OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F20-56

ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF THE PROVINCE OF BC

Elizabeth Barker
Director of Adjudication

December 15, 2020

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Summary: An applicant asked the public body for access to specific meeting records containing his personal information. The public body refused access to information under several FIPPA exceptions. The adjudicator found that ss. 13,14 and 22 applied to some of the information in dispute but s. 17 did not. The adjudicator ordered the public body to disclose a small amount of information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2), 13(3), 14, 17(1), 17(1)(c), 17(1)(d), 17(1)(f), 22(1), 22(4)(e), 22(3)(g), 22(2)(e), 22(2)(f) and 22(2)(h).

INTRODUCTION

[1] On December 4, 2018, the applicant requested the public body, the Association of Professional Engineers and Geoscientists of the Province of BC (Association), provide him access to all records containing his personal information pertaining to two specific Association council meetings. The Association disclosed records but withheld some information under ss. 13 (advice or recommendations), 14 (legal advice), 15(1)(a) (harm to law enforcement), 17 (harm to public body's financial or economic interests) and 22 (harm to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Association's decision. Mediation did not resolve the dispute and it proceeded to inquiry.

Preliminary matter

[3] In its initial submission, the Association explains that it is no longer refusing to disclose information under s.15(1)(a). Instead, it is only refusing access to that information under s. 13.[1] Therefore, s. 15(1)(a) is no longer an issue in this inquiry.

ISSUES

[4] The issues to be decided in this inquiry are:

1. Is the Association authorized under ss. 13, 14 and 17 to refuse to disclose the information in dispute?

2. Is the Association required under s. 22(1) to refuse to disclose the information in dispute?

[5] Section 57(1) of FIPPA states that the public body must prove that the applicant has no right to access the information in dispute under ss. 13, 14 and 17. However, s. 57(2) says that the applicant must prove that disclosure of any information about a third party would not be an unreasonable invasion of the third party's personal privacy under s. 22(1).

DISCUSSION

Background

[6] The Association regulates and governs the professions of engineering and geoscience in British Columbia under the authority of the *Engineers and Geoscientists Act* (EGA).[2] It is governed by a council of appointed and elected councillors (Council). The applicant was an Association member for a little over four years. His membership was cancelled as the result of disciplinary proceedings.

[7] There were also multiple legal proceedings between the applicant and the Association (and others) in the Supreme Court of British Columbia. Ultimately, the court declared the applicant to be a vexatious litigant and he was also jailed for contempt. The applicant also complained to the Law Society of BC about the Association's lawyers, but his complaint was dismissed.

[8] The applicant's submissions focus on his belief that he was wronged by the Association during the disciplinary proceedings and the subsequent legal

[1] The information is the titles of two reports on p. 10, 27 and 109 of the records. As per the Association's initial submission at paras. 24-25.
[2] *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116. This background comes from the affidavit of the Association's Director, Legislation, Ethics and Compliance (Director).

proceedings.[3] He says that he could have used the information in dispute during all of those proceedings. He also wants the information in order to proceed with his pending legal action against the Association and others.

[9] The applicant asks the OIPC to judge what took place during the Association's disciplinary proceedings, Law Society proceedings and in court. While I have reviewed what the parties say about those matters, they are outside my jurisdiction to decide under FIPPA.

Information at issue

[10] The information in dispute is in the following records:

- slides from a Council meeting presentation;
- emails between the Association's in-house and external lawyers and its staff, including the Association's Director, Legislation, Ethics and Compliance (Director);
- the Director's legal memorandum to Council;
- the Association's external lawyer's letter to Council;[4] and
- an Association staff member's cover email to the Council president with an attached annotated agenda.

Advice and recommendations, s. 13

[11] Section 13(1) says that the head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister. The purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny.[5] Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences about the advice or recommendations.[6]

Report titles

[12] The Association is refusing to disclose the titles applied to two information reports under s. 13. These titles appear on a slide used during a council meeting

[3] The applicant provided three submissions, dated July 21, 22 and 25, 2020.
[4] At para. 23 of its initial submission, the Association says that it has decided to disclose the four records which were attached to this letter. They are at pp. 44-104 of the records.
[5] *John Doe v. Ontario (Finance*), 2014 SCC 36 at paras. 45-51.
[6] Order 02-38, 2002 CanLII 42472 (BCIPC) and Order F10-15, 2010 BCIPC 24 (CanLII).

and in an annotated meeting agenda.[7] The Association says that the report titles "are sufficiently descriptive that they reveal topics and areas that were of concern to the Association's Council and therefore enable an individual to draw inferences about advice or recommendations sought or received by Council."[8] The Director says only that one of the reports was written by in-house legal counsel and that report does not relate to the applicant.[9]

[13] The applicant does not make any submission regarding s. 13.

[14] I find that the Association's arguments and evidence do not adequately explain how disclosing the titles for the two reports would reveal advice or recommendations. The titles are very generally worded and they reveal only the broad subject matter of the reports. The Association has not adequately explained how disclosing that information would reveal anything about the advice or recommendations provided about the matters the reports address.

Meeting agenda with cover email

[15] The Association has also relied on s. 13 to refuse access to parts of a council meeting agenda and part of the cover email that accompanied the agenda.[10] The Association says:

> Theses annotations "were developed by senior Association staff and provided to the Association's President in advance of the Council meeting. The annotations are comprised of advice and recommendations regarding the items on the agenda and the conduct of the meeting generally, including advice on how to most effectively and efficiently introduce, characterise and discuss agenda items, to facilitate an effective meeting and to foster Council's decision-making process.[11]

[16] The Director says that he has reviewed the meeting agenda and the annotations were developed by senior Association staff.[12]

[17] I find that disclosing the information withheld from the cover email would not reveal advice or recommendations. That information is in the header of the email, specifically the "subject", "date" and "attachment" information. I note that the information in the attachment line of the header has already been disclosed

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[7] On p. 10 of the records (duplicate on p. 27) and 109. Initially, the Association withheld these titles under ss. 13, 14 and 15(1)(a), but it says that it is now only relying on s. 13 (as per Association's initial submission at paras. 24-25).
[8] Association's initial submission at para. 47.
[9] Director's affidavit at para. 27. He does not identify which of the two reports he means.
[10] The email is on p. 105 and the agenda is on pp. 106-116.
[11] Association's initial submission at para. 48.
[12] Director's affidavit at para. 28.

in the body of the email. The Association does not explain how disclosing the information in the cover email would reveal advice or recommendations.

[18] In addition, some of the information withheld from the agenda is headings and names of people scheduled to present items during the meeting, which I find are statements of fact that do not reveal advice or recommendations.

[19] However, I find the balance of the information in dispute in the agenda is advice and recommendations to the Association's president about the procedure to follow when conducting the meeting and a proposed script of what to say to keep the processes moving along.

[20] I have also considered if ss. 13(2) or 13(3) apply to the annotated agenda information that I find reveals advice or recommendations.[13] A public body must not refuse to disclose under s. 13(1) information that falls into the categories listed in s. 13(2). Section 13(3) says information that has been in existence for more than 10 years may not be withheld under s. 13(1). I find that none of the categories in s. 13(2) apply, and the information is only two to three years old so s. 13(3) does not apply. Therefore, the Association has proven that it is authorized to refuse to disclose this information under s. 13(1).

Solicitor client privilege, s. 14

[21] Section 14 of FIPPA states that the head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege. Section 14 encompasses both legal advice privilege and litigation privilege. The Association argues that legal advice privilege applies to the information it is withholding under s. 14. It does not say that litigation privilege applies.

[22] When deciding if legal advice privilege applies, BC Orders have consistently applied the following criteria:

1. there must be a communication, whether oral or written;
2. the communication must be of a confidential character;
3. the communication must be between a client (or his agent) and a legal advisor; and
4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

[23] Not every communication between client and solicitor is protected by solicitor client privilege. However, if the conditions set out above are satisfied,

[13] Neither party made submissions about ss. 13(2) or 13(3).

then legal advice privilege applies to the communications and the records relating to it.[14]

Association's submission

[24] The Association did not provide the information that it is withholding under s. 14 for my review. The Association's Director provides an affidavit describing the s. 14 information. He explains that he is the Association's senior in-house legal counsel and his role includes providing legal advice to the Association, supervising the legal department and the other legal counsel employed by the Association, and supervising investigation and discipline processes. He says that he has reviewed the records severed under s. 14. His evidence about those records is as follows:

- Three emails are between the Director and a law firm about the Association retaining a lawyer at that firm for the Association's discipline proceedings against the applicant. Also, a fourth email is from the Director to the Association's Legislation, Ethics and Compliance department instructing them about the retention of the external lawyer and the steps that needed to be taken to enable her to represent the Association. He says that these emails directly relate to seeking legal advice from the external lawyer and providing legal advice to the Association staff.[15]

- One email is from the Association's in-house legal counsel to the Director and the Association's senior staff containing the in-house counsel's advice about the Association's legal obligations. Another email is from a senior staff member to two other staff forwarding and discussing the in-house counsel's advice. The Director says these emails contain the in-house counsel's legal advice and discussion of that advice.[16]

- There are seven emails in which the Director, and a staff member acting on the Director's behalf, made inquiries of another staff member for the purpose of enabling the Director to provide legal advice to the Association regarding council meetings and the applicant's discipline proceedings. He says these emails contain his legal advice or directly relate to his formulating and giving that legal advice.[17]

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[14] *R. v. B.,* 1995 CanLII 2007 (BCSC) at para. 22; *Canada v. Solosky*, 1979 CanLII 9 (SCC) at p. 13; *R. v. McClure*, 2001 SCC 14 at para. 36; *Festing v. Canada (Attorney General)*, 2001 BCCA 612 at para. 92.
[15] Director's affidavit at para. 17
[16] Director's affidavit at paras. 18.
[17] Director's affidavit at paras. 19.

- Nine emails are between various combinations of the Director, two other staff, the external counsel and her legal assistant about the applicant's discipline proceedings. The Director says these emails contain external counsel's legal advice to the Association and directly relate to seeking legal advice from the external counsel and from the Director.[18]

- Another email is from the Director to a staff member in relation to an Association council meeting. He says the email was directly related to formulating his legal advice for the Association.[19]

- There is also a "confidential legal memorandum" written by the Director for the Association's council regarding the discipline proceedings against the applicant. He says he wrote the memorandum in his capacity as the Association's legal advisor. Attached to the memorandum is a letter from the external legal counsel concerning the applicant's disciplinary matter. He says that the memorandum and the letter contain legal advice from the Director and external legal counsel to the Association.[20]

[25] The Director says that he understands that the Association has not waived privilege over the above records and they have been maintained in confidence by the Association.

[26] The applicant disputes that any of the information is protected by privilege because it was "not involved in a court case" and it was handled by lawyers inside the Association. He says, "I have filed complaints against lawyers and member of the law society of BC who work as employees of the [Association] which were dismissed because as the law society states they worked not in their capacity as a lawyer for the [Association]."[21]

[27] I accept the Director's evidence and based on it find that the Association has proven that the information it is refusing to disclose under s. 14 is protected by legal advice privilege. I am satisfied that the communications between the Association and its lawyers took place when the lawyers were acting in their capacity as legal counsel and that the communications were about the provision of legal advice. I also accept that the communications were intended to be confidential between the Association and its lawyers. There is nothing to indicate that the legal advice provided by the lawyers was not maintained in confidence within the Association when staff shared or discussed it amongst themselves.

[18] Director's affidavit at paras. 20.
[19] Director's affidavit at paras. 21.
[20] Director's affidavit at paras. 23-24.
[21] Applicant's July 21, 2020 submission.

[28] The applicant argued that privilege cannot apply to the communications that involve the Association's in-house legal counsel.

[29] Whether solicitor client privilege applies to communications between a public body and its in-house legal counsel, depends on the nature of the relationship, the subject matter of the advice, and the circumstances in which it is sought and rendered.[22] The Supreme Court of Canada has said, "owing to the nature of the work of in-house counsel, often having both legal and non-legal responsibilities, each situation must be assessed on a case-by-case basis to determine if the circumstances were such that the privilege arose.[23]

[30] I accept the evidence provided by the Director that the in-house lawyer was acting in the role of a lawyer providing legal advice in confidence to the Association respecting the records and information in dispute in this inquiry. The applicant's argument about what the Law Society of BC may have said about law society members not acting as lawyers when working for the Association is lacking in specificity and supporting detail, and I am not satisfied that it even relates to the records and information in dispute in this inquiry. I find his evidence about that to be unpersuasive.

[31] I disagree with the applicant's argument that privilege only protects information and records involved in a court case. Solicitor client privilege applies to confidential communications between lawyer and client "whether or not litigation is involved".[24] Connection to a court case is not a requirement for legal advice privilege as stated in the test (see above at paragraph 22). As long as the communication meets all the elements of the test, legal advice privilege applies.

[32] In summary, I find that the Association has established that it is authorized by s. 14 to refuse to disclose all of the information it asserts is protected by solicitor client privilege.

Harm to financial or economic interests, s. 17

[33] The Association is relying on ss. 17(1)(c), (d) and (f) to refuse access to four slides from a Council meeting presentation.[25] The slides are essentially identical. The applicant did not make any submissions regarding s. 17.

[34] The parts of s. 17 that are relevant in this case state:

> 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

[22] *R v. Campbell*, 1999 CanLII 676 at para. 50.
[23] *Pritchard v. Ontario (Human Rights Commission),* 2004 SCC 31 at para. 20.
[24] *R. v. Mitchell*, 2018 BCCA 52 at para. 31.
[25] On pp. 14, 15, 32 and 33 of the Records.

> 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:
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> …
> (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;
> …
> (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[35] To rely on s. 17 a public body must establish that disclosure of the information 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. Subsections 17(1)(a) to (f) are examples of information that may result in harm under s. 17. Past orders have said that subsections 17(1)(a) to (f) are not stand-alone provisions and even if information fits within those subsections, a public body must also prove the harm described in the opening words of s. 17.[26] Therefore, regardless of the type of information, the overriding question will always be whether disclosure of the information 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 the government to manage the economy.

[36] The standard of proof for s. 17, which uses the language "could reasonably be expected to harm", is a middle ground between that which is probable and that which is merely possible. A public body must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to meet the standard. The determination of whether the standard of proof has been met is contextual. 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."[27]

[37] The Association's full submission regarding s. 17 is as follows:

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[26] See for example: Order F05-06, 2005 CanLII 11957 (BC IPC) at para 36; Order F10-39, 2010 CanLII 77325 (BC IPC) at para. 32–34; Order F11-14, 2011 BC IPC 19 at paras. 47–48. Order F12-02 2012, BCIPC 2, at para. 42.

[27] All principles and quotes in this paragraph are from *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54, citing *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3.

> The Association has applied section 17 of FIPPA to redact 4 slides, each of which are nearly identical and none of which relate to the Applicant (the "Section 17 Slides").
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> The Section 17 Slides identify plans relating to the administration of the Association that have not been made public to date, which engages the consideration at section 17(c) of FIPPA. The Section 17 Slides relate to long-term planning and the premature disclosure of their subject matter could harm the negotiating position of the Association relative to other parties, which engages the considerations at sections 17(d) and 17(f) of FIPPA.
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> The potential harm that would be suffered as a result of the disclosure of the Section 17 Slides is not merely speculative. In his affidavit, [the Director] has indicated that he is aware of at least one external party that has expressed a competing interest in the resources or assets to which the Section 17 Slides relate.[28]

[38] The Director says:

> I am familiar with the project or initiative that is the subject of the redacted information on the Section 17 Slides. Although certain of the Association's staff and some third parties are likely aware of this project or initiative, to my knowledge, the Association has not made knowledge of this project or initiative available to the public generally.
>
> It could harm the negotiating position of the Association in relation to certain resources or assets if competitors for those same resources or assets became aware that the Association was exploring the subject matter of the Section 17 Slides. I have heard of at least one external party that expressed a competing interest in the resources or assets to which the Section 17 Slides relate.[29]

[39] The applicant's submissions do not address s. 17.

[40] I have carefully considered the information withheld under s. 17, the Director's evidence and the Association's submissions about it. The information is about instructing staff to start work on an administrative matter. I find that it reveals, in a very general way, a plan that relates to the administration of the Association. However, the Association's submissions and evidence do not adequately explain how disclosing the information could reasonably be expected to harm its financial or economic interests. It does not say what its financial or economic interests are. It also does not identify what resources, assets, competitors or negotiating position it is talking about. There is nothing in the slides that I can see that would reveal anything about those things.

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[28] Association's initial submission at paras. 50-52.
[29] Director's affidavit at paras. 30-31.

[41] In conclusion, I find that the Association has not established that disclosing the information in the four slides could reasonably be expected to cause the s. 17 harms the Association claims.[30]

Unreasonable invasion of third party personal privacy, s. 22

[42] Section 22 requires public bodies to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.[31]

[43] The Association provided submissions about s. 22, but the applicant did not.

[44] The first step in a s. 22 analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." Contact information is defined as "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."[32]

[45] I find that some of the information the Association withheld under s. 22 is not personal information because it is not about an identifiable individual but is, for example, about an administrative step.[33] Other information is not personal information because it is contact information in email header and signature blocks and a meeting agenda.[34] The Association is not authorized or required to refuse to disclose this information under s. 22 because it is not personal information.

[46] I find that the balance of the information that the Association is refusing to disclose under s.22 is personal information because it is as follows:

- a greeting in an email that identifies by name the Council member who is the recipient of the email;[35]

[30] Records on pp. 14, 15, 32 and 33.
[31] Schedule 1 of FIPPA says: "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.
[32] See Schedule 1 of FIPPA for the definitions of personal information and contact information.
[33] Records on pp. 4, 6 (duplicate p. 23) and 9 (duplicate p. 26).
[34] Records on pp. 105 and 106.
[35] Records on p. 105.

- the name of Council members and Association staff that are identified in the meeting agenda as designated to speak about certain topics;[36]
- the name and gender of an individual who did not participate in part of a meeting due to a declared conflict of interest;[37] and
- the name of an individual who was nominated for an award. The nomination is recorded in a Council motion in the meeting agenda. [38]

Not an unreasonable invasion, s. 22(4)

[47] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If so, disclosing it would not be an unreasonable invasion of third party personal privacy. The Association says that s. 22(4) does not apply to the information. I disagree and find that s. 22(4)(e) applies to some of the personal information.

[48] Section 22(4)(e) says that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if 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. Previous orders have found that s. 22(4)(e) encompasses personal information that relates to the individual's job duties in the normal course of work-related activities, such as objective, factual statements about what the individual did or said in the usual course of discharging their job duties, but not qualitative assessments or evaluations of such actions.[39]

[49] I find that s. 22(4)(e) applies to the greeting in an email that identifies by name the Council member who is the recipient of the email. The context for the greeting is a mundane administrative exchange of information. I also find that s. 22(4)(e) applies to the names of the Council members and Association staff who are identified on the meeting agenda as designated to speak. The individuals' names all appear in the context of carrying out their work functions, specifically addressing the Council during meetings. Their names do not appear in a context that suggests any judgement about them or their work. Given that s. 22(4)(e) applies to this information, the Association is not authorized or required to refuse to disclose it under s. 22.

[50] However, I find that s. 22(4) does not apply to the name and gender of the individual who did not participate in part of a meeting due to a declared conflict of interest, or the name of an individual who was nominated for an award.

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[36] Records on pp. 108, 109, 113, 114, 115 and 116.
[37] Records on p. 4. This person's identity also appears on p.108 but I found that s. 13 applied to it in that context.
[38] Records on p. 9 (duplicate p. 26).
[39] Order 01-53, 2001 CanLII 21607 (BC IPC) at para 40.

Presumptions, s. 22(3)

[51] The third step in the s. 22 analysis is to determine whether s. 22(3) applies to the personal information to which s. 22(4) does not apply. If so, disclosing that personal information is presumed to be an unreasonable invasion of third party personal privacy.

[52] I find that s. 22(3)(g) applies to the name of the individual nominated by the Council for an award. Section 22(3)(g) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party. In my view, nominating a third party for an award is a form of personal recommendation and evaluation about the third party.

[53] I find that no s. 22(3) presumptions apply to the name and gender of the person who did not participate in part of the meeting due to a declared conflict of interest.[40]

Relevant circumstances, s. 22(2)

[54] The fourth step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those in s. 22(2). It is at this step that any applicable s. 22(3) presumptions may be rebutted. The s. 22(2) factors that play a role in this case are as follows:

> 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
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> …
>
> (e) the third party will be exposed unfairly to financial or other harm,
>
> (f) the personal information has been supplied in confidence,
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> …
>
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and
>
> …

[55] The Association submits that s. 22(2)(f) applies to the information about the third party's declaration that they were in a conflict of interest with respect to a matter to be discussed at the portion of the Council meeting that was closed to the public. The Association says that this conflict of interest declaration was made in confidence.[41]

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[40] The Association did not argue that s. 22(3) applied to that personal information.
[41] Association's initial submission at para. 39.

[56] The Association also says that ss. 22(2)(e) and (h) apply for the following reasons:

> The Applicant shows little if any regard for the impact of his comments and correspondence on third parties, even in the face of a Court order directing him to restrain his communication. The Applicant has repeatedly made parties who are in some way associated or connected with the Association or APEGA [Association of Professional Engineers and Geoscientists of Alberta] the subject of his unfounded allegations of corruption, coverup, harassment, and other criminal activity, none of which have been substantiated by any body. His actions have the potential to create great expense and stress for the parties he targets.
>
> … There is a genuine risk that had the Association not redacted the names and titles of third parties from its disclosure to the Applicant, those third parties would have been exposed to harm, a consideration recognized in section 22(2)(e) of FIPPA. The potential harm could have been both financial, in terms of the cost of responding to actions taken or complaints made by the Applicant, or non-financial, in the form of stress and other mental health consequences in the event that the Applicant involved those third parties in narratives containing unfounded allegations.
>
> There is also a genuine risk that disclosing third party names to the Applicant would have unfairly damaged the reputations of those third parties, a consideration recognized in 22(2)(h), again because of the realistic prospect that the Applicant would then have involved those third parties in narratives containing unfounded allegations.[42]

[57] I have considered s. 22(2)(f) and whether the personal information about the person nominated for the award and the person who had the conflict of interest was supplied in confidence. This personal information appears in the context of the "closed" portion of the meeting, which was not open to the public. There is no information to suggest that this information was disclosed beyond the confines of the closed portion of the meeting and not maintained in confidence. Given this context and the nature of the personal information, I am satisfied that it is personal information about third parties that was supplied in confidence.

[58] I have also considered the fact that there is ample evidence (provided by both the applicant and the Association) that the applicant is very litigious. He has commenced multiple legal proceedings and the Supreme Court of BC declared him a vexatious litigant and jailed him for contempt of a court order. I am not persuaded, however, by the Association's arguments that his litigious behaviour would cause the type of impact in ss. 22(2)(e) or (h). That is because the identities of the award nominee and the person who was in a conflict pertain to meeting agenda items that have absolutely nothing to do with the applicant. The

[42] Association's initial submission at paras. 35-37.

evidence shows that the applicant's frequent litigation all relates to his own issues and concerns.

[59] Having considered all the relevant circumstances in this case, I find that the s. 22(3)(g) presumption that applies to the identity of the award nominee has not been rebutted. I also find that the s. 22(2)(f) factor that applies to the identity of the individual who was excused from the meeting due to a conflict of interest is sufficient to conclude that disclosure would be an unreasonable invasion of their personal privacy. The Association is required under s. 22(1) to refuse to disclose that information to the applicant.

CONCLUSION

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

1. Subject to paragraph 2 below, I confirm in part the Association's decision to refuse to disclose the disputed information under ss. 13 and 22.

2. The Association is not authorized or required by ss. 13 or 22 to refuse to disclose the information that I have highlighted on pages 4, 6, 9, 10, 23, 26, 27, 105, 106 and 108-116 of the records, which are provided to the Association with this order.

3. I confirm the Association's decision to refuse to disclose the disputed information under s. 14.

4. The Association is not authorized by s. 17 to refuse to disclose the disputed information on pages 14, 15, 32 and 33 of the records.

5. I require the Association to give the applicant access to the information described in paragraphs 2 and 4 above. The Association must also concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of those pages of records.

[61] Pursuant to s. 59(1) of FIPPA, the Association is required to comply with this order by January 29, 2021.

December 15, 2020

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

OIPC File No.: F19-78595