



Order F21-03

TRANSLINK

Celia Francis
Adjudicator

January 26, 2021

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Summary: A journalist requested access to the emails of TransLink’s interim CEO for a specified five-day period in August 2015. TransLink disclosed most of the information, withholding small amounts of information, such as email addresses and a street address. The adjudicator found that s. 22(1) did not apply to most of the information in dispute, as it was “contact information”, and ordered TransLink to disclose this information to the journalist. The adjudicator also found that s. 22(1) applied to the interim CEO’s home telephone number and a small amount of information about a consultant’s employment history, and ordered TransLink to withhold this information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(3)(d), 22(4).

INTRODUCTION

[1] This case concerns a journalist’s request to TransLink, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), for access to the emails of TransLink’s interim Chief Executive Officer (CEO).¹ TransLink disclosed most of the 136 pages of responsive records, withholding information under four exceptions to disclosure.

[2] The journalist asked that the Office of the Information and Privacy Commissioner (OIPC) review TransLink’s decision to withhold information. As a result of OIPC mediation, TransLink disclosed more information and dropped two of the exceptions. Mediation did not resolve the matter and it proceeded to inquiry. The OIPC received submissions from TransLink and the journalist.

¹ The request covered the period from noon August 6, 2015 to 6 p.m. August 11, 2015.

[3] In its initial submission to this inquiry, TransLink said it had dropped another exception and disclosed more information. Ultimately, the inquiry concerned only the application of s. 22(1) (unreasonable invasion of third-party privacy).

ISSUE

[4] The issue to be decided in this inquiry is whether TransLink is required to withhold information under s. 22(1).

[5] Under s. 57(2) of FIPPA, it is up to the journalist to show that disclosure of personal information about a third party would not be an unreasonable invasion of the third party's privacy.

DISCUSSION

Preliminary issue

[6] In his request for review, the journalist noted that some attachments mentioned in the emails were not included. The Investigator's Fact Report for this inquiry did not mention this issue.

[7] My copy of the records in dispute was also missing some attachments. I requested that TransLink retrieve them, make a decision on whether or not the journalist could have access to them and provide me with copies. In response, TransLink told the OIPC that it had been unable to search for the attachments, due to technical issues with its computer system.²

[8] In mid-January 2021, TransLink said the computer system issues were ongoing and it could be a month or more before it could search for the attachments.³ Rather than delay this matter further, I have decided to proceed without the attachments. Assuming TransLink locates them, the journalist may, if he wishes, request that the OIPC review any decision to withhold or sever them.

Information in dispute

[9] TransLink disclosed almost all of the information in the 136 pages of responsive records. The information in dispute is that which TransLink withheld under s. 22(1):

- some email addresses;
- a street address;
- a telephone number;

² Letter of December 17, 2020.

³ Email of January 13, 2021.

- information about one individual; and
- a link to an online photo album.

Unreasonable invasion of third-party personal privacy – s. 22(1)

[10] TransLink said that s. 22(1) applies to the information at issue. The journalist disagrees.

[11] The approach to applying s. 22(1) of FIPPA has long been established. See, for example, Order F15-03, where the adjudicator said this:

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 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.⁴

Is it personal information?

[12] FIPPA defines “personal information” as recorded information about an identifiable individual, other than contact information.

[13] “Contact information” is defined in Schedule 1 of FIPPA 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.”

[14] Past orders have said “[w]hether information will be considered ‘contact information’ will depend on the context in which the information is sought or disclosed”.⁵

⁴ Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

⁵ See, for example, Order F08-03, 2008 CanLII 13321 (BC IPC), at para. 82.

[15] TransLink said that all of the withheld information is personal information.⁶ The journalist said it is all business contact information about people acting in a business capacity.⁷

Email addresses

[16] **Consultant:** One email address relates to an individual who, it is evident from disclosed information in the emails, is a consultant who hoped to do business with TransLink.

[17] His email address is clearly to enable him to be contacted at his place of business. I find that it is “contact information” and s. 22(1) does not apply to it. I note, in any case, that TransLink disclosed this email address elsewhere in the records.

[18] **“Opinion Leaders”:** The interim CEO wrote to several individuals, whom he described as “Opinion Leaders”, at the end of his six-month stint at TransLink. Disclosed information in the emails shows that the interim CEO wrote to thank these individuals for their “helpful comments and insight” during his tenure and to introduce his replacement as acting CEO.

[19] I deduce from the context that these individuals, who are named in the emails, assisted the interim CEO in his work and thus dealt with the interim CEO in a business capacity. Their email addresses are, therefore, to enable them to be contacted at a place of business and I find that they are “contact information”. Section 22(1) does not, therefore, apply to these email addresses.

[20] **Interim CEO:** The interim CEO provided an email address to two of his TransLink colleagues in an email entitled “Coordinates after August 10”. I take it to be his home email address. Given the context provided by the email, I am satisfied that he did not provide this address for the purpose of being contacted at a place of business, so it is not contact information. I am satisfied that it is personal information.

Telephone number

[21] The interim CEO provided a telephone number in the email entitled “Coordinates after August 10” mentioned just above. I take it to be his home telephone number. I am, therefore, satisfied that it is “personal information”.

⁶ TransLink’s initial submission, para. 11.

⁷ Journalist’s response submission, paras. 5-13.

Street address

[22] The journalist said that this address, while the “then-CEO’s home address”, is also his registered business address for his holding company, which he named. He argued that the address is business contact information.⁸

[23] TransLink said that, in this context, this information relates to the interim CEO’s home address.⁹

[24] This address appears on a July 30, 2015 invoice of travel and other work-related expenses which, it appears, the interim CEO incurred for TransLink, from May 13, 2015 to July 30, 2015. The address appears under a business name only. In this context, this information is not “about” an identifiable individual. I find, rather, that it is “contact information”. Section 22(1) does not, therefore, apply to it.

Link to online photo album

[25] This link appears in the consultant’s business signature block at the bottom of an August 8, 2015 email. The email is from the consultant to the interim CEO in which he is promoting his business. It appears along with the consultant’s business telephone number, business skype address and business website address. Thus, I find this link forms part of the information provided by the consultant about his business and to enable him to be contacted at his place of business. I find that this link is “contact information”. Section 22(1) does not, therefore, apply to it.

References to consultant

[26] This information comprises one and a half sentences in the body of the August 8, 2015 email mentioned in the previous paragraph. It is about the consultant as an identifiable individual and I find, therefore, that it is “personal information”.

[27] In summary, I find that the interim CEO’s home email address, his home telephone number and the information about the consultant are personal information. The balance of the information withheld under s. 22 is contact information, so it does not meet the definition of personal information.

⁸ Journalist’s response submission, paras. 8-9.

⁹ TransLink’s reply submission.

Does s. 22(4) apply?

[28] Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. TransLink said that s. 22(4) does not apply.¹⁰ The journalist did not address this factor.

[29] I agree that there is no basis for finding that s. 22(4) applies here.¹¹ The personal information at issue does not, for example, relate to any third party's position, functions or remuneration as an officer, employee or member of a public body (s. 22(4)(e)).

Presumed unreasonable invasion of third-party privacy – s. 22(3)

[30] Section 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

Consultant's employment history

[31] TransLink said that s. 22(3)(d) applies to the one and a half sentences of information about the consultant in the body of the August 8, 2015 email because it relates to his employment history.¹² The journalist did not address this issue.

[32] Section 22(3)(d) reads as follows:

22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...
(d) the personal information relates to employment, occupational or educational history,
...

[33] The withheld information consists of the consultant describing some of his work experience. I agree with TransLink that this information relates to the consultant's employment history and that s. 22(3)(d) applies to it. Its disclosure is, therefore, presumed to be an unreasonable invasion of his personal privacy.

Interim CEO's home email address and home telephone number

[34] This personal information does not fall squarely into any of the s. 22(3) categories.

¹⁰ TransLink's initial submission, para. 12.

¹¹ TransLink's initial submission, para. 12.

¹² TransLink's initial submission, para. 12.

Relevant Circumstances

[35] 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. It is at this stage that the s. 22(3)(d) presumption may be rebutted.

[36] TransLink said that the factors in s. 22(2) are not relevant.¹³ The journalist did not address this issue

[37] I agree with TransLink to some extent. There is no evidence, for example, that disclosure is desirable for subjecting a public body's activities to public scrutiny (s. 22(2)(a)) or is likely to promote public health or safety (s. 22(2)(b)). There are, however, other relevant, if unlisted, circumstances, which I will consider next.

[38] I found above that interim CEO's email address is his personal information. However, while TransLink withheld this email address in some places, it disclosed this information elsewhere in the records. This factor favours disclosure of this information.

[39] The remaining withheld personal information (interim CEO's home telephone number and consultant's work history) is not particularly sensitive. It is nevertheless about these individuals' private lives, a factor which favours non-disclosure of the information. I have also considered that the journalist did not explain why he should have access to this personal information.

Conclusion on s. 22(1)

[40] I found above that most of the information at issue is "contact information" and that s. 22(1) does not apply to it. I also found that some of the information is personal information and that s. 22(4) does not apply to it.

[41] I found that s. 22(3)(d) presumption applies to a small amount of personal information about the consultant and that no s. 22(3) presumptions apply to the rest of the personal information (the interim CEO's home telephone number and home email address).

[42] The previous disclosure of the interim CEO's home email address negates, in my view, any privacy issues that might otherwise attach to the disclosure of this information. I find, therefore, that s. 22(1) does not apply to it. I find that no relevant circumstances favouring disclosure respecting the rest of the withheld personal information: the interim CEO's home telephone number

¹³ TransLink's initial submission, para. 12.

(pages 82 and 93) and the information about the consultant's work history (page 12). I also find that the fact that this information is about the private lives of the two individuals in question favours non-disclosure. The applicant has failed to meet his burden of proof regarding this information. I find, therefore, that s. 22(1) applies to it.

CONCLUSION

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

1. Under s. 58(2)(a), subject to item 2 below, I require TransLink to give the journalist access to all of the information it withheld under s. 22(1).
2. Under s. 58(2)(c), I require TransLink to refuse the journalist access, under s. 22(1), to the interim CEO's home telephone number (pages 82 and 93) and the information about the consultant's work history (page 12).

[44] Under s. 59(1), TransLink is required to comply with this order by March 10, 2021. TransLink must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the journalist, together with a copy of the records.

January 26, 2021

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F15-63144