042 (BC IPC) at p.10.

⁴ Order F07-15, 2007 CanLII 35476 (BC IPC) at para. 17, referring to *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 (CanLII).

⁵ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) and *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII) ("Merck Frosst").

⁶ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 54 citing *Merck Frosst*.

possible.⁷ An institution must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach that middle ground.⁸ The inquiry is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and “inherent probabilities or improbabilities or the seriousness of the allegations or consequences.”⁹

[10] In *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*,¹⁰ Bracken, J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm, and that the burden rests with the public body to establish that the disclosure of the information in question could result in the identified harm.

[11] Section 15(1)(l) allows the City to withhold information where disclosure would harm the security of a communications system. The City applied s. 15(1)(l) to Teleconference Information in the City Manager’s Agenda.

[12] I find that there is a reasonable expectation of probable harm to the City’s teleconferencing communications system from disclosure of the Teleconference Information. Disclosing the Teleconference Information would create a real risk of unauthorized individuals potentially accessing City teleconferences involving the City Manager. In addition, the affidavit evidence of the City’s Chief Information Officer describes in detail how the City’s teleconference system operates, and how the withheld information could be used to harm the security of the system if disclosed, beyond the obvious risk of unauthorized access to City teleconferences. I find s. 15(1)(l) applies to the withheld information.

Disclosure harmful to personal privacy — s. 22

[13] The City relies on s. 22 of FIPPA to withhold telephone numbers, Personal Appointments, and Employee Information. The Applicant did not make a submission on the application of s. 22 to the records except to recite without comment s. 22(4).

[14] Section 22 of FIPPA applies to “personal information”, which is recorded information about an identifiable individual other than contact information. Contact information is defined as “information to enable an individual at a place

⁷ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 54 citing *Merck Frosst*.

⁸ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 54 citing *Merck Frosst* at paras. 197 and 199.

⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 54 citing *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53 (CanLII), at para. 40.

¹⁰ 2012 BCSC 875 (CanLII), at para. 43. Bracken J. also refers to *Merck Frosst* (supra) in support.

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”.¹¹

[15] The City is withholding three telephone numbers under s. 22. The City’s evidence, based on a failure to find the phone numbers listed publically after an internet search and a reverse look up inquiry, is that these telephone numbers are not publically available. However, in my view, whether the numbers can be located in a public forum is not determinative of whether they are contact information. More important for determining whether a telephone number is contact information for the purposes of FIPPA is whether, in context, the parties intend the information to be used to enable them to be contacted for business purposes.¹² The phone numbers appear in the context of appointments where all or almost all the information listed for that appointment has already been disclosed, because the appointment forms part of the City Manager’s work activities. The context in which the information appears strongly suggests that the telephone number has been provided by the third party in the ordinary course of conducting business with the City Manager, to enable the City Manager to contact the third party. Therefore, the telephone numbers comprise information to enable the third party to be contacted by the City Manager to conduct their business affairs. Accordingly, I conclude that the telephone numbers are contact information as defined in FIPPA and therefore not personal information.

[16] The remaining information withheld under s. 22 is the Personal Appointments and the Employee Information. This information is about the City Manager, City employees and other third parties, and is clearly not contact information. I therefore find that it is the personal information of these individuals. No factors in s. 22(4) apply to the information.

[17] The City Manager’s affidavit evidence is that all of the Personal Appointments do not relate to her role with the City and were personal in nature.¹³ Disclosure of some of the Personal Appointments information is presumed to be unreasonable because it falls within s. 22(3)(a).¹⁴ There are no factors in favour of rebutting the presumption where it applies or generally in favour of disclosure of the Personal Appointments. I am satisfied from my review of the information that the Personal Appointments are unrelated to the City Manager’s work function and relate to her personal affairs. It would be an unreasonable invasion of the City Manager’s personal privacy to disclose the Personal Appointments.

¹¹ Schedule 1 of FIPPA.

¹² See also Order F14-45, 2014 BCIPC 48 (CanLII) at para. 41.

¹³ Affidavit of City Manager at para 2.

¹⁴ Information that relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[18] The Employee Information in the Agendas is about third parties' birthdays. While the information appears in the Agenda as a consequence of the City Manager's employment, I am satisfied that the information is personal in nature and not relevant to any legitimate scrutiny of the City Manager's work functions. The information is not subject to any presumptions in s. 22. I am not aware of any factors in favour of disclosure of the information. Given the personal nature of the information, and that it does not further scrutiny of the City Manager's work functions, I am satisfied that it would be an unreasonable invasion of the third party's personal privacy to disclose the information.

[19] In conclusion regarding s. 22, I require the City to disclose the telephone numbers. However, it is required to refuse to disclose the personal appointments and employee information in the records.

CONCLUSION

[20] For the reasons given above, under s. 58 of FIPPA, I order that the City is:

- 1) authorized to refuse to disclose the information withheld under s.15(1)(l) of FIPPA;
- 2) required to disclose the telephone numbers withheld under s. 22 (highlighted in yellow in the copy of the records that will be provided to the City accompanying this Order); and
- 3) subject to 2), required to refuse to disclose the information withheld under s. 22.

[21] I order that the City is required to disclose the telephone numbers withheld under s. 22 by September 24, 2015, pursuant to s. 59 of FIPPA. The City must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the information it provides to the applicant.

August 12, 2015

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

OIPC File No.: F13-54804