



CITY OF WHITE ROCK

Order F21-20

Celia Francis
Adjudicator

May 13, 2021

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Summary: An applicant requested access under the *Freedom of Information and Protection of Privacy Act* from the City of White Rock (White Rock) to an email he sent, as well as other records associated with that email. White Rock disclosed the records, withholding some information under s. 22(1) (unreasonable invasion of third-party privacy). The adjudicator found that s. 22(1) did not apply to a third party's name and email address because they were contact information. The adjudicator ordered White Rock to disclose this information to the applicant. The adjudicator also found that a reference to a group to which the third party belonged was personal information, both of the third party and another individual, and White Rock must refuse to disclose that information under s. 22(1).

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

INTRODUCTION

[1] This order flows from an applicant's request of mid-September 2017 to the City of White Rock (White Rock) under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for a copy of his own email, as well as copies of all records of White Rock's mayor and several named staff related to that email. In early November 2017, he asked that the Office of the Information and Privacy Commissioner (OIPC) review White Rock's failure to respond to his request.¹

[2] Several days later, White Rock disclosed the responsive records, withholding some information under s. 22 of FIPPA (unreasonable invasion of third-party privacy). The OIPC then closed its file on this matter.

¹ OIPC File F17-72018.

[3] In January 2018, the applicant asked the OIPC to review White Rock's decision to apply s. 22 of FIPPA.² This matter was not resolved in mediation and it proceeded to inquiry. The applicant also complained to the OIPC that White Rock had not conducted an adequate search for the requested records.³ The OIPC's investigation resolved that complaint and it is not an issue in this inquiry.

[4] The OIPC received inquiry submissions from White Rock, the applicant and a third party. In September 2021, after the OIPC had issued the notice for this inquiry, White Rock decided to disclose the (now former) mayor's email address in the responsive records, on the grounds that it was available on a public website.

ISSUE

[5] The issue to be decided in this inquiry is whether s. 22 requires White Rock to withhold information. Under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of third-party personal information would not be an unreasonable invasion of third-party privacy.

DISCUSSION

Information in dispute

[6] The responsive records consist of a string of four emails:

1. An August 20, 2017 email from the applicant to several individuals, including provincial health officials, in which the applicant expressed concern that White Rock's water supply was contaminated with glyphosate;⁴
2. The third party's August 21, 2017 covering email, forwarding the applicant's email to the mayor of White Rock;
3. The mayor's August 21, 2017 email response, which included comments about the applicant; and
4. The third party's brief August 22, 2017 email reply.

² OIPC File F18-72944.

³ OIPC File F18-73270. The OIPC denied the applicant's request for a reconsideration of the investigator's decision about the complaint. The OIPC also denied the applicant's request to add the complaint into this inquiry.

⁴ The applicant said in the email that glyphosate is an active ingredient in a named herbicide. The applicant did not send his email to White Rock staff.

[7] White Rock disclosed almost all of the emails except a few items of information related to the third party which appear in emails 2, 3 and 4. These few items of withheld information are as follows:

- the third party's name;
- the third party's email address; and
- a reference to a group to which the third party belongs.

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

[8] 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.⁵

Is it personal information?

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

[10] “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.”

[11] White Rock said that the information is personal information.⁶ The applicant speculated that the withheld information is contact information and thus not personal information.⁷ The third party did not expressly address this issue but did object to the disclosure of his or her name and email address.⁸

⁵ Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

⁶ City’s initial submission, para. 8.

⁷ Applicant’s response submission, paras. 92-100.

⁸ Third party’s statement.

Third party's name and email address

[12] The disclosed portions of email 2 (the covering email from the third party to the mayor) read as follows:

On Aug 21, 2017, at 8:24 PM, [THIRD PARTY'S NAME AND EMAIL ADDRESS WITHHELD] wrote:

Hi [FIRST NAME OF MAYOR, DISCLOSED],
Just wonder if you have seen this? I can handle the Manganese and Arsenic situation but am not sure about Glyphosate. If in fact it is in the aquifer that is going to be very difficult to deal with. Mr. [LAST NAME OF APPLICANT, DISCLOSED] asks a couple of very good questions. I have only one question and that is "was Epcor aware of this before they sold us the water utility?" I'm still drinking water from the tap. Are you? As far as I know so are my grandkids but I don't know for how much longer. Would be interested in Mr. [LAST NAME OF HEALTH OFFICIAL, DISCLOSED]'s reply. Give me a call if you want to discuss this?
[THIRD PARTY'S FIRST NAME, WITHHELD]
P.S. How come this [FULL NAME OF APPLICANT, DISCLOSED] guy is testing our water on his own in order to find this out? Don't our engineers do this?⁹

[13] 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".¹⁰

[14] The contents of email 2 indicate that the third party had, in the past, been acting in a business or work-related capacity, with and on behalf of White Rock, in dealing with White Rock's water quality issues. In my view, the third party was also acting in that capacity for White Rock in relaying the applicant's email to the mayor, alerting the mayor to the applicant's concerns and implicitly asking for advice on how to handle the glyphosate issue.

[15] I find support for my view in the following:

- the phrase "I can handle the Manganese and Arsenic situation ...";
- the phrase "it is going to be very difficult to deal with";
- the question about whether EPCOR was aware of the glyphosate issues "before they sold us the water utility";¹¹ and

⁹ As noted, White Rock withheld the third party's name and email address in emails 3 and 4, as well.

¹⁰ See, for example, Order F08-03, 2008 CanLII 13321 (BC IPC), at para. 82.

¹¹ I understand that White Rock purchased its water services from EPCOR in 2015. The applicant in that case criticized the purchase in part because of his concerns that White Rock's water

- the reference to “our engineers”.

[16] It follows that the third party’s name and email address in emails 2-4 were to enable the third party to be contacted at a place of business. I find, therefore, that the third party’s name and email address are contact information and not personal information. This means that s. 22 does not apply to this information.

Reference to group

[17] This information appears in email 4 in which the third party replied to the mayor’s question in email 3 as to how the third party had obtained the applicant’s email:

One of the guys on the [SHORT PHRASE WITHHELD] who lives in White Rock sent it to me. I am guessing he knows this [APPLICANT’S LAST NAME, DISCLOSED] guy. ...

[18] White Rock said that this withheld reference is the third party’s personal information.¹² The applicant suggested that it is not about an identifiable individual but rather is contact information.¹³ The third party did not specifically address this information or object to its release.

[19] The information at issue is about the third party as an identifiable individual and his recreational activity. It also relates to the “guy” who sent the applicant’s email to the third party and who appears to be identifiable to the applicant in this context. I find that this reference is personal information.

Does s. 22(4) apply?

[20] Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. White Rock said that s. 22(4) does not apply to the information in dispute.¹⁴ The applicant argued that the information falls under s. 22(4)(e).¹⁵ The third party did not deal with this issue.

[21] Section 22(4)(e) says that it is not an unreasonable invasion of a third party’s personal privacy to disclose information related to 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.

contained “inordinately high levels of Arsenic and Manganese”. See Order F17-17, 2017 BCIPC 18 (CanLII) at paras. 6-7 and 15.

¹² City’s initial submission, paras. 8 and 11.

¹³ Applicant’s response submission, paras. 105-107.

¹⁴ City’s initial submission, para. 9.

¹⁵ Applicant’s response submission, para. 120.

[22] I disagree with the applicant. The information in question clearly relates to the third party's recreational activities, as well as those of the other individual.

[23] I find that s. 22(4)(e) does not apply to this information. I also find that there is no basis for finding that any other part of s. 22(4) applies to it.

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

[24] Section 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. White Rock argued that the information in dispute relates to the third party's occupational history, as it would reveal details about how the third party spends her or his time.¹⁶ The applicant said s. 22(3)(d) does not apply.¹⁷ The third party did not deal with this issue.

[25] 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,
 ...

[26] Past orders have generally held that the term "occupational history" refers to the work-related activities or matters of individuals belonging to the professions, such as lawyers, nurses, teachers or psychologists.¹⁸ The withheld information is not of this type but rather relates to the personal recreational activities of the third party and the "guy" to whom the third party refers in email 4. The phrase in question does not expressly fall into any of the other categories of information listed in s. 22(3) either.¹⁹

Relevant Circumstances

[27] 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

¹⁶ City's initial submission, paras. 11-12.

¹⁷ Applicant's response submission, paras. 131-139.

¹⁸ See for example, Order F17-29, 2017 BCIPC 31 (CanLII), Order F18-02, 2018 BCIPC 2 (CanLII) and Order F19-27, 2019 BCIPC 29 (CanLII).

¹⁹ Past orders have said that, even if personal information does not fall under s. 22(3), this does not mean that, under s. 22(1), the information can be disclosed without unreasonably invading third-party privacy. See, for example, Order F05-08, 2005 CanLII 11959 (BC IPC), and F05-28, 2005 CanLII 30678 (BC IPC).

the personal information would be an unreasonable invasion of a third party's personal privacy. The third party did not expressly deal with s. 22(2).

[28] I have considered below 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,

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

(e) the third party will be exposed unfairly to financial or other harm,

(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, ...

[29] **Public scrutiny:** White Rock said there would be no public benefit to disclosing the information to the applicant.²⁰ The applicant disagreed.²¹

[30] There is no indication that disclosing information on the recreational activities of the third party and the "guy" would assist in subjecting White Rock to public scrutiny. I find that s. 22(2)(a) does not apply to this information.

[31] **Supply in confidence:** White Rock argued that the third party would not have expected the email to be disclosed, as the third party wrote to the mayor at the mayor's personal email address and the tone of the email is private and familiar rather than formal.²² The applicant said that there is no indication in the third party's email that s. 22(2)(f) applies.²³

[32] I agree that the tone of the emails between the third party and the mayor is informal and friendly. However, nothing in the third party's communications suggests that the "guy" supplied the applicant's email to the third party or that the third party, in turn, supplied the applicant's email to the mayor in confidence. The third party's objection, three years later, to disclosure of her or his name and

²⁰ White Rock's initial submission, para. 14.

²¹ Applicant's response submission, para. 148.

²² White Rock's initial submission, para. 16.

²³ Applicant's response submission, paras. 164-166.

email address does not mean that the “guy” or the third party supplied the applicant’s email in confidence. I find that s. 22(2)(f) does not apply.

[33] **Sections 22(2)(e), (g) and (h):** The applicant argued that White Rock did not suggest that any harm under ss. 22(2)(e) or (h) would come to the third party if the information in dispute were disclosed. He also said there was every indication that the information is accurate and reliable for the purposes of s. 22(2)(g).²⁴

[34] White Rock did not comment on these issues. I agree with the applicant that there is no indication that any of these provisions applies in this case.

[35] **Applicant’s rights:** Past orders have set out a four-part test to determine whether s. 22(2)(c) applies:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.²⁵

[36] The applicant argued that s. 22(2)(c) applies, as he might want to sue the mayor for defamation for calling him an idiot and a liar in email 3.²⁶ He added that:

Filing an action to correct [the mayor’s] malicious and wrongful attack on my character in a public body document to an unknown Third Party is an action that has been contemplated. In order to make a fair and final determination in this regard, I would at minimum need to know the name of the individual to whom [the mayor] slandered me in writing.²⁷

[37] I am not persuaded by what the applicant says that he actually intends to sue the mayor for defamation. He could have done so any time in the three years since he received the mayor’s email, as he knows the name of the mayor and

²⁴ Applicant’s response submission, paras. 159-163, 171-175.

²⁵ See, for example, Order 01-07, 2001 CanLII 21561 (BC IPC) and Order F18-48, 2018 BCIPC 51 (CanLII).

²⁶ Applicant’s response submission, paras. 149-158.

²⁷ Applicant’s response submission, para. 156.

what the mayor said about him in email 3. In any case, as White Rock argued,²⁸ the information at issue has no bearing on the applicant's ability to pursue a claim for defamation. I find that s. 22(2)(c) does not apply.

[38] **“Guy’s” identity:** White Rock said that disclosure would likely reveal the identity of the “guy” who provided the applicant's email to the third party.²⁹ The applicant argued that White Rock's argument is speculative and, in any case, the information at issue is innocuous.³⁰

[39] I agree with the applicant that the information is innocuous. However, as noted above, its disclosure would likely reveal the identity of the individual who supplied the applicant's email to the third party.

Conclusion on s. 22(1)

[40] I found above that the third party's name and email address are contact information and that s. 22(1) does not therefore apply to them. I also found that the remaining withheld information is personal information and that it does not fall squarely into s. 22(3). I then found that none of the circumstances listed in s. 22(2) applies.

[41] However, I also found that disclosure of the remaining withheld information would likely reveal the identity of the individual who supplied the applicant's email to the third party. It is not clear if that individual was aware that the third party intended to inform White Rock of how he or she had obtained the applicant's email. The information, while not sensitive, is also about the private lives of the two individuals. In my view, these factors weigh in favour of withholding the information in question.

[42] While the information in question is innocuous, the applicant has not explained why he should have access to the personal information of the third party or the “guy”. He has not met his burden of proof. I find that s. 22(1) applies to the reference to the group to which the third party and the other individual belong.

²⁸ White Rock's reply submission, para. 8.

²⁹ White Rock's initial submission, para. 16.

³⁰ Applicant's response submission, paras. 177-182.

CONCLUSION

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

1. Under s. 58(2)(a), I require White Rock to give the applicant access to the third party's name and email address.
2. Under s. 58(2)(c), I require White Rock to refuse the applicant access to the remaining information White Rock withheld under s. 22(1), that is, the reference in email 4 to the group to which the third party and the other individual belong.

[44] Under s. 59(1), White Rock is required to comply with this order by June 25, 2021. White Rock must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records.

May 13, 2021

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F18-72944