Order F23-29

CITY OF REVELSTOKE

David S. Adams
Adjudicator

April 14, 2023

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Summary: An applicant requested a copy of a workplace investigation report prepared for the City of Revelstoke (City). The investigation report was partially about the applicant. The City provided the applicant with a copy of the report, but withheld some information in it under ss. 14 (solicitor-client privilege), 13(1) (advice or recommendations), and 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator determined that the City was authorized to refuse to disclose some, but not all, of the information it withheld under s. 14. The adjudicator determined that the City was authorized to refuse to disclose the information it withheld under s. 13(1). Finally, the adjudicator determined that the City was required to refuse to disclose most, but not all, of the information it withheld under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13(1), 13(2), 13(3), 14, 22(1), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(d), 22(4).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested a copy of a workplace investigation report dealing with allegations of harassment (the Report), prepared by an outside consultant for the City of Revelstoke (the City). The applicant was one of the subjects of the Report. The City gave the applicant a copy of the Report, but withheld some information in it under ss. 13(1), 14, and 22(1) of FIPPA.

[2] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the City's withholding of information. During mediation, the City released some more information to the applicant. However, mediation did not resolve the outstanding issues and the matter proceeded to this inquiry.

[3] Both parties provided submissions. The City provided affidavits from the City's manager of corporate services (the Manager) and from the lawyer who commissioned the Report (the Lawyer). The applicant provided a collection of documents related to the complaint process and to his access request.

ISSUES AND BURDEN OF PROOF

[4] The issues I must decide in this inquiry are:

1. Whether the City may refuse to disclose information under s. 14 of FIPPA;

2. Whether the City may refuse to disclose information under s. 13(1) of FIPPA; and

3. Whether the City must refuse to disclose information under s. 22(1) of FIPPA.

[5] Under s. 57(1) of FIPPA, the City bears the burden of proving that the applicant has no right of access to the information it withheld under ss. 13(1) and 14.

[6] Meanwhile, under s. 57(2) of FIPPA, the applicant bears the burden of proving that the disclosure of personal information withheld under s. 22(1) would not be an unreasonable invasion of third-party personal privacy. However, it is up to the City to establish that the information at issue is personal information.[1]

DISCUSSION

Background[2]

[7] The applicant is a former employee of the City. In April 2019, several City employees made a collection of related workplace complaints (the Complaints) alleging that the applicant and other City employees had violated the City's respectful workplace policy (the Policy).

[8] The City engaged the Lawyer to investigate the Complaints, and the Lawyer in turn hired a consultant experienced in workplace investigations (the Consultant) to investigate and report on the Complaints. On May 9, 2019, the Consultant provided the Report to the Lawyer. The Lawyer used the Report to inform his advice to City Council.

[9] The Report concluded, among other things, that the applicant had not violated the Policy. The City advised the applicant of this outcome.

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[1] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.
[2] The information in this section is drawn from the parties' submissions and evidence.

[10] In October 2020, the applicant requested a copy of the Report from the City. In December 2020, the City provided the applicant with a copy of the Report, but withheld much of the information in it under various sections of FIPPA.

Records at issue

[11] The only record in dispute in this inquiry is the 15-page Report. The Consultant is the sole author of the Report. The Report contains an introduction, some background information on the City's management structure and the people involved, a set of allegations and findings, an assessment of witnesses' credibility, the Consultant's conclusions of fact, and a set of recommendations for the City.

Solicitor-client privilege – s. 14

[12] Section 14 of FIPPA allows a public body to refuse to disclose information that is subject to solicitor-client privilege. Section 14 encompasses both legal advice privilege and litigation privilege.[3]

[13] Legal advice privilege, at common law and for the purposes of s. 14, applies to communications that:

1. are between solicitor and client;
2. entail the seeking or giving of legal advice; and
3. are intended by the parties to be confidential.[4]

[14] Legal advice privilege promotes full and frank communication between solicitor and client, thereby promoting "effective legal advice, personal autonomy (the individual's ability to control access to personal information and retain confidences), access to justice and the efficacy of the adversarial process".[5]

[15] Legal advice privilege also applies to the "continuum of communications" related to the seeking and giving of legal advice, including communications "relating to the implications of the legal advice once it is received by the client. For example, internal memoranda of the client, which relate to the legal advice received and discuss its implications, are equally privileged".[6] In other words,

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[3] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII) at para 26 [*College*].
[4] *Solosky v. The Queen*, 1979 CanLII 9 (SCC) [1980] 1 SCR 821 at 837.
[5] *College*, *supra* note 3 at paras 26 and 30.
[6] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24; Order F22-36, 2022 BCIPC 40 (CanLII) at para 23; see also *Bank of Montreal v. Tortora*, 2010 BCSC 1430 (CanLII) at para 12.

internal client communications that transmit or comment on privileged advice will also attract the privilege.

[16] The City is relying on legal advice privilege to withhold some information on pages 9 and 11-12 of the Report. The City has produced the information it withheld under s. 14 for my review.

Parties' positions

[17] The City says that the withheld information on pages 11 and 12 "contains internal communications regarding privileged communications and advice provided by a lawyer to the City in relation to a legal matter".[7]

[18] The applicant says that the fact-finding nature of the Report and the fact that its full text was never provided to the City "makes the claim that section 14 authorizes redaction untenable". He says he is "certain" that the withheld information is not itself legal advice and is not capable of revealing legal advice. He says that since the Report's author is not a lawyer, the Report cannot contain privileged legal advice.[8]

[19] The City says in reply that the applicant has no basis for his certainty that the withheld information does not meet the test for legal advice privilege. It says the Report author's status as a non-lawyer is not relevant to the question of whether the Report contains information that is protected by solicitor-client privilege.[9]

Analysis

[20] On their face, the two paragraphs withheld under s. 14 on page 11 discuss and comment on the substance of legal advice the City received, on a confidential basis, from one or more of its lawyers. I am therefore satisfied that if disclosed, they would reveal privileged advice.

[21] This may seem to the applicant like a strange result. As the surrounding text makes clear, he himself was the author of the email discussing the privileged advice. However, it was the City, not the applicant, that was the client. The applicant, in his email, was not discussing the advice on his own behalf, but in his capacity as a City employee. Now, he is an access applicant under FIPPA, and an outsider to the solicitor-client relationship.

[22] However, I do not find that the information on page 9 is protected by legal advice privilege. The topic of the paragraph has already been disclosed to the

[7] City's initial submission at para 31.
[8] Applicant's response submission at paras 11-13.
[9] City's reply submission at paras 5-6.

applicant. The withheld information is of a broad, generic character that I find is not capable of revealing privileged information. The City also does not explain how legal advice privilege applies to the information on this page. I conclude that it does not.

[23] I likewise do not find that the information withheld on page 12 is protected by legal advice privilege. This information is similarly of a generic character that I find is not capable of revealing privileged advice.

Conclusion on s. 14

[24] To summarize, I have found that the two paragraphs on page 11 of the Report that the City withheld under s. 14 are protected by legal advice privilege. However, I have found that the withheld information on pages 9 and 12 is not specific enough to reveal information that is protected by legal advice privilege.

Policy advice or recommendations – s. 13

[25] Section 13(1) of FIPPA says that the head of a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister.

[26] The purpose of s. 13(1) is "to ensure that a public body may engage in full and frank deliberations, including requesting and receiving advice, in confidence and free of disruption from requests of outside parties for disclosure".[10]

[27] In Order F22-39, the adjudicator offered a thorough synthesis of the interpretive principles for s. 13(1), as set out in OIPC orders and court decisions, which I will reproduce here (citations omitted; emphasis in original):

- Section 13(1) applies to information that *would reveal* advice or recommendations and not only to information that *is* advice or recommendations.

- The terms "advice" and "recommendations" are distinct, so they must have distinct meanings.

- "Recommendations" relate to a suggested course of action that will ultimately be accepted or rejected by the person being advised.

- "Advice" has a broader meaning than "recommendations". It includes setting out relevant considerations and options, including expert opinions on matters of fact. Advice can be an opinion about an existing set of

[10] *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para 29.

circumstances and does not have to be a communication about future action.

- "Advice" also includes factual information "compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body". This is because the compilation of factual information and weighing the significance of matters of fact is an integral component of an expert's advice and informs the decision-making process.[11]

[28] The first step in the analysis is to consider whether the disputed information would reveal advice or recommendations under s. 13(1). The second step is to consider whether the disputed information falls within ss. 13(2) or 13(3).

[29] Section 13(2) sets out types of information that a public body must not refuse to disclose under s. 13(1). For instance, s. 13(2)(a) provides that a public body must not refuse to disclose any factual material under s. 13(1). Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. In this case, the information dates from 2019, so s. 13(3) does not apply.

Parties' positions

[30] The City is relying on s. 13(1) to withhold most of the information on pages 14 and 15 of the Report. These pages contain the Consultant's factual conclusions and recommendations. The City says the withheld information would reveal advice or recommendations developed by the Consultant for the City, as well as the background information the Consultant gathered during the investigation.

[31] The applicant says that the Report was never intended by the City to include advice or recommendations. He says that because the Report itself was never presented to the City Council, it "cannot possibly comprise advice or recommendations for the City".[12]

[32] In reply, the City disputes the applicant's assertion that the Report does not contain advice and recommendations, and says it is not relevant for the purposes of s. 13 whether or not a public body ultimately considers the recommendations.[13]

[33] Neither party made submissions about the application of ss. 13(2) and 13(3).

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[11] Order F22-39, 2022 BCIPC 44(CanLII) at para 67.
[12] Applicant's response submission at paras 7-10.
[13] City's reply submission at paras 3-4.

Analysis and conclusion

[34] The information the City withheld on page 14 under s. 13(1) consists of the Report's conclusions and summary. I am satisfied that this information is "advice" for the purposes of s. 13(1) since it consists of factual information compiled and selected by an expert in workplace investigations, the Consultant. It sets out her interpretation of the evidence. The conclusions and summary also lead directly into the recommendations on the next page; the recommendations flow logically from them.

[35] The information withheld on page 15 consists of a list of recommendations that the Consultant developed for action by the City. In other words, its express purpose is to set out recommendations for a public body.

[36] While the applicant laid much stress on the fact that the City Council was never provided with a copy of the Report, I do not think this is a relevant factor in the question of whether the information would reveal advice or recommendations developed for a public body. Almost all of the withheld information consists of advice and/or recommendations developed for a public body, as those terms have been interpreted.

[37] However, there is one piece of information that I do not find would reveal advice or recommendations: the heading on page 15. Neither party's submission expressly addresses the heading; it seems likely to me that it was withheld in error. The City's submission expressly refers to the "investigator's findings and resulting 'Recommendations' for the City at pages 14 and 15".[14] The City's reply submission also says: "the Report clearly sets out the investigator's [the Consultant's] 'Recommendations' on pages 14 and 15 of the Report".[15] In addition, I do not find that the heading itself would reveal any advice or recommendations developed for the City. The City therefore may not refuse to disclose the heading under s. 13(1).

[38] Reviewing the withheld information in light of the provisions of s. 13(2), I do not find that any of them apply. As set out above, I do not find that s. 13(3) applies. The City may therefore refuse to disclose the information it withheld under s. 13(1), with the exception of the heading on page 15.

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

[39] Section 22(1) of FIPPA says that a public body must refuse to disclose personal information if this disclosure would be an unreasonable invasion of a third party's personal privacy. The analytical framework for s. 22, which I will apply, is well established:

[14] City's initial submission at para 40.
[15] City's reply submission at para 3.

> 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.[16]

[40] The majority of the withheld information in the Report is withheld under s. 22(1). Some information is withheld under both s. 22(1) and other sections of FIPPA. For example, the City withheld information on pages 14 and 15 under both ss. 13(1) and 22(1). I have found above that the City is authorized to refuse to disclose most of this information under s. 13(1). I therefore do not need to consider whether s. 22(1) also applies. The information I will consider here is the information identifying the complainants and the people they complained about (respondents), the statements of the complainants and respondents, and the Consultant's evaluations of those statements, all of which are withheld under s. 22(1).

Is the information personal information? – s. 22(1)

[41] The first step in the s. 22 analysis is to determine whether the information is personal information. Both "personal information" and "contact information" are defined in Schedule 1 of FIPPA:

> "personal information" means recorded information about an identifiable individual other than contact information;
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> "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;

[42] The City says that all of the information it withheld under s. 22(1) is personal information because it is about identifiable individuals and is not contact information.[17]

[43] The applicant says that the withheld information "is not personal information about" the complainants because he already knows their identities, and that he has a right to know things said about him by others.[18]

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[16] Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.
[17] City's initial submission at paras 14-15.
[18] Applicant's response submission at para 19.

[44] I am satisfied that most of the information withheld under s. 22(1) is the personal information of third parties, because on its face it is about identifiable individuals (other than the applicant) and is not contact information. Some of the information is the personal information of both the applicant and a third party. I reject the applicant's argument that his purported knowledge of the complainants' identities has anything to do with whether the information is personal information. I will address the relevance of the applicant's knowledge of some of the information below under s. 22(2).

[45] However, I find that some of the withheld information is not personal information. For instance, I cannot see, and the City does not explain, how the number of complaints made, which is withheld on page 2 of the Report, is capable of identifying individual people.[19] I also do not find that some information on page 9,[20] some information on page 12,[21] the withheld information in the first paragraph under the heading "Credibility" on page 13, and the headings on pages 4-6, 12, and 15 are capable of identifying individuals.

Not an unreasonable invasion of third-party personal privacy – s. 22(4)

[46] The next step in the s. 22 analysis is to determine whether the personal information falls into any of the categories set out in s. 22(4), and is therefore not an unreasonable invasion of a third party's personal privacy.

[47] The City says that no provisions of s. 22(4) apply.[22] The applicant does not make a submission specifically about the application of s. 22(4).

[48] Reviewing the withheld information in light of the provisions of s. 22(4), I find that none of them apply.

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

[49] The third step in the s. 22 analysis is to determine whether any presumptions set out in s. 22(3) apply, such that disclosure of the personal information is presumptively an unreasonable invasion of a third party's personal privacy.

[50] The Ministry submits that s. 22(3)(d) (personal information related to employment, occupational, or educational history) applies. The City does not

[19] In Order 00-18, 2000 CanLII 7416 (BC IPC), former Commissioner Loukidelis indicated that "[i]nformation which reveals the number of individuals involved in a matter may in a rare case qualify" as personal information. Here, however, disclosure of the number of complaints dealt with in the Report would not even reveal the number of individuals involved.
[20] Namely, the quoted personal pronoun in the fourth paragraph, and the two redactions in the sixth paragraph, of Allegation #2.
[21] Namely, the first two words on the second line of page 12.
[22] City's initial submission at para 16.

argue that any other s. 22(3) circumstance applies.[23] The applicant does not make a submission specifically about any s. 22(3) presumption.

Employment, occupational, or educational history – s. 22(3)(d)

[51] Section 22(3)(d) says that disclosure of personal information is presumed to be an unreasonable invasion of third-party personal privacy where the personal information relates to the third party's employment, occupational, or educational history.

[52] The City submits that all of the withheld personal information relates to the employment history of third parties, because it was confidentially collected in the course of a workplace investigation into complaints about a violation of a workplace policy, so that its disclosure should be presumed to be an unreasonable invasion of third-party personal privacy under s. 22(3)(d).[24]

[53] Deciding whether a given piece of information attracts a s. 22(3)(d) presumption is not always straightforward. The leading BC order on the application of s. 22(3)(d) to personal information arising from a workplace investigation is Order 01-53, where the former Commissioner discussed several kinds of information that typically arise in that context. Statements made by complainants and respondents to a workplace investigator will attract the s. 22(3)(d) presumption, as will the investigator's findings and conclusions, because those pieces of information relate to the employment history of the parties involved in that they are about what the parties said and did in the workplace.[25]

[54] In Order F16-50, the adjudicator found s. 22(3)(d) applied to information related to "subjective observations about individuals and their workplace actions in the context of a workplace investigation".[26]

[55] Keeping all this in mind, I find that all of the withheld information relates to the employment or occupational history of third parties because it describes what those third parties said and did in the context of a workplace investigation, or contains the Consultant's conclusions about what the third parties said and did. It also describes the third parties' backgrounds and credibility.

[56] I therefore find that a presumption of an unreasonable invasion of third-party privacy applies in this case with respect to all of the withheld personal information. I now turn to consider whether, considering all the relevant circumstances, that presumption has been rebutted.

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[23] City's initial submission at paras 17-22.
[24] City's initial submission at paras 17-22.
[25] Order 01-53, 2001 CanLII 21607 (BC IPC) at paras 32-38.
[26] Order F16-50, 2016 BCIPC 55 (CanLII) at para 41.

Relevant circumstances – s. 22(2)

[57] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those set out in s. 22(2). It is at this stage that any s. 22(3) presumptions may be rebutted.

[58] The City submits that none of the circumstances set out in s. 22(2) favour disclosure, and that many of them weigh against disclosure. In particular, the City says that ss. 22(2)(a) (subjecting the public body to public scrutiny), 22(2)(c) (information relevant to a fair determination of the applicant's rights), 22(2)(e) (unfair exposure of third party to financial or other harm), 22(2)(f) (information supplied in confidence), and 22(2)(h) (unfair damage to a third party's reputation) either do not apply or weigh against disclosure.[27]

[59] The applicant says he already knows the contents of much of the withheld information, including the names of the complainants and the other respondent. He also says that much of the withheld information is his personal information because it consists of opinions about him.[28]

Supplied in confidence – s. 22(2)(f)

[60] The City says the Policy requires that information received from parties to the investigation process be kept confidential. Therefore, it says, the third parties supplied their personal information in confidence and the complaint process generally was understood by the participants to be confidential.[29]

[61] The applicant says that the Policy does not guarantee a complainant confidentiality, nor allow for anonymous complaints, so the information the complainants gave to the Consultant cannot have been supplied in confidence.[30]

[62] The City says in reply:

> …the Applicant reasons that because he received a copy of the Complaints during the Investigation, he should also be entitled to receive a copy of the Report. However, the Policy requires any information regarding the Investigation that is known to the Applicant to stay confidential to the extent possible, and even expressly states that all parties have a responsibility to respect confidentiality. The relevant portion of the Policy on this matter provides:
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> > *Confidentiality will be maintained to the extent possible to encourage employees to come forward. It is the responsibility of all parties involved to respect this intent of confidentiality.*

[27] City's initial submission at para 24.
[28] Applicant's response submission at paras 14-15.
[29] City's initial submission at para 24.
[30] Applicant's response submission at para 15.

> Furthermore, the Applicant was advised to keep information about the complaints confidential by [the Lawyer] both during and after the investigation.[31]

[63] Based on my review of the Policy, I can see that it requires confidentiality to be maintained to the extent possible. The Policy also provides:

> Confidentiality must, however, be distinguished from anonymity. If a complainant wishes to file a formal complaint and proceed with an investigation, the respondent must be made aware of the nature of the complaint, which will include the identity of the complainant. Information will only be disclosed on a "need to know" basis and where disclosure is required to fairly investigate a complaint or as required by law.[32]

[64] I agree with the applicant that the Policy does not allow for anonymous complaints. He clearly knows the identity of the complainants and the nature of the complaints against him because the Policy required this information to be disclosed to him as the respondent, and it was. However, for the reasons that follow, I find that the personal information was supplied in confidence.

[65] The Policy states that in order to encourage employees to come forward with complaints, the City will, to the extent possible, treat the information confidentially. I find it reasonable to conclude from this that the people who supplied personal information during the investigation would have understood from this that the information was going to be held in confidence to the greatest extent possible.

[66] Furthermore, the way the City treated the personal information it received indicates that it understood that the personal information was supplied in confidence. For instance, the Report itself is marked "PRIVATE & CONFIDENTIAL" on its cover and on each of its pages. This signals the City's intention to maintain the confidentiality of the personal information that was supplied during the investigation. Similarly, the fact that the City asked the applicant to also treat the information he learned during the investigation as confidential is evidence the City believed the personal information it was sharing with him had been supplied to the City in confidence.

[67] Previous orders have held that information supplied by witnesses during a workplace investigation is typically supplied in confidence.[33] It is a well-established principle that disclosure of information through an access request, other than an applicant's personal information, is effectively disclosure to the

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[31] City's reply submission at paras 7-8.
[32] Affidavit of Manager, Exhibit G.
[33] See, e.g., Order F16-28, 2016 BCIPC 30 (CanLII) at para 101.

world.[34] Given this context, I find that the withheld personal information was supplied in confidence, and that this factor weighs strongly against disclosure.[35]

Applicant's knowledge

[68] The applicant says he already knows the identities of the complainants. He also says that "a great deal of personal information" has been disclosed to him during the complaint process.[36] In support of this argument, the applicant provided copies of the complaints against him.[37] The City says in reply that the applicant's knowledge and possession of the documents disclosed to him during the investigation do not change the City's obligation to withhold information whose disclosure would be an unreasonable invasion of third-party personal privacy.[38]

[69] Previous orders have found an applicant's knowledge of a third party's identity to be a relevant circumstance favouring disclosure.[39]

[70] I accept the applicant's assertion that a great deal of personal information was disclosed to him during the complaint process. I can see from his evidence that he knows the identities of the complainants and one of the other respondents, as well as the substance of the complaints against him. I find that for this information, this factor strongly favours disclosure. However, the applicant has not established that he knows what the complainants and other respondent(s) said to the Consultant, nor what the Consultant wrote, so I find that for most of the withheld personal information, this factor does not favour disclosure.

Applicant's personal information

[71] The City says that where the withheld personal information is the applicant's personal information, it is inextricably intertwined with the personal information of third parties.[40] The applicant says that much of the withheld personal information is his personal information because it consists of others' opinions about him.[41]

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[34] See, e.g., Order 03-35, 2003 CanLII 49214 (BC IPC) at para 31.
[35] In coming to this conclusion, I am mindful of what former Commissioner Loukidelis said in Order 01-07, 2001 CanLII 21561 (BC IPC) at para 25: "An assurance of confidentiality is not a veto on disclosure. There can be no absolute guarantee of confidentiality, under [FIPPA] or otherwise."
[36] Applicant's response submission at paras 14 and 19.
[37] Attachment 1 to applicant's response submission.
[38] City's reply submission at para 9.
[39] See, e.g., Order 01-53, *supra* note 25 at paras 80-81; Order F22-12, 2022 BCIPC 14 (CanLII) at paras 50-52.
[40] City's initial submission at paras 22-23.
[41] Applicant's response submission at paras 15 and 19.

[72] Past orders have held that where the withheld information is the applicant's own personal information, this will be a relevant circumstance favouring disclosure.[42] I find that most of the withheld information is not the applicant's personal information because it is not about him, but rather about various third parties. However, some of the withheld information is the applicant's personal information as well as the personal information of third parties.[43]

[73] Previous orders have considered the issue of the joint or inextricably intertwined personal information of two or more individuals. For instance, in Order F15-54, the adjudicator concluded that an applicant's personal information was inextricably intertwined with a third party's personal information so that it was not possible to disclose the applicant's own personal information without also disclosing the personal information of the third party. [44] I make a similar finding here. In this case, where the personal information is the personal information of both the applicant and a third party, I likewise find that it would not be reasonably possible to sever and disclose pieces of the information without also disclosing the personal information of third parties. It seems to me that the City has disclosed as much of the applicant's personal information as it reasonably could. I therefore find that this factor does not favour further disclosure.

Sensitivity of information

[74] While neither party made a submission on sensitivity, previous orders have held that the sensitivity of the information may be a relevant circumstance (either for or against disclosure) under s. 22(2).[45]

[75] In my view, all of the withheld personal information is sensitive in nature. It was supplied or created for the sole purpose of conducting a confidential workplace investigation. It contains allegations of wrongdoing and descriptions of private workplace encounters. I therefore conclude that this factor weighs against disclosure.

Other circumstances – ss. 22(2)(a), (c), (e), and (h)

[76] Examining the withheld information in light of these factors, I do not think most of them apply. In particular, I do not think the withheld personal information is relevant to a fair determination of the applicant's rights under s. 22(2)(c), first, since most of the withheld information does not relate to him, and second, the investigation has concluded, with no breaches of the Policy on the applicant's part found. I also do not think, and the applicant does not argue, that disclosure

[42] Order F20-13, 2020 BCIPC 15 (CanLII) at para 73.
[43] For example, much of the information withheld in Complaint #2 describes events in which the applicant participated and is therefore also his personal information.
[44] Order F15-54, 2015 BCIPC 57 (CanLII) at paras 26-27.
[45] E.g., Order F16-06, 2016 BCIPC 7 (CanLII) at para 38.

of the information would assist with public scrutiny of the City's activities under s. 22(2)(a).

[77] I am not persuaded by the City's submission on s. 22(2)(e). There is no evidence before me of the type of harm, financial or otherwise, that the City contemplates that the third parties will suffer if their personal information is disclosed. I find that this factor does not apply.

[78] I do, however, find that s. 22(2)(h) is a relevant circumstance. In Order F17-27, the adjudicator concluded that information in a survey about workplace harassment would unfairly damage the reputation of survey respondents if disclosed.[46] Similarly, here the topic of the Report is workplace harassment. I find that s. 22(2)(h) is relevant and weighs against disclosure of the personal information.

Conclusion on s. 22(1)

[79] To summarize, I have found that most, but not all, of the information withheld under s. 22 is either the personal information of third parties, or jointly the personal information of the applicant and one or more third parties. I have found that no s. 22(4) circumstances apply. I have found that s. 22(3)(d) applies to raise a presumption of an unreasonable invasion of privacy in the case of all of the withheld personal information.

[80] There are strong factors both for (with respect to some of the information) and against the rebuttal of this presumption. The applicant's knowledge of some of the information favours disclosure of that information. However, other circumstances, most notably the fact that the information was supplied in confidence and is sensitive in nature, weigh against disclosure. I do not find, on balance, that the presumption of an unreasonable invasion of third-party personal privacy has been rebutted with respect to any of the personal information. The City must therefore refuse to disclose it.

CONCLUSION

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

1. Subject to item 4 below, I confirm the City's decision to refuse to disclose the information it withheld under s. 14.

2. Subject to item 4 below, I confirm the City's decision to refuse to disclose the information it withheld under s. 13(1).

[46] Order F17-27, 2017 BCIPC 29 (CanLII) at paras 51-56.

3. Subject to item 4 below, the City is required to refuse access to information under s. 22(1).

4. The City is not authorized or required to refuse access under ss. 13(1), 14 or 22(1) to the information I have highlighted in green[47] in the copy of the Report which is provided to the public body with this order. The City is required to give the applicant access to the information highlighted in green.

5. The City must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the record described at item 4 above.

[82] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by May 29, 2023.

April 14, 2023

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

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[47] At pages 2, 4-6, 9, 12-13, and 15.