



Order F22-45

## BC FINANCIAL SERVICES AUTHORITY

Erika Syrotuck  
Adjudicator

October 3, 2022

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**Summary:** A realtor complained that the BC Financial Services Authority (Authority) disclosed his personal information in a way that was not permitted by s. 33(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that the Authority was authorized to disclose the personal information at issue under s. 33(2)(q) of FIPPA because the disclosure was made for the purpose of discipline of persons regulated by governing bodies of professions or occupations.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act* RSBC 1996 c 165, ss. 33(1), 33(2)(d), 33(2)(e), 33(2)(f), 33(2)(q); *Real Estate Services Act*, SBC s 42 ss. 45 and 46; *Finance Statutes Amendment Act, 2021* SBC c 2 s. 126(3).

### INTRODUCTION

[1] This inquiry is about a realtor's complaint that the BC Financial Services Authority (Authority) disclosed his personal information in contravention of s. 33(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] Mediation by the Office of the Information and Privacy Commissioner (OIPC) did not resolve the issue and the matter proceeded to inquiry.

### ISSUE

[3] In this inquiry, I must decide whether the Authority was authorized to disclose the complainant's personal information under s. 33(1) of FIPPA.

### DISCUSSION

#### *Background*

[4] The Authority is the governing body that regulates real estate professionals in BC. Previously, the governing body for real estate professionals was the Real Estate Council of BC (Council).<sup>1</sup> On August 1, 2021, the Council was dissolved and the operations and activities of the Council were transferred to the BC Financial Services Authority.<sup>2</sup> I will refer to the “Council” when discussing events that took place before August 1, 2021.

[5] At the relevant time, the complainant was a licenced real estate professional.<sup>3</sup> As permitted by ss. 45 and 46 of the *Real Estate Services Act*, a discipline committee held a hearing to decide if it should grant urgent orders relating to the complainant’s real estate licence.<sup>4</sup>

[6] The discipline committee decided to grant the urgent orders. The Council published the decision on its website in two parts; one document contained the urgent orders (Order) and a short time later, the Council published a separate document containing the reasons for the Order (Reasons).<sup>5</sup> As I explain below, the complainant says that the Reasons disclose his personal health information in violation of FIPPA.

### **Section 33 – disclosure of personal information**

[7] Under s. 33(1) of FIPPA, a public body may disclose personal information in its custody or under its control only as permitted by subsections (2) to (9) or s. 33.3.<sup>6</sup>

[8] The Authority identified the following bases under s. 33(2) for its authority to disclose the complainant’s personal information in the Order:

(2) A public body may disclose personal information in any of the following circumstances:

...

(d) for the purpose for which the information was obtained or compiled, or for a use consistent with that purpose within the meaning of section 34 [definition of consistent purpose];

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<sup>1</sup> The Authority’s initial submissions, para 35.

<sup>2</sup> The Authority’s initial submissions, para 20 citing s. 126(3) of the *Finance Statutes Amendment Act, 2021* SBC c 2.

<sup>3</sup> The background of the complaint is set out in the Authority’s initial submissions, paras 1 – 10. I have intentionally omitted the exact dates in order to protect the complainant’s privacy.

<sup>4</sup> Real Estate Services Act, SBC c 42 ss. 45 and 46 before amended by the *Finance Statutes Amendment Act, 2021*.

<sup>5</sup> The Authority provided the Order and the Reasons as evidence in this inquiry. I have intentionally omitted the exact dates in order to protect the complainant’s privacy.

<sup>6</sup> FIPPA was amended in November 2021. This order references the new version.

(e) in accordance with an enactment of British Columbia or of Canada that authorizes or requires the disclosure;

(f) if the information is made available to the public under an enactment that authorizes or requires the information to be made public;

...

(q) for the purposes of licensing, registering, insuring, investigating or disciplining persons regulated by governing bodies of professions or occupations;

[9] Since s. 33(1) only applies to personal information, I will first decide if the Reasons disclose the complainant's personal information. If it does, I will turn to whether any of the above circumstances under s. 33(2) apply.

*Do the Reasons disclose the complainant's personal information?*

[10] Schedule 1 of FIPPA says that "personal information" means recorded information about an identifiable individual other than "contact information". Schedule 1 of FIPPA also says that "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 or email or business fax number of the individual."

[11] The Reasons include the complainant's name, details about his conduct as a licenced real estate professional and references to the complainant's health. I find that this information is identifiable information about the complainant and is not contact information. Therefore, I am satisfied that the Reasons include the complainant's personal information.

[12] The Authority's arguments are framed in terms of the Council's ability to "publish" reasons. However, s. 33(1) is about disclosure. "Disclosure" is not defined in FIPPA. However, there is no question in my mind that publishing a document for the public to read is a type of disclosure. Therefore, I find that the Council disclosed the complainant's personal information when it publicly posted the Reasons to its website.

[13] I turn to whether any of the above subsections under s. 33(2) permitted the disclosure of the complainant's personal information in the Reasons. I will begin with s. 33(2)(q).

*Does s. 33(2)(q) permit the disclosure of the complainant's personal information?*

[14] Section 33(2)(q) allows a public body to disclose personal information for the purposes of licensing, registering, insuring, investigating or disciplining persons regulated by governing bodies of professions or occupations.<sup>7</sup>

[15] The Authority says that the Council was authorized to publish the Reasons under s. 33(2)(q) of FIPPA. More specifically, the Authority says that the *Real Estate Services Act* establishes a regulatory regime that empowered the Council (and now the Authority) to regulate the conduct of licensees. It explains that one of the ways that it regulates the conduct of licensees is by imposing orders. It says that although the Council published the Order and Reasons as separate documents, they are meant to be read together. It says that providing the reasons for why an order was made serves various important functions, including:

- informing other licensees about the sanctions imposed and the reasons for their imposition, thereby providing useful guidance to the profession of the standards expected of them;
- denouncing misconduct and preventing and discouraging future misconduct by licensees;
- informing clients and prospective clients of misconduct, potential misconduct, restrictions imposed on a licensee's licence, or risks to the public, so that they can make informed choices;
- informing the brokerage and managing broker(s) with whom the subject licensee works of the misconduct and/or restrictions on a licensee's licence so that they can make informed choices and/or provide the necessary assistance or oversight to the licensee;
- informing the public of potential harms that they may have suffered in relation to the misconduct, allowing persons affected by the conduct or order to contact the regulator for more information;
- providing for justification and transparency of decision-making, and contributing to similar cases being treated in a similar manner; and
- contributing to upholding the confidence of the public in the regulated profession.

[16] The Authority also says that the ability to publish reasons for why an order was made is within the Council's (and now the Authority's) ability to control its own processes. It says that advising the public about why an order was made is necessary to fulfil its regulatory functions, including the above, under the *Real Estate Services Act*.

[17] With regards to the specific personal information at issue in the Reasons, the Authority says that it does not mention any details of the medical or health

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<sup>7</sup> FIPPA was amended in November 2021. This section was s. 33.1(1)(l) under the former version of the legislation. Since the new and old versions are substantially similar, my analysis applies equally to the former version. In their submissions, the parties only reference the new version.

issues of the complainant. It says that it made general references to these issues only for the purpose of explaining the evidence relating to specific issues about the complainant's conduct as a licensee.

[18] In his initial complaint to the OIPC, the complainant says that the Reasons disclose his personal health information and that this disclosure violates FIPPA. The complainant does not contest that the Council had the authority to publish the Order or even that the Council had the ability to publish the Reasons. The complaint is about the discipline committee's decision to include specific information relating to the complainant's health in the Reasons.

[19] The complainant's submissions are primarily about the Authority's conduct related to the hearing process that resulted in the Order. The complainant also alleges the Authority breached the *Human Rights Code*. These matters are not relevant to the issue I must decide in this inquiry, which is whether FIPPA authorized the Authority to publish the complainant's personal information in the Reasons.

[20] For the reasons that follow, I am satisfied that the purpose of the disclosure of the complainant's personal information in the Reasons was for the purpose of disciplining persons regulated by the Council.

[21] First, there is no question, on the facts of this case, that the Council was a "governing body" of a profession or occupation (in this case real estate licensees) and that the complainant was a person regulated by the Council.

[22] In my view, the Council's decision to publicly post the Reasons in addition to the terms of the Order was part of the discipline. More specifically, I accept that the purpose of disclosing the information in this way was, in part, to publicly denounce the complainant's misconduct. The Reasons describe the complainant's actions in detail. As such, they give the reader an understanding of what the expected conduct of a licensee is and how the complainant's conduct fell short. I can see that the complainant's health information was disclosed for the purpose of describing his conduct as a real estate licensee. For these reasons, I am satisfied that the disclosure of the complainant's personal information, including his health information, was made for the purpose of disciplining the complainant. As a result, I am satisfied that the disclosure was permitted under s. 33(2)(q).

[23] As I noted above, the complainant specifically opposes the disclosure of his personal information related to his health. I have found that the disclosure was permitted under s. 33(2)(q) because it was made for the purpose of disciplining the complainant. Since s. 33(2)(q) is framed only in terms of the purpose for the disclosure, it is my view that I do not have the authority to make an order about the specific information that the Council chose to disclose for this

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purpose. While other provisions under s. 33(2) only permit a “necessary” disclosure,<sup>8</sup> s. 33(2)(q) contains no such stipulation.

[24] Having said that, I do think the Council (and now the Authority) should be mindful of the nature of the personal information it chooses to disclose publicly for the purpose of disciplining its licensees. The Reasons include a detail that may allow a reader to infer the nature of the complainant’s health issues.<sup>9</sup> It seems to me that the Council could have easily communicated the point it was trying to make without disclosing this detail. The Council (and now the Authority) should carefully consider licensees’ privacy, particularly when disclosing information related to a licensee’s health in its public orders.

[25] Given my findings, it is not necessary for me to consider whether ss. 33(2)(d), (e), or (f) apply.

### **CONCLUSION**

[26] For the reasons given above, I confirm the decision of the Authority to disclose the complainant’s personal information under s. 58(3)(e) of FIPPA.

October 3, 2022

### **ORIGINAL SIGNED BY**

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Erika Syrotuck, Adjudicator

OIPC File No.: F19-80352

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<sup>8</sup> For example, ss. 33(2)(h) through (k), definition of consistent purpose in s. 34 in relation to s. 33(2)(d).

<sup>9</sup> To protect the complainant’s privacy, I am not going to reproduce the statement in this order, but for the parties’ benefit, it is at paragraph 26 of the Reasons.