



Order F21-67

## MINISTRY OF FINANCE

Erika Syrotuck  
Adjudicator

December 22, 2021

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**Summary:** The applicant made a request under the *Freedom of Information and Protection of Privacy Act* for a cabinet briefing note and candidate profile and declaration for a named individual within a specified date range. In response, the Ministry of Finance disclosed some information in the responsive record, but withheld other information under s. 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator found that s. 22(1) applied to some but not all of the information in dispute.

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

### INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Finance (Ministry) for the Board Resourcing and Development Office cabinet briefing note and candidate profile and declaration for a named individual within a specified date range.

[2] The Ministry provided one candidate profile and declaration form in response to the applicant's access request, but withheld some information under s. 22(1) (unreasonable invasion of a third party's personal privacy). The Ministry says that it could not locate a cabinet briefing note in the specified date range.<sup>1</sup>

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision to refuse access under s. 22(1). Mediation did not resolve the parties' dispute and the matter proceeded to inquiry.

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<sup>1</sup> Ministry's initial submissions at para. 14.

[4] The named individual was invited to make submissions but declined to do so.

[5] At the inquiry, the Ministry reconsidered its decision and disclosed some information that it had previously withheld under s. 22.<sup>2</sup>

[6] This inquiry is part of a set of five about similar requests made by the applicant. While there is some overlap in my reasons, all of the inquiries have different facts. The companion orders are F21-66, F21-68, F21-69, and F21-70.

## **ISSUE**

[7] At this inquiry, I must decide whether the Ministry is required to withhold the information in dispute under s. 22(1). Under s. 57(2) of FIPPA, the burden is on the applicant to prove that disclosure of the information in dispute is not an unreasonable invasion of a third party's personal privacy. However, the public body has the initial burden of proving that the information is personal information.<sup>3</sup>

## **DISCUSSION**

### **Background<sup>4</sup>**

[8] The Board Resourcing and Development Office was created in 2001. At the time, it was housed in the Office of the Premier.

[9] After moving through various ministries and program areas,<sup>5</sup> the Board Resourcing and Development Office was moved to the Ministry of Finance and renamed the Crown Agencies and Board Resourcing Office in 2017 (I will refer to both iterations as the "Office"). The Office remains in the Ministry of Finance, but is now under the Crown Agency Secretariat.

[10] The Office oversees recruitment and recommendation of candidates for appointments to public sector organizations such as public post secondary institutions, health authorities, advisory boards, tribunals and certain types of Crown Corporations. In a similar vein, the Office assists public sector organizations in identifying the size, composition and key areas of skill and experience required for board and tribunal membership.

[11] Applicants for appointment to a public sector organization must complete a candidate profile and declaration form and submit it to the Office for

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<sup>2</sup> Ministry's initial submissions at para. 8.

<sup>3</sup> Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9-11.

<sup>4</sup> The background information comes from the Ministries initial submissions at paras. 17-26.

<sup>5</sup> The Office was part of Government Communications and Public Engagement in the Ministry of Advanced Education, for example. See Ministry's initial submissions at paras.19-20.

consideration. The general practice is that all appointees to public sector boards and tribunals are individuals who are independent of management and have no material interest in the organization.<sup>6</sup> Board and tribunal members must have the appropriate combination of skills, experience and personal attributes to support a public sector organization's mission.

[12] All board and tribunal appointments are officially approved, via an Order in Council, Minister's Order or Premier's letter, for example.

[13] Once appointed, the name, appointment term and biographical information of each director is published on the organization's website.

[14] I am satisfied that the named individual was successfully appointed as a member of a public sector organization (Organization).<sup>7</sup>

### **Record in dispute**

[15] The record at issue is a completed candidate profile and declaration form (Profile), submitted by the individual named in the applicant's access request (Candidate). The Profile includes the following sections:

- contact information;
- background;
- conflict of interest – disclosure statement;
- integrity and public accountability; and
- references.

[16] The Ministry has disclosed the headings, questions, and most of the template language on the Profile. The information in dispute is some of the information provided by the Candidate, which I describe in further detail below.

### ***Section 22 – unreasonable invasion of a third party's personal privacy***

[17] Section 22(1) requires a public body to refuse to disclose information to an applicant if disclosure would be an unreasonable invasion of a third party's personal privacy.

[18] The Ministry withheld the following information from the Profile under s. 22(1):

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<sup>6</sup> Unless the governing legislation specifies otherwise.

<sup>7</sup> The applicant provided a partial reference to a Ministerial Order in the access request. I was able to find the relevant Ministerial Order and based on this, I confirm that the individual was appointed as a member of the Organization.

- The Candidate's home and cellular telephone numbers, home address, email address and birth date;
- Some information about the Candidate's educational background and past employment;
- The Candidate's response to a question asking the Candidate to rate their ability to read and understand financial statements (self-assessed score);
- The Candidate's responses to some of the questions under the conflict of interest section of the Profile;
- All of the Candidate's responses to the questions in the integrity and public accountability section of the Profile; and
- The names, positions, addresses, home telephone numbers and business telephone numbers of the Candidate's references (reference information).

[19] The Ministry says it disclosed all information that is publicly available in biographies about the Candidate.<sup>8</sup>

*Personal information*

[20] Section 22 only applies to personal information. Therefore, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information.

[21] Schedule 1 of FIPPA provides the following definitions of "personal information" as well as "contact 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;

[22] In accordance with these definitions, if information is contact information, it is not personal information under FIPPA. Whether information is contact information depends on the context in which it appears.<sup>9</sup>

[23] The Ministry submits that the information in dispute is clearly not contact information as it is not information to enable individuals to be contacted in any sort of business context.<sup>10</sup>

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<sup>8</sup> Ministry's initial submissions at para. 48.

<sup>9</sup> Order F20-13, 2020 BCIPC 15 at para. 42.

<sup>10</sup> Ministry's initial submissions at para. 37.

[24] I have considered whether the reference information is contact information and I conclude that it is not. While the business phone numbers would allow the references to be contacted at their places of business, past orders, including recent orders, have found that information is only “contact information” for the purpose of FIPPA if, in the context of the record, it was used in the ordinary course of conducting the third party’s business affairs.<sup>11</sup>

[25] I find that the Candidate provided the reference information so that the Office could contact the references for the purpose assessing the Candidate’s suitability for a position with the Organization. In my view, providing such a reference is not part of the ordinary course of conducting the references’ business affairs and therefore the information is not “contact information.”

[26] As a result, I find that the reference information is personal information because it is identifiable information about the references and it is the Candidate’s personal information because it shows who they chose to be their reference. The rest of the information provided by the Candidate on the Profile is clearly identifiable information about them. The Candidate and their references are all third parties under FIPPA.<sup>12</sup>

[27] However, I find that additional template language that the Ministry has withheld under s. 22(1) is not personal information because it is not about an identifiable individual. For example, the template language asking for more details is not about anyone. Similarly, the template language specifying the pieces of information that the Candidate was required to provide about their references is not about an identifiable individual. Since this information is not personal information, s. 22(1) does not apply.

[28] I now turn to whether disclosure of the personal information in dispute is an unreasonable invasion of a third party’s personal privacy.

#### *Section 22(4)*

[29] Section 22(4) sets out circumstances where disclosure is not an unreasonable invasion of a third party’s personal privacy. If any of the circumstances in s. 22(4) apply to the personal information in dispute, the public body is required to give the applicant access to that information.

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<sup>11</sup> Order F15-32, 2015 BCIPC 35 at para. 15; Order F20-52, 2020 BCIPC 61 at paras. 25-26; Order F20-08, 2020 BCIPC 9 at para. 52. See also Order F14-07, 2014 BCIPC 8 at para. 48 and F18-42, 2018 BCIPC 45 at para 10; these orders do not use language similar to “ordinary course of conducting the third party’s business affairs” but I find the reasoning to be consistent.

<sup>12</sup> Schedule 1 of FIPPA says that a third party, in relation to a request for access to a record means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

Section 22(4)(e) – positions, functions and remuneration of an officer, employee or member of a public body

[30] The applicant submits that s. 22(4)(e) applies. Section 22(4)(e) states that disclosure is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, function or remuneration as an officer, employee or member of a public body or as a member of the minister's staff.

[31] The applicant submits that it is self-evident that the Profile is about the Candidate's position, functions or remuneration as a member of a public body.<sup>13</sup>

[32] The Ministry submits that it was careful to disclose any information about a third party's position, function or remuneration as an officer, employee or member of the public body or as a member of a minister's staff.<sup>14</sup> The Ministry says that the withheld information does not include information about the functions or responsibilities of the position with the Organization.<sup>15</sup>

[33] The applicant's argument appears to be about the nature of the Profile as a whole. However, s. 22 is about information, not records. The Ministry has only withheld one item describing the Candidate's professional and employment background and it is not about the Candidate's position, functions or remuneration as an officer, employee or member a public body or a Minister's staff. I accept the Ministry's position that any information of this sort has already been disclosed.

[34] I find that s. 22(4)(e) does not apply to the personal information in dispute.

*Section 22(3)*

[35] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The next step in the analysis is to consider whether any of the circumstances apply. The Ministry submits that ss. 22(3)(a), (d), (f) and (g) apply and I will consider each in turn.

Section 22(3)(a) – medical, psychiatric or psychological history

[36] Section 22(3)(a) creates a presumption that disclosure of personal information relating to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is an unreasonable invasion of a third party's personal privacy.

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<sup>13</sup> Applicant's response submissions at para. 30.

<sup>14</sup> Ministry's initial submissions at para. 41.

<sup>15</sup> Ministry's reply submissions at para. 10.

[37] The Ministry submits that s. 22(3)(a) applies to a question on the profile which asks whether a candidate has any kind of disability that would affect the candidate's ability to serve as a board member and if so, whether the candidate requires an accommodation.<sup>16</sup>

[38] In my view, s. 22(3)(a) plainly applies to information revealing whether or not a candidate has a disability. Therefore, disclosure of this information is presumed to be an unreasonable invasion of the Candidate's personal privacy.

Section 22(3)(d) – employment, occupational or educational history

[39] Under s. 22(3)(d), disclosure of a third party's employment, occupational or educational history is presumed to be an unreasonable invasion of that third party's personal privacy.

[40] The Ministry submits that s. 22(3)(d) applies to information about the Candidate's educational background, professional and employment background and the Candidate's self-assessed score of their ability to read financial statements.<sup>17</sup> As previously mentioned, the Ministry says that it has disclosed information that appears in the Candidate's publicly available biographies.<sup>18</sup>

[41] In my view, the information about the Candidate's educational background and professional and employment background clearly relates to the Candidate's educational and employment histories, respectively.

[42] However, I do not see how the Candidate's self-assessed score of their ability to read a financial statement relates to their employment, occupational or educational history under s. 22(3)(d). For example, this information in the context of the Profile does not relate to a particular past employment or educational endeavour. The question simply asks the Candidate to rate their ability on a scale of one to ten.<sup>19</sup>

[43] For these reasons, I find that s. 22(3)(d) applies to the information about the Candidate's educational background and the Candidate's professional and employment background. As a result, disclosure of this information is presumed to be an unreasonable invasion of the Candidate's personal privacy.

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<sup>16</sup> Ministry's initial submissions at para. 45.

<sup>17</sup> *Ibid* at para. 47.

<sup>18</sup> *Ibid* at para. 48.

<sup>19</sup> I note that the Candidate has hand-written comments near the self-assessed score, however they do not appear to have anything to do with the Candidate's ability to read financial statements. These comments have been disclosed.

Section 22(3)(f) – third party’s finances

[44] The Ministry submits that s. 22(3)(f) applies to the answers to several questions on the Profile. Section 22(3)(f) presumes that disclosure of personal information that describes a third party’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness is an unreasonable invasion of that third party’s personal privacy.

[45] First, the Ministry argues that s. 22(3)(f) applies to the answer to a question in the conflict of interest section. That question asks whether a conflict may arise because the Candidate, their associates, or any trustee or nominee on their behalf, owns or possesses, directly or indirectly, any interests (i.e. shares, businesses or properties).<sup>20</sup>

[46] I accept that information identifying a Candidate’s interests of this kind would describe their assets within the meaning of s. 22(3)(f). However, I cannot say anything that would confirm or deny whether the Candidate did provide information about their interests because that would disclose the personal information in dispute. For this reason, all I can say is that I have determined whether the presumption applies and weighed it accordingly.

[47] Second, the Ministry argues that some of the questions in the integrity and public accountability section of the Profile reference the Candidate’s financial history. For example, the Ministry points to a question that is part of a set of questions and asks whether a candidate<sup>21</sup> has been charged with or convicted of an offence under a “federal statute including the *Income Tax Act*, the *Controlled Drugs and Substances Act*, or others.” The Ministry also submits that the answers to the questions in the integrity and public accountability section are interrelated, such that disclosure of one response could indirectly lead to disclosure of another.<sup>22</sup>

[48] The question that the Ministry identified mentions the *Income Tax Act* as an example; however, the question is about a charge or conviction under any federal statute. In other words, an affirmative answer could indicate a charge or conviction that is not necessarily under the *Income Tax Act* or a federal statute that has anything to do with a candidate’s finances. Therefore, I am not satisfied that the Candidate’s response to this question would reveal anything about the Candidate’s financial history or otherwise describes any of the items under s. 22(3)(f).

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<sup>20</sup> Question 9(b) on p. 6 of the records in dispute.

<sup>21</sup> Either in their personal capacity or as part of any company in which they have a direct or indirect controlling interest.

<sup>22</sup> Ministry’s initial submissions at para. 52.

[49] Without more, I am not satisfied that any of the remaining answers to the questions in the integrity and public accountability section describe the Candidate's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness under s. 22(3)(f). Nor do I see how the answers are interrelated, so that one response could indirectly lead to disclosure of another response.

[50] In addition, there is space below the questions to provide details, which the Ministry withheld. Without confirming or denying whether the Candidate provided details, I conclude that there is no personal information in this space that describes the Candidate's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness within the meaning of s. 22(3)(f).

[51] As a result, I find that s. 22(3)(f) does not apply to any information in dispute.

#### Section 22(3)(g) – personal recommendations

[52] Section 22(3)(g) creates a presumption where the information consists of personal recommendations or evaluations, character references or personnel evaluations of a third party.

[53] The Ministry argued that s. 22(3)(g) applies to the reference information.<sup>23</sup>

[54] The Ministry references Order 00-48 to support its position that reference check information falls under s. 22(3)(g).<sup>24</sup> However, I find Order 00-48 distinguishable from the present case because the information at issue in that case was the names of the references *and* their opinions about a third party.

[55] The information at issue in the present case does not include the references' opinions about the Candidate or any other information that is a personal recommendation or evaluation, character reference or personnel evaluation of a third party. Therefore, I conclude that s. 22(3)(g) does not apply.

#### *Section 22(2)*

[56] Section 22(2) says that when a public body decides whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some against. Relevant circumstances that weigh in favour of disclosure may rebut any applicable presumptions under s. 22(3).

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<sup>23</sup> *Ibid* at para. 54.

<sup>24</sup> *Ibid* at para. 55 citing Order 00-48, 2000 CanLII 14413 (BCIPC), at 3.2.

[57] I have considered several enumerated circumstances and some additional circumstances. I will discuss each circumstance in turn.

Section 22(2)(a)

[58] Section 22(2)(a) is about whether disclosure of the personal information in dispute is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Section 22(2)(a) recognizes that, where disclosure of the information in dispute would foster accountability, this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.<sup>25</sup> It is well established that the purpose of s. 22(2)(a) is to make public bodies accountable, not individual third parties.<sup>26</sup>

[59] The applicant says that there can be no more basic and important public scrutiny of a public body than knowing whether the directors of a publicly appointed board are law-abiding citizens who have no conflicts of interest.<sup>27</sup> The applicant says that British Columbians have a right to see a fulsome conflict of interest statement for anyone who is responsible for strategic direction, policy and spending of any public body. Further, the applicant submits that the people of BC have a right to know whether a person appointed to a board has been charged or convicted of an offence in any jurisdiction or otherwise been involved in any unethical behaviour that may harm their ability to work on behalf of the public.<sup>28</sup> The applicant says that, "if the public does not know, how can it have trust and confidence in the board, its decisions, and by extension, the government?"<sup>29</sup>

[60] The applicant also says that government board appointment processes tend to be controversial, due to the "tradition of rewarding political friends."<sup>30</sup> The applicant references some research on the topic, but it appears to be focussed on appointments by the federal government.<sup>31</sup>

[61] The Ministry says that disclosure of the personal information would at most subject the Candidate to public scrutiny. The Ministry says that past orders have held that information relating to an assessment of an individual's candidacy does not add anything meaningful to the public's understanding of its activities or whether the hiring practices are merit based.<sup>32</sup>

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<sup>25</sup> Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

<sup>26</sup> Order F18-47, 2018 BCIPC 50 at para. 32, for example.

<sup>27</sup> Applicant's response submissions at para. 28.

<sup>28</sup> *Ibid* at paras. 23 and 24.

<sup>29</sup> *Ibid* at para. 28.

<sup>30</sup> *Ibid* at para. 25.

<sup>31</sup> *Ibid* at para. 26.

<sup>32</sup> Ministry's initial submissions at paras. 58-62 and reply submissions at para. 13.

[62] The Ministry further says that it is the job of the Office to ferret out whether a candidate is suitable for a board position and that citizens do not have a right to see a conflict of interest statement or the answers to the integrity and public accountability sections of the Profile.<sup>33</sup>

[63] I see two distinct arguments about the applicability of s. 22(2)(a).

[64] The first is whether or not disclosure of any of the information in dispute is desirable for the purpose of scrutinizing the Office's process of recruiting and recommending candidates for appointment to public sector organizations.<sup>34</sup>

[65] Broadly speaking, I agree that personal information about the Candidate does not allow the public to scrutinize whether the Office's decision to recommend them for appointment to the Organization was merit based. This is particularly true because the personal information at issue is not about other applicants or the factors that led the Office to recommend this particular Candidate. My finding here is consistent with past orders on this issue.<sup>35</sup>

[66] As a result, I conclude that disclosure of the Candidate's personal information is not desirable for public scrutiny of the Office.

[67] The second argument I see is whether disclosure of any of the information about the Candidate's personal history and attributes, including any conflicts of interest, is desirable for subjecting the activities of the Organization to public scrutiny.<sup>36</sup>

[68] The Ministry withheld the answers to some questions under the conflict of interest section of the Profile. In my view, knowing whether or not the Candidate had any potential conflicts of interests with the Organization would foster accountability of the Organization. As a result, I find that s. 22(2)(a) is a circumstance weighing in favour of the information in dispute in the conflict of interest section.

[69] However, I do not think that disclosure of the answers to the integrity and public accountability questions would foster accountability of the Organization.

[70] In this regard, the applicant argued the public has a right to know about any unethical past behaviour of an appointee. I understand the applicant to be

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<sup>33</sup> Ministry's reply submissions at para. 11.

<sup>34</sup> I note that while the Office itself is not a public body, as previously mentioned, it is part of the Ministry of Finance, which is a public body under FIPPA. "Public body" is defined in Schedule 1 of FIPPA.

<sup>35</sup> Order F14-41, 2014 BCIPC 44 at para. 57, for example.

<sup>36</sup> I note that the Organization is a public body under FIPPA.

arguing that it would be desirable for the public to know the answers to the questions in the integrity and public accountability section of the Profile because past unethical behaviour may harm a candidate's ability to effectively serve the public as an appointee to a public sector organization.

[71] I do think that the higher up in an organization an individual is, the more the line between personal scrutiny and public body scrutiny becomes blurred. However, I am not persuaded that disclosure of the personal information in dispute is desirable for scrutiny of the Organization in the way the applicant suggests. I do not see enough of a link between information about past actions of the Candidate and the activities of the Organization. Without more, I am not satisfied that the Candidate's responses to the integrity and public accountability section of the Profile would assist the public in scrutinizing the actions of the Organization.

[72] In conclusion on point, I find that disclosure of the Candidate's responses to the questions in the conflict of interest of the Profile is desirable for public scrutiny of the Organization but the responses to the integrity and public accountability questions are not.

[73] My overall conclusion about s. 22(2)(a) is that disclosure of the responses to the conflict of interest questions are desirable for public scrutiny of the Organization. Therefore, I find that s. 22(2)(a) is a circumstance weighing in favour of disclosure of this information.

Section 22(2)(f) – supplied in confidence and expectation of public disclosure

[74] Under s. 22(2)(f), the public body must consider whether the personal information in dispute has been supplied in confidence. If it applies, this circumstance weighs in favour of withholding the information.

[75] The Ministry says that the information in dispute was supplied in confidence.<sup>37</sup> In support of its argument, the Ministry points to template language on the Profile that "all information provided to us will be considered as supplied in confidence." In addition, the Ministry points to several statements that indicate that the purpose of any disclosure of the Candidate's personal information is to assess their suitability for a position. For example, the Profile states the Office may disclose information to references or "such persons or organizations when such disclosure is necessary to evaluate my suitability for appointment."<sup>38</sup>

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<sup>37</sup> Ministry's initial submissions at paras. 63-67.

<sup>38</sup> *Ibid* at para. 65.

[76] I do not think that the template language, on its own, is a strong indicator of the Candidate's subjective expectation of confidentiality. However, combined with the types of information the Candidate was required to provide on the Profile, I agree that the Candidate would have had some expectation that the information would not be shared other than for the specified purpose of assessing the Candidate's suitability for a position. Therefore, subject to one exception which I detail below, I find that the information in dispute was supplied in confidence in accordance with s. 22(2)(f) and that it is a relevant circumstance weighing in favour of withholding the information.

[77] I am not satisfied, however, that the Candidate supplied their background information in confidence. The Profile states that the Office may publish a biography that contains some or all of the information in certain sections of the Profile including the Candidate's educational background and professional and employment background.<sup>39</sup> Therefore, the Candidate would have expected that any of this information could be shared publicly. Therefore, I find that s. 22(2)(f) is not a relevant circumstance with regards to this information. Further, I find that the fact that the Candidate supplied their background information with the expectation that it could be shared publicly is its own relevant circumstance, weighing in favour of disclosure.

#### Section 22(2)(h) – unfair damage to reputation

[78] Under s. 22(2)(h) the public body is required to consider whether disclosure of the personal information would unfairly damage the reputation of any person referred to in the record requested by the applicant. Where s. 22(2)(h) applies, it weighs in favour of withholding that information.

[79] The Ministry argues that the Candidate's responses to some of the integrity and public accountability questions could, depending on the answers, unfairly damage the Candidate's reputation.<sup>40</sup> These questions ask whether the Candidate has been charged or convicted of a crime, disciplined by a professional association, had any improper dealings with government or promoted hate, for example.

[80] I accept that, depending on the information in dispute, the answers to these questions may damage a Candidate's reputation, given their serious nature. However, for s. 22(2)(h) to apply, any damage to reputation must also be unfair. Whether any damage is unfair depends on the specific information in dispute and any relevant factual circumstances.

[81] Based on the information before me, I conclude that there is no information in dispute that would, if disclosed, unfairly damage the reputation of

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<sup>39</sup> *Ibid* at para. 68.

<sup>40</sup> *Ibid* at para. 67.

any person referred to in the records requested by the applicant. I therefore conclude that s. 22(2)(h) does not apply. I cannot provide further details without revealing the information in dispute.

### Sensitivity

[82] Sensitivity is not an enumerated factor under s. 22(2), however, many past orders have considered it as a relevant circumstance. Where information is sensitive, it is a circumstance weighing in favour of withholding the information.<sup>41</sup> Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.<sup>42</sup>

[83] The Ministry submits that some of the information is highly sensitive. For example, the Ministry says that personal information about potential conflicts of interest, whether an individual has been charged or convicted of an offence, or exercised unethical behaviour is highly sensitive personal information.<sup>43</sup>

[84] I understand the Ministry to be arguing that the information in dispute under the conflict of interest and the integrity and public accountability sections of the Profile is sensitive, and therefore that this should weigh in favour of withholding the information. I will consider each section separately, starting with the integrity and public accountability section.

[85] In my view, the questions in the integrity and public accountability section of the Profile clearly ask about sensitive matters, such as whether a candidate has been charged or convicted of an offence under the *Criminal Code*, promoted hate or has had any improper dealings with government.<sup>44</sup>

[86] While I think that the degree of sensitivity depends on the specific information provided, I think that the responses to some questions are at least somewhat sensitive regardless of the response provided. For example, an affirmative answer to a question about a criminal charge or conviction along with extensive details would almost certainly be more sensitive than a negative answer with no details. However, a negative answer to the same question is still somewhat sensitive because of the nature of the question.

[87] Therefore, I find this is a factor weighing in favour of withholding the information in the integrity and public accountability section of the Profile, but explaining the exact degree to which I find the information to be sensitive could disclose the information in dispute, so I decline to do so.

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<sup>41</sup> Order F19-15, 2019 BCIPC 17 at para. 99, for example.

<sup>42</sup> Order F16-52, 2016 BCIPC 58 at para. 91, for example.

<sup>43</sup> Ministry's reply submissions at para. 14.

<sup>44</sup> The question does not specify which level or type of government.

[88] Turning to the conflict of interest section, as I mentioned earlier, the Ministry has withheld the responses to some questions in this section. I acknowledge that the Ministry says that information about conflicts of interests is sensitive but it has not provided an adequate explanation about why these particular responses are sensitive. In my view, this information is not sensitive.

[89] With regards to the other information in dispute, I find that some of it is not sensitive. As previously mentioned, the self-assessed score is just a numerical score of the Candidate's self-rated ability without any further explanation. I find that it is not sensitive.

[90] Finally, I find that an individual's date of birth is sensitive because it is often used to verify their identity.<sup>45</sup>

[91] I conclude that the sensitivity of the information is a relevant factor for some of the information in dispute, in some cases weighing for, and in some cases weighing against disclosure.

#### Effect on future candidates

[92] The Ministry submits that the potential for the information in the conflict of interest and integrity and public accountability sections of the Profile to be publicized may deter potential qualified and deserving applicants from applying.<sup>46</sup> This kind of argument is referred to as a "chilling effect."

[93] I do not think the effect on future candidates is a relevant circumstance in the present case. My task in this inquiry is to determine whether disclosure of the specific information in dispute would be an unreasonable invasion of the Candidate's personal privacy. I do not think what a hypothetical future candidate may or may not do is relevant to this determination.

[94] In addition, the provisions of s. 22 itself should assuage this concern. This section only requires disclosure of information if it is not an unreasonable invasion of a third party's personal privacy. My decision is based on the specific information in dispute in this case. Future decisions about other profiles will be decided based on the information and circumstances of those cases.

[95] As a result, I find that the effect on future candidates is not a relevant circumstance.

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<sup>45</sup> For similar findings see Order P09-01, 2009 CanLII 38705 (BCIPC) at para 117 and Order F19-37, 2019 BCIPC 41 at para. 59.

<sup>46</sup> Ministry's reply submissions at para. 20.

*Conclusion on s. 22*

[96] After taking all of the above into account, I find that s. 22 applies to some but not all of the personal information in dispute. My conclusions about the specific personal information in dispute are as follows.

[97] First, I find that s. 22(1) applies to the Candidate's home and cellular telephone numbers, home address, email address and birth date and the reference information. No presumptions apply, and I found this information was supplied in confidence. In addition, I found that the Candidate's birth date was sensitive. There are no factors that weigh in favour of disclosure.

[98] In addition, I find that disclosing the answers to the questions in the integrity and public accountability section of the Profile would unreasonably invade the Candidate's personal privacy. The information was supplied in confidence and is sensitive. In addition, s. 22(3)(a) applies to information about whether or not a candidate has a disability that may affect their ability to serve as a board member.

[99] However, I find that disclosure of the rest of the information would not be an unreasonable invasion of the Candidate's personal privacy under s. 22(1).

[100] Specifically, I find that disclosing the personal information about the Candidate's educational background and the Candidate's professional and employment background would be not be an unreasonable invasion of their personal privacy. As noted, this information was subject to s. 22(3)(d), however, the Candidate supplied it with the knowledge that it could be shared publicly. After weighing these factors, I find s. 22(1) does not apply.

[101] Next, I do not think it is an unreasonable invasion of the Candidate's privacy to disclose their self-assessed score. I found that this information was not subject to s. 22(3)(d). This information is not sensitive, which outweighs the fact that it was supplied in confidence.

[102] Further, I find that s. 22(1) does not apply to the withheld responses to the questions under the conflict of interest section of the Profile.<sup>47</sup> I found that, depending on the response to one question, s. 22(3)(f) may apply but that I cannot state my conclusion without revealing the information in dispute. I did conclude that this information was supplied in confidence in accordance with s. 22(2)(f). However, I found that this information is desirable for public scrutiny of the Organization and that it is not sensitive, which in my view outweigh the other factor(s).

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<sup>47</sup> For clarity, the answers to question 9 (a), (b) and (c), 10 and 14.

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## CONCLUSION

[103] Based on the reasons above, I make the following order under s. 58 of FIPPA:

1. Subject to item 2, I require the Ministry of Finance to refuse to disclose parts of the records in dispute under s. 22(1).
2. The Ministry of Finance is required to give the applicant access to the parts of the records in dispute that I have highlighted in a copy of the records provided to the Ministry along with this order.
3. The Ministry of Finance must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant when it provides the applicant access to the parts of the records described in item 2.

[104] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by February 2, 2022.

December 22, 2021

### ORIGINAL SIGNED BY

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Erika Syrotuck, Adjudicator

OIPC File No.: F17-69302