OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F16-03

CITY OF NANAIMO

Celia Francis
Adjudicator

January 27, 2016

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Summary: The applicant asked for any records with his name on them. The City disclosed some records, withholding information under ss. 12(3)(b) (local public body confidences), 16(1)(b) (information received in confidence) and 22(1) (harm to third-party privacy). The Adjudicator found that all three exceptions applied.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 12(3)(b), 16(1)(b), 22(3)(b), 22(3)(d), 22(2)(a), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h).

Authorities Considered: B.C.: Order F13-10, 2013 BCIPC 11 (CanLII); Order 00-11, 2000 CanLII 10554 (BC IPC); Order 03-09, 2003 CanLII 49173 (BC IPC); Order F15-20, 2015 BCIPC 22 (CanLII); Order 01-53, 2001 CanLII 21607 (BC IPC); Order 00-53, 2000 CanLII 14418 (BC IPC); Order F05-28, 2005 CanLII 30678 (BC IPC); Order F05-08, 2005 CanLII 11959 (BC IPC); Order F14-38, 2014 BCIPC 41 (CanLII); Order 02-19, 2002 CanLII 42444 (BC IPC); Order F15-54, 2015 BCIPC 57 (CanLII); Order F14-10, 2001 CanLII 21561 (BC IPC); Order F08-02, 2008 CanLII 1645 (BC IPC); Order 01-07, 2001 CanLII 21561 (BC IPC); Order F15-23, 2015 BCIPC 25 (CanLII).

INTRODUCTION

[1] In May 2014, the applicant submitted a request under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to the City of Nanaimo ("City") for "Anything with my name on it". The City responded in August 2014 by disclosing a number of records. It told the applicant it was withholding some information and records under ss. 12 (local public body confidences), 13 (advice or recommendations), 14 (solicitor client privilege), 15 (harm to law enforcement)

and 22 (harm to third party privacy). The applicant requested a review of the City's decision by the Office of the Information and Privacy Commissioner ("OIPC").

[2] Mediation by the OIPC led to the disclosure of more information and changes in some of the reasons for withholding information. Mediation was not otherwise successful and the matter proceeded to inquiry. Ultimately, the City took the position that ss. 12(3)(b), 16(1)(b) (information received in confidence) and 22(1) applied to most of the withheld information. At the inquiry, the OIPC received submissions from the City and the applicant.

ISSUES

[3] The issues before are these:

1. Whether the City is authorized by ss. 12(3)(b) and 16(1)(b) to withhold information.

2. Whether the City is required by s. 22(1) to withhold information.

[4] Under s. 57(1) of FIPPA, the public body has the burden of proving that the applicant has no right of access under ss. 12(3)(b) and 16(1)(b). Under s. 57(2), the applicant has the burden of proving that disclosure of third-party personal information would not be an unreasonable invasion of the third party's personal privacy under s. 22(1).

DISCUSSION

Background

[5] The applicant regularly attends Nanaimo City council meetings and holds up signs that criticize the City council's decisions. At a May 2014 council meeting, the applicant held up a sign that some councillors found offensive. The Nanaimo City Manager took steps to determine the applicant's identity and determined that his employer is a regional district. The City Manager also sent an email to City councillors informing them of the proper procedure, in case of future disruptions at council meetings.[1]

Records in dispute

[6] Most of the records consist of emails among City staff and councillors and others following the May 2014 meeting. There is considerable repetition of text in the email strings. There are also some earlier records related to matters such as a bylaw complaint.

[1] City's initial submission, paras. 10-18; Swabey affidavit, paras. 18-19.

Preliminary matter – out of scope records

[7] The City argued that 35 pages of records and information are not responsive to the request, either because they post-date the applicant's request or do not have his name on them.[2] The applicant responded, "Providing the records have been supplied to the OIPC and in the opinion of the OIPC it is out of scope, then fine. If this is based on the city's discretion, then it is strongly requested that the city be put to strict proof of [*sic*] that the content is out of scope".[3]

[8] The applicant's request was for "Anything with my name on it". For the reasons the City gave, I agree that these records are not responsive to the applicant's request.[4]

Local public body confidences – s. 12(3)(b)

[9] The City is relying on s. 12(3)(b) to withhold only one sentence in an email. The City submits that the sentence reveals a motion made at an *in camera* Committee of the Whole meeting on May 5, 2014, on a matter unrelated to the applicant or his request. Disclosing this information would, the City argued, reveal the substance of deliberations of its *in camera* council meeting (*i.e.*, a meeting that is closed to the public).[5] The applicant did not address this issue.

[10] Section 12(3)(b) of FIPPA authorizes public bodies to withhold the substance of deliberations of *in camera* council meetings, unless s. 12(4) applies. Sections 12(3)(b) and (4) of FIPPA state:

> 12(3) The head of a local public body may refuse to disclose to an applicant information that would reveal
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> …
>
> (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

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[2] Pages 82-83,111-115, 135, 166-167, 176-195, 197-203.
[3] Applicant's submission, p. 1.
[4] Normally, the OIPC would not entertain a pubic body's claim that records are not responsive to a request because FIPPA does not authorize a public body to sever and withhold portions of responsive records on the basis that they are outside the scope of an applicant's request. See Order F15-23, 2015 BCIPC 25 (CanLII), on this point. However, in these circumstances, where the applicant is prepared to accept the OIPC's assessment, I have dealt with this issue.
[5] City's initial submission, paras. 65-67; Swabey affidavit, paras. 21-24.

> (4) Subsection (3) does not apply if
>
> (a) the draft of the resolution, bylaw, other legal instrument or private Bill or the subject matter of the deliberations has been considered in a meeting open to the public, or
>
> (b) the information referred to in that subsection is in a record that has been in existence for 15 or more years.

Standard for applying s. 12(3)(b)

[11] Previous orders have stated that three conditions must be met in order for s. 12(3)(b) to apply:

> 1) there was statutory authority to meet in the absence of the public;
>
> 2) a meeting was actually held in the absence of the public; and
>
> 3) the information would, if disclosed, reveal the substance of deliberations of the meeting.[6]

Analysis

[12] The sentence in question appears in an email in which the City Manager brought two matters to the attention of City council. One matter relates to the applicant and the City has disclosed the relevant sentence to him. The other matter refers to the motion of concern to the City. The City's evidence is as follows:

- the City has authority under s. 90(1)(i) of the *Community Charter* to close a council meeting to the public, where the subject matter being considered relates to the receipt of advice that is subject to solicitor-client privilege
- s. 93(a) of the *Community Charter* states that s. 90 applies to council committees, including Committees of the Whole
- the minutes of the open Committee of the Whole meeting of May 5, 2014 show that the Committee passed a resolution under s. 90 of the *Community Charter* to close the meeting to the public, following which the closed (*in camera*) meeting took place
- the minutes of the *in camera* meeting of May 5, 2014 show that the Committee passed a particular motion during that *in camera* meeting

[6] See, for example, Order F13-10, 2013 BCIPC 11 (CanLII), at para. 8, and Order 00-11, 2000 CanLII 10554 (BC IPC), at p. 5.

- the City's *in camera* evidence supports its position that it had authority under s. 90(1)(i) of the *Community Charter* to consider the subject matter in question on an *in camera* basis[7]

[13] Previous orders have confirmed that disclosing a motion passed at an *in camera* meeting would reveal the substance of a City council's deliberations at *in camera* meetings.[8] Disclosure of the sentence in question would, in my view, reveal the substance of deliberations of Nanaimo City council at the *in camera* meeting of May 5, 2014, that is, the motion that councillors considered and passed. Based on the above, I find that the City has met its burden of proof here and that s. 12(3)(b) applies to the sentence in question.

Does s. 12(4) apply?

[14] Neither party addressed this issue. I am, however, satisfied that s. 12(4) does not apply because the record in which the information appears has not existed for more than 15 years and there is no evidence that the subject matter of the deliberations was considered in a meeting open to the public.

Information received in confidence – s. 16(1)(b)

[15] The City argued that s. 16(1)(b) applies to some of the information in the records,[9] as the emails between its City Manager and the regional district that employs the applicant were exchanged in confidence.[10] The applicant did not address s. 16(1)(b). The relevant provisions read as follows:

> **Disclosure harmful to intergovernmental relations or negotiations**
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> 16(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
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> (a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
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> ….
>
> (ii) the council of a municipality or the board of a regional district;
>
> …
>
> (i) the government of Canada or a province of Canada;

[7] City's initial submission, paras. 65-67; Swabey affidavit, paras. 21-23 and exhibits.
[8] See, for example, Order 03-09, 2003 CanLII 49173 (BC IPC), where the adjudicator found that disclosure of a motion that a city council passed would reveal the substance of deliberations, and Order F15-20, 2015 BCIPC 22 (CanLII), where the adjudicator made a similar finding.
[9] Pages 14-16.
[10] City's initial submission, paras. 51-62.

…

(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies, …

Standard for applying s. 16(1)(b)

[16] Former Commissioner Loukidelis established a two-part test for the application of s. 16(1)(b) in Order 02-19.[11] The first part is to determine whether the information was received from one of the bodies listed in s. 16(1)(a) or any of their agencies. The second part of the test is to determine whether the information was "received in confidence". In Order No. 331-1999,[12] the former Commissioner considered the meaning of the phrase "received in confidence". He said there must be an implicit or explicit agreement or understanding of confidentiality on the part of both those supplying and receiving the information. He also set out several relevant circumstances that public bodies should consider in determining if information "was received in confidence".

Analysis

[17] The emails in question were exchanged between the City Manager, on behalf of the City of Nanaimo (a municipality), and the regional district's chief administrative officer (CAO), on behalf of a regional district. Section 16(1)(a)(ii) explicitly lists a municipality and the board of a regional district. I am therefore satisfied that the first part of the s. 16(1)(b) test is met.

[18] Regarding the second part of the test, the City's evidence satisfies me of the following:

- the City manager and the CAO communicate regularly, usually on sensitive matters, and under a mutual expectation of confidentiality, unless it is made clear a matter is not confidential
- they exchanged the information in question voluntarily
- the City Manager and the CAO both expected the information at issue here to be received and kept by the other in confidence and that is what occurred[13]

[19] Furthermore, the emails themselves contain explicit markers of confidentiality. For instance, the CAO's emails all contain a statement that they

[11] 2002 CanLII 42444 (BC IPC), at para. 58.
[12] 1999 CanLII 4253 (BC IPC), at pp. 6-9.
[13] Swabey affidavit, paras. 14-17; regional district CAO's affidavit, paras. 8-10.

are confidential and the City Manager specifically says in one email that he is providing information confidentially.[14]

[20] Finally, the subject matter of the emails is, in my view, of a type that a reasonable person would expect to be kept confidential. The City's submission and evidence thus satisfy me that the information was received in confidence. Accordingly, I find that the second part of the s. 16(1)(b) test is also met. I therefore find that s. 16(1)(b) applies to the information.

[21] I also considered whether the City exercised its discretion properly in deciding to withhold the information. The City provided evidence, both open and *in camera*, on the sensitivity of the subject matter of the emails. The City also provided evidence that "it is absolutely critical" that the regular communications on confidential matters that take place between City and regional district "remain confidential".[15] I am satisfied that these were appropriate factors for the City to consider in exercising its discretion regarding s. 16(1)(b).

Harm to third-party personal privacy – s. 22(1)

[22] The City argued that s. 22(1) applies to much of the withheld information. The City applied s. 22 to some of the information to which it applied s. 16(1)(b). Given my finding on s. 16(1)(b), I will not consider if s. 22(1) applies to the same information.[16]

[23] The applicant argued that the City "repeatedly attempted to breach" his privacy in contacting the regional district and is using FIPPA "in a feeble attempt" to protect privacy.[17]

Approach to applying s. 22(1)

[24] The approach to applying s. 22(1) of FIPPA has long been established. See, for example, Order F15-03:

> Numerous orders have considered the approach to s. 22 of FIPPA, which states that a "public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy." This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be

[14] Page 16.
[15] City's initial submission, para. 59; Swabey affidavit, paras. 14-15; CAO's affidavit, paras. 8-10.
[16] Pages 14-16.
[17] Applicant's submission, para. 13.

> rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.[18]

[25] I have taken the same approach in considering the s. 22 issues here.

Is the information "personal information"?

[26] FIPPA defines "personal information" as recorded information about an identifiable individual, other than contact information.[19] The City argued that the personal information of its City Manager and various other third parties is in issue here.[20] The applicant did not directly address this issue.

[27] The withheld information consists of comments and opinions about the City Manager and other individuals. I find that it is the personal information of these individuals. A small amount of the withheld information is comments or opinions by the City Manager and the councillor about the applicant. It appears in the context of comments about the City Manager and is thus the personal information of both the City Manager and the applicant.

Does s. 22(4) apply?

[28] Section 22(4) of FIPPA sets out a number of situations in which disclosure of personal information is not an unreasonable invasion of third-party privacy. The City argued that s. 22(4) does not apply. In particular, the City argued that s. 22(4)(e) does not apply to the withheld information in the emails between the City Manager and others, as it is not about the City Manager's position, functions or remuneration.[21] The applicant disputed the City's arguments.[22]

[29] Section 22(4)(e) reads as follows:

> 22 (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
>
> …
>
> (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,
>
> …

[18] 2015 BCIPC 3 (CanLII), at para. 58.
[19] 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." See Schedule 1 of FIPPA for this definition.
[20] City's initial submission, para. 20, regarding pp. 9, 39, 80, 150, 204-205.
[21] City's initial submission, para. 25.
[22] Applicant's submission, para. 17

[30] Past orders have said that s. 22(4)(e) applies to objective, factual information about an employee's job duties.[23] I agree with the City that the withheld information is not of this type. I find that s. 22(4)(e) does not apply here. I also agree that no other parts of s. 22(4) are relevant here. I find that s. 22(4) does not apply to the withheld information in issue.

*Presumed unreasonable invasion of third-party privac*y – s. 22(3)

[31] The next step is to consider whether disclosure of the information in issue is presumed to be an unreasonable invasion of a third party's personal privacy. The City argued that the personal information about the City Manager contains "an assessment and evaluation of how he performed his job duties" and that it therefore relates to his employment history under s. 22(3)(d).[24] It also argued that some information relates to a bylaw complaint and therefore falls under s. 22(3)(b).[25] The applicant argued generally that the emails in question should be disclosed, including where they contain his personal information.[26]

[32] The relevant provisions are this:

> 22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> …
>
> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
>
> …
>
> (d) the personal information relates to employment, occupational or educational history,

[33] **City Manager's personal information** — The withheld information about the City Manager consists of four severed passages in email exchanges between the City Manager and a councillor. In the withheld portions, the councillor comments on certain work-related actions the City Manager took. The City Manager responds, justifying why he took those actions. It is clear they did not agree on the issue.[27] In my view, this withheld information is about the City

[23] See for example, Order 01-53, 2001 CanLII 21607 (BC IPC), at para. 40.
[24] City's initial submission, paras. 29-30.
[25] City's initial submission, paras. 48-49.
[26] Applicant's submission, paras. 18-19
[27] The email strings are duplicated many times in the records. Thus, the same severed passages appear on pp. 2-3, 27, 34,-35, 41-42, 45-46, 51, 61-62, 65-66, 70-71, 74-75, 76-77, 85-86, 91-92, 96-97, 101-102, 105-106.

Manager's employment history as previous orders have interpreted this term.[28] I find that s. 22(3)(d) applies to the withheld information about the City Manager.

[34] **Other individuals' personal information** — The City said it withheld a complainant's identifying information because it relates to a bylaw complaint regarding the applicant's dogs and therefore falls under s. 22(3)(b).[29] Previous orders have found that bylaw investigations into alleged infractions of its bylaws are investigations into possible violations of law under s. 22(3)(b).[30] I am therefore satisfied that the complainant's identifying information falls under s. 22(3)(b).

[35] A small amount of withheld personal information relates to members of the public and City councillors.[31] This information comprises individuals' personal opinions (about themselves and a member of the public) and statements about the personal circumstances of another individual. None of the presumptions in s. 22(3) applies to this personal information.

Relevant circumstances – s. 22(2)

[36] In determining whether disclosure of personal information is an unreasonable invasion of personal privacy under s. 22(1) or 22(3), a public body must consider all the relevant circumstances, including those set out in s. 22(2). At this point, the presumption that disclosure of the withheld information would be an unreasonable invasion of personal privacy may be rebutted.

[37] The City raised the following provisions:

> 22 (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
>
> …
>
> (e) the third party will be exposed unfairly to financial or other harm,

[28] See, for example, Order 01-53, 2001 CanLII 21607 (BC IPC), at para. 32, where former Commissioner Loukidelis found that observations about an employee's workplace behaviour or actions were part of the employee's employment history. In Order 00-53, 2000 CanLII 14418 (BC IPC), at p. 17, the Commissioner found that an employee's response to issues under review and her explanation of her actions fell under s. 22(3)(d).

[29] City's initial submission, regarding pp. 204-205.

[30] See, for example, Order F14-38, 2014 BCIPC 41 (CanLII), at para. 25.

[31] Withheld information on pp. 9 (duplicated on p. 80), 39, 150.

> (f) the personal information has been supplied in confidence,
>
> (g) the personal information is likely to be inaccurate or unreliable,
>
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,
>
> …

Public scrutiny

[38] **City Manager's personal information —** The City submitted that s. 22(2)(a) does not apply to the personal information of the City Manager because this provision relates to scrutiny of a public body, not an employee.[32] The applicant made arguments to the effect that transparency regarding the City Manager's actions is important in this case.[33]

[39] In my view, it is possible that disclosure of personal information about an employee could shed light on the activities of a public body. In this case, the actual information on what the City Manager did has already been disclosed. The exchange between the councillor and the City Manager in which they comment on these actions would not, in my view, add meaningfully to scrutiny of the City. I therefore agree that disclosure of the City Manager's personal information would not be desirable in order to subject the City to public scrutiny. I find that s. 22(2)(a) does not apply to the personal information of the City Manager.

Unfair harm, damage, unreliable information

[40] **City Manager's personal information** — The City argued that ss. 22(2)(e), (g) and (h) all apply to the City Manager's personal information, "heavily" favouring its withholding. The City argued that the public might rely on the statements about the City Manager as being "an accurate and reliable reflection" on how the City Manager performed his duties, since the statements came from "an elected official". The City provided *in camera* evidence from the City Manager regarding the harm under ss. 22(2)(e) and (h) that he believes could occur if the information were disclosed.[34] The applicant said he was only concerned about inaccurate perceptions if the information is about him.[35]

[41] I accept that, given his positon, a councillor's opinions might carry weight in a particular case. However, in my view, the councillor's comments are subjective opinions about the City Manager and not an objective assessment of

[32] City's initial submission, para. 35.
[33] Applicant's submission, para. 18.
[34] City's initial submission, paras. 33-34; Swabey affidavit, paras. 19-20.
[35] Applicant's submission, para. 20.

the way he performs his duties. In this light, I am not persuaded that the public would be misled into thinking the councillor's comments about the City Manager are accurate and reliable. I find that s. 22(2)(g) does not apply here.

[42] However, taking into account the City Manager's *in camera* evidence, I am satisfied that disclosure of the councillor's comments about the City Manager's actions could unfairly damage the City Manager's reputation and could expose him to unfair harm for the purposes of ss. 22(2)(e) and (h). I find that these sections apply.

[43] **Other individuals** — The City argued that disclosure of some of the third-party personal information[36] would portray that individual in a negative light.[37] The information in question is subjective, negative criticism of the behaviour of a member of the public. I agree that disclosure of this information could damage the reputation of the individual in question. I therefore find that s. 22(2)(h) applies to this information.

[44] The City also argued generally that the other third-party personal information, including the information related to the bylaw complaint, was provided in confidence.[38] The applicant argued that information involving the councillors should be disclosed as they are "public officials".[39] I agree with the City that s. 22(2)(f) applies to this withheld information.

Are the presumptions rebutted?

[45] **City Manager's personal information** — I find that the City Manager's personal information falls under s. 22(3)(d) and that its disclosure is therefore presumed to be an unreasonable invasion of his privacy. I also find that the relevant circumstances in ss. 22(2)(e) and (h) favour withholding this information. No relevant circumstances favour its disclosure. I therefore find that the presumption in s. 22(3)(d) is not rebutted and that s. 22(1) applies to the personal information of the City Manager.

[46] **Other individuals' personal information** — I find that the personal information that relates to a bylaw complaint falls under s. 22(3)(b) and that its disclosure is therefore presumed to be an unreasonable invasion of privacy of the individual in question.[40] The relevant circumstance in s. 22(2)(f) favours withholding the information. I find that the s. 22(3)(b) presumption is not rebutted and that s. 22(1) applies to this information.

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[36] On pp. 9 and 80.
[37] City's initial submission, 45.
[38] City's initial submission, para. 50, regarding pp. 39, 150 and 204-205.
[39] Applicant's submission, para. 22.
[40] Pages 204-205.

[47] I also find that other withheld personal information that relates to members of the public and City councillors (personal opinions about themselves and another individual; statements about their personal circumstances) does not fall into any of the s. 22(3) presumptions.[41] However, the relevant circumstances in ss. 22(2)(f) and (h) favour withholding this information. No relevant circumstances favour its disclosure. I find that this information falls under s. 22(1).[42]

Is it reasonable to sever under s. 4(2)?

[48] I noted above that a small amount of the withheld information in the emails between the City Manager and the councillor was comments or opinions about the applicant. I found that it was the personal information of the City Manager and the applicant. Section 4(2) of FIPPA states that, where it is reasonable to sever excepted information from a record, an applicant has the right of access to the remainder. I will now consider whether it is reasonable to sever the third-party personal information from the records in dispute here and disclose the applicant's personal information to him.

[49] A number of orders have considered the issue of joint or "inextricably intertwined" personal information of two or more individuals. They have generally found that it is not reasonable to separate an applicant's personal information from a third party's personal information in such cases and that disclosing the joint personal information would be an unreasonable invasion of third-party privacy.[43]

[50] In this case, while there is a small amount of information about the applicant in these emails, it appears in the context of the comments on the City Manager's performance of his duties. This information is either jointly the personal information of the applicant and the City Manager or is inextricably intertwined with the City Manager's personal information. It would not, in my view, be possible to disclose the applicant's own personal information to him without also disclosing the personal information of the third party. I noted above that disclosure of the City Manager's personal information to the applicant would be an unreasonable invasion of the City Manager's privacy. I find that it is not reasonable to sever the City Manager's personal information from the record in dispute and disclose the remainder to the applicant.

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[41] Pages 39, 150.

[42] For similar findings, see, for example, Order F05-28, 2005 CanLII 30678 (BC IPC), and Order F05-08, 2005 CanLII 11959 (BC IPC), which found that personal information related to a "third party's personal affairs" and a third party's "domestic activities did not fall under any of the presumed unreasonable invasions of third-party privacy in s. 22(3), but nevertheless had to be withheld under s. 22(1).

[43] See, for example, Order F15-54, 2015 BCIPC 57 (CanLII), Order F14-10, 2001 CanLII 21561 (BC IPC), Order F08-02, 2008 CanLII 1645 (BC IPC), and Order 01-07, 2001 CanLII 21561 (BC IPC).

Conclusion on s. 22(1)

[51] I find that ss. 22(3)(b) and (d) apply to some information and that other information does not fall under any of the s. 22(3) presumptions. I find that the relevant circumstances favour withholding all of this personal information and no relevant circumstances favour disclosing it. I find the applicant has not met his burden of proof in this case and the presumed unreasonable invasion of third-party privacy is not rebutted. I also find that it is not possible to disclose the applicant's personal information to him without unreasonably invading third-party personal privacy. Therefore, I find that s. 22(1) requires that all of the personal information in dispute be withheld.

CONCLUSION

[52] For reasons given above, I make the following orders:

1. Under s. 58(2)(b), I confirm that the City is authorized by ss. 12(3)(b) and 16(1)(b) to refuse the applicant access to the information it withheld under those exceptions.

2. Under s. 58(2)(c), I require the City to refuse the applicant access to the information it withheld under s. 22(1).

January 27, 2016

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F14-58900