



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F23-33

THOMPSON RIVERS UNIVERSITY

D. Hans Hwang
Adjudicator

May 4, 2023

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Summary: An applicant made a request to Thompson Rivers University (TRU) under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for records about his complaint of a conflict of interest. TRU provided the responsive records, but refused to disclose some information in them under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), and 22(1) (harm to third-party personal privacy). The adjudicator determined that TRU was authorized to refuse to disclose most, but not all, of the information it withheld under s. 14. The adjudicator determined that TRU was authorized to withhold some of the disputed information under s. 13(1). Finally, the adjudicator determined that TRU was required to refuse to disclose some of the information it withheld under s. 22(1).

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

INTRODUCTION

[1] A faculty member (applicant) at Thompson Rivers University (TRU) asked TRU for access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records about his self-nomination to a TRU Senate Committee and his complaint of a conflict of interest involving several individuals relating to the nomination.

[2] TRU refused to disclose some information in the records to the applicant under ss.13(1) (advice or recommendations), 14 (solicitor-client privilege) and 22 (harm to personal privacy) of FIPPA. The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review TRU's decision.

[3] OIPC's mediation did not resolve the matter and it proceeded to this inquiry.

ISSUES AND BURDEN OF PROOF

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

1. Is TRU authorized to refuse to disclose the information at issue under ss. 13(1) and 14?
2. Is TRU required to refuse to disclose the information at issue under s. 22(1)?

[5] Section 57(1) of FIPPA states TRU, who is a public body in this case,¹ has the burden of proving that the applicant has no right of access to records or parts of records under ss. 13(1) and 14.

[6] Meanwhile, s. 57(2) places the burden on the applicant to prove disclosing the information at issue would not unreasonably invade a third party's personal privacy under s. 22(1). However, the public body has the initial burden of proving the information at issue is personal information.²

DISCUSSION

Background³

[7] TRU is a university based in Kamloops, British Columbia. It provides educational and training programs to more than 25,000 students and employs approximately 2,000 faculty members and other employees.

[8] The applicant is a TRU faculty member. In 2020, he made an application for membership on the TRU's Senate Research Committee. In making the application, the applicant complained that several TRU faculty members have a conflict of interest when dealing with his nomination, so they should not participate in any decision on the application (Complaint).

[9] A TRU faculty member, who is a department chair, examined and discussed the Complaint with several TRU employees.

¹ Schedule 2 of FIPPA.

² Order 03-41, 2003 CanLII 49220 (BCIPC) at para 9–11.

³ The information in this background section is based on TRU's initial submission at para 2 and 11-13.

Records and information at issue

[10] TRU provided me with 28 pages of records to review. They are emails and one email attachment. The information in dispute is only in the emails. The attachment was completely disclosed to the applicant, so it is not at issue in this inquiry.

Solicitor-client privilege, s. 14

[11] TRU is completely withholding some emails under s. 14. Other emails are only partially severed under s. 14.

[12] Section 14 states that a public body may refuse to disclose information that is subject to solicitor-client privilege. Solicitor-client privilege encompasses both legal advice privilege and litigation privilege.⁴ TRU is claiming only legal advice privilege.⁵

[13] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion or analysis.⁶ Also, legal advice privilege applies to information that, if disclosed, would reveal or allow an accurate inference to be made about privileged information. For example, legal advice privilege extends to internal client communications that transmit or comment on privileged communications with lawyers.⁷

[14] The test for legal advice privilege has been expressed in various ways, but the essential elements are that there must be:

- a communication between solicitor and client (or their agent);
- that entails seeking or providing legal advice; and
- that is intended by the solicitor and client to be confidential.⁸

[15] Not every communication between a solicitor and their client is privileged; however, if the conditions above are satisfied, then legal advice privilege applies to the communication and the records relating to it.⁹

⁴ *College of Physicians and Surgeons of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 26.

⁵ TRU's submission at para 24 and 27.

⁶ *College*, *ibid* at para 31.

⁷ *Solosky v. The Queen*, [1980] 1 SCR 821 [Solosky] at p. 834.

⁸ *Solosky* at p. 837; *R. v. B.*, 1995 CanLII 2007 (BCSC) at para 22.

⁹ *Solosky* at p. 829.

Evidentiary basis for solicitor-client privilege

[16] TRU did not provide me with most of the information it withheld under s. 14.¹⁰ Instead, it provided sworn affidavit evidence to support its claims that the information is protected by solicitor-client privilege.¹¹

[17] The applicant argues “As TRU has not provided OIPC with the actual documents for inspection, the veracity of TRU with regard to privilege claims must be examined.”¹²

[18] Section 44(1) gives me the power to order production of records so I may review them during the inquiry. However, in order to minimally infringe on solicitor-client privilege, I would only order production of records being withheld under s. 14 when absolutely necessary to adjudicate the issues. That is due to the importance of solicitor-client privilege to the proper functioning of the legal system.¹³

[19] In this case, after reviewing TRU’s submissions and affidavit evidence, I determined that I have enough information to decide whether s. 14 applies to the information in dispute. I find that TRU’s affidavit is acceptable evidence because it identifies the source of the information and belief that the testimony is based on.¹⁴ While TRU did not provide the content of emails it withheld under s. 14, these records identify the sender, recipient and date of the communications that were withheld. Based on this information, I am satisfied that I have sufficient detail to make an informed decision and it is not necessary to order production of the records.

[20] The applicant also alleges that in other OIPC inquiries between TRU and himself, TRU’s affiants committed perjury or made errors in their affidavits.¹⁵ For that reason, he asserts that I should not believe what TRU says about privilege in this present inquiry. I am not persuaded by this argument because I am deciding this inquiry based on the evidence before me, not on evidence presented in

¹⁰ I note that there is an inconsistency in what TRU says in its initial submission about the application of s. 14 to pages 2, 4 and 6 of the records. TRU says that it withheld information on pages 2, 4 and 6 under s. 14, but those pages are not marked as having been severed under s. 14. Erring on the side of caution, I have considered if s. 14 applies to the information in dispute on pages 2, 4 and 6.

¹¹ TRU’s initial submission at para 24 and 27.

¹² Applicant’s response submission at p. 5.

¹³ Order F19-14, 2019 BC IPC 16 (CanLII) at para. 10; *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para. 17; *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII) at para. 68.

¹⁴ For similar reasoning, see *XY, LLC v. Canadian Topsires Selection Inc.*, 2015 BCSC 988 at para 33, citing *Meier v. Canadian Broadcasting Corporation* (1981), 1981 CanLII 644 (BC SC), 28 B.C.L.R. 136 at 137-8.

¹⁵ Applicant’s response submission at p. 5.

different inquiries. It is clear that the affiants in the present inquiry are not the people the applicant mentions from the previous inquiries.

[21] I turn now to the parties' arguments and evidence about whether the information at issue is subject to solicitor-client privilege.

Parties' submissions

[22] TRU argues that the communications in the records at issue were between TRU, as the client, and TRU's legal counsel, as the solicitor, undertaken for the purpose of seeking, formulating and providing legal advice.¹⁶

[23] The applicant disputes that legal advice privilege applies to the information at issue. He says, "I find no definition of legal advice that applies to an institution's internal policies. Thus, this appears to only be what is sometimes called 'business advice'".¹⁷

[24] In reply, TRU asserts that communications do not need to comprise direct communications with a lawyer in order for solicitor-client privilege to apply and confidential communications that refer to actual or anticipated privileged communications with a lawyer continue to be privileged.¹⁸

Analysis and findings

[25] Legal advice privilege applies to confidential communications between a solicitor and client for the purpose of seeking or giving legal advice. Therefore, I will first consider whether there was a solicitor-client relationship, before turning to consider nature of the communication and whether the communication was confidential.

[26] Whether there was a solicitor-client relationship: For the reasons that follow, I find that there was a solicitor-client relationship between legal counsel for TRU (TRU Lawyer) and TRU employees. I accept the following sworn testimony of a coordinator to the TRU Office of General Counsel (Coordinator):

- The senate steering committee has responsibility for receiving and making recommendations on application for membership on the Senate Research Committee.
- A TRU faculty member who was the chair of the senate steering committee, in his role as Chair, was seeking legal advice from the TRU Lawyer on how to handle the Complaint.¹⁹

¹⁶ TRU's initial submission at para 24 and 27.

¹⁷ Applicant's response submission at p. 5.

¹⁸ TRU's reply submission at para 13.

¹⁹ Affidavit #1 of the Coordinator at para 8-9 and 11-15.

[27] I am satisfied that the TRU Lawyer was acting in his role as legal counsel for the chair of the senate steering committee with regard to the communications contained in the records.

[28] Nature of the communication: The next condition necessary for legal advice privilege to apply is that the communication must entail the seeking or giving of legal advice.

[29] Based on the Coordinator's affidavit evidence, which I accept, my findings about the nature of the communications are as follows:

- The Coordinator has reviewed the communications between the chair of the senate steering committee and TRU Lawyer and she was copied on some of the communications.
- She understood those communications were confidential communications for the purpose of seeking, formulating or providing legal advice, and she was informed by the TRU lawyer that portions of the communications had been withheld on the basis of solicitor-client privilege.

[30] I am satisfied that the information at issue consists of communications between the TRU Lawyer and his client and those communications entail the seeking and providing of legal advice on the Complaint.

[31] Confidentiality: The final part of the test requires that the communications were intended by the participants to be confidential.

[32] I find that there are several emails that have a boilerplate confidentiality proviso in the signature block. However, on its own, such a proviso in a signature block is insufficient to establish the contents of the email were supplied in confidence.²⁰ In most of the records and in the evidence, there is nothing that expressly addresses an intention of the individuals regarding the confidentiality of these communications.

[33] I find, however, that the email communications only include the TRU Lawyer and several TRU employees who were dealing with the Complaint. There is nothing that suggests these emails or their contents were distributed more widely. As a result, I accept that the correspondents intended for the communications to be confidential and treated them in that manner.

[34] Taking all of this into account, I am satisfied that some of the disputed information falls within the scope of the legal advice privilege.²¹

²⁰ For similar reasoning, see Order F18-19, 2018 BCIPC 22 at para 67.

²¹ Pages 7-12, 17-18 and 20 of the records in dispute.

[35] However, I find the rest of the information withheld from the records is not subject to legal advice privilege under s. 14. There are several instances where the communications were between TRU employees who were not in a solicitor-client relationship.²² For example, there are several emails that the chair of the senate steering committee sent to a coordinator to the TRU Office of General Counsel and none of these emails contains information from confidential communication between solicitor and client. Further, there are instances where a recipient's email address and name were withheld in the email "to/from" lines,²³ and this information does not contain any communication. I cannot see, and TRU does not explain, how disclosing the email addresses would reveal confidential legal advice provided by a lawyer.

Summary, s. 14

[36] TRU has proved some of the disputed information withheld under s. 14 is protected by legal advice privilege, and it may be withheld on that basis. However, the rest of the information does not fall within the scope of legal advice privilege, so TRU is not authorized to withhold that information under s. 14.

Advice and Recommendations, s. 13

[37] TRU applied s. 13(1) to withhold most of the information at issue.²⁴ Section 13(1) says that the head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister. The purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny.²⁵

[38] Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences about the advice or recommendations.²⁶

[39] The term "recommendations" includes material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being

²² Pages 2, 3, 4, 5 and 6 of the records in dispute.

²³ Pages 14 ("2020-05-13 8:23 AM" email) and 18 ("2020-05-13 2:57 PM" email) of the records in dispute.

²⁴ Pages 2-6, 7-12, 12-16, 17-18, 20, 22-23 of the records in dispute; Affidavit #1 of Privacy Assistant of TRU Office of General Counsel and Secretariat at paras 12(a), (b) and (c).

²⁵ *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para 45-51.

²⁶ Order 02-38, 2002 CanLII 42472 at para 135. See also Order F17-19, 2017 BCIPC 20 (CanLII) at para 19.

advised and can be express or inferred.²⁷ Further, the term “advice” has a broader meaning than “recommendations”,²⁸ and includes “an opinion that involves exercising judgment and skill to weigh the significance of matters of fact,” including “expert opinion on matters of fact on which a public body must make a decision for future action”.²⁹

[40] As well, s. 13(1) extends to factual or background information that is a necessary and integrated part of the advice or recommendation.³⁰ This includes factual information compiled and selected by an expert, using their expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.³¹

[41] The first step in the s. 13 analysis is to determine whether disclosing the information in dispute would reveal advice or recommendations developed by or for a public body. If it would, then I must decide if ss. 13(2) or (3) apply to the information. Section 13(2) lists types of information and records that public bodies cannot withhold under s. 13(1), and s. 13(3) says that public bodies cannot use s. 13(1) to withhold information in a record that has been in existence for 10 or more years.

Parties’ submissions on s. 13

[42] TRU submits there are portions of the records that constitute “internal dialogue” about seeking and receiving internal advice and recommendations regarding the Complaint, so it was withheld on the basis of s. 13.³²

[43] The applicant disputes the TRU’s application of s. 13(1) to the records.³³

Analysis and findings on advice and recommendations

[44] I now turn to whether each piece of information in dispute qualifies as advice or recommendation under s. 13(1).³⁴

²⁷ *Ibid* at para 23-24.

²⁸ *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para 24.

²⁹ College at para, 113.

³⁰ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para 52-53.

³¹ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 94.

³² TRU’s initial submission at para 36.

³³ Applicant’s response submission at para 1-2.

³⁴ TRU applied ss. 13, 14 and 22 to information in pages 7-12, 17-18 and 20; I already found s. 14 applies to that information, so it is not necessary for me to consider again whether s. 13 applies to the information repeated here.

[45] I am satisfied that some of the information withheld from the emails is advice or recommendations under s. 13(1). For example, I can see that a TRU employee provided another employee with advice about possible issues that may arise and recommendations on what steps to take next in dealing with the Complaint.³⁵

[46] However, I am not satisfied that the rest of the information at issue is advice or recommendations under s. 13(1). I therefore find that TRU is not authorized to withhold this information for the reasons that follow:

- The emails from a TRU employee that commented on, and questioned, how to deal with a matter.³⁶ A question or request for advice certainly may *lead* to advice or recommendations; however, the question or request itself does not amount to advice under s. 13 unless it would allow for accurate inferences as to advice actually received, and in this instance, I find it would not.³⁷
- There are instances where the information only reflects a summary of a factual nature relating to the nomination of committee members and where the author commented about a topic but did not provide advice or recommendations about the topic.³⁸

Sections 13(2) and (3)

[47] The next step in the s. 13 analysis is to consider whether any of the circumstances under ss. 13(2) and 13(3) apply to the information that I found would reveal advice or recommendations developed by or for a public body or minister.

[48] TRU argues that none of the circumstances under s. 13(2) applies.³⁹ The applicant argues s. 13(2)(n) applies to the information at issue.⁴⁰

[49] Section 13(2)(n) states that a public body must not refuse to disclose “a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.”

[50] Having considered the submissions and records, I am not satisfied that s. 13(2)(n) applies. I find some of the information contains recommendations for

³⁵ Pages 3, 5 and 23 of the records in dispute.

³⁶ Pages 2 and 4 of the records in dispute.

³⁷ See, for example, Order F14-19, 2014 BCIPC 22 at para 35; For similar reasoning, see Order F17-23, 2017 BCIPC 24 at para 19 in which Adjudicator Whittome found that information that refers to the intention to seek advice or recommendations does not fit within the meaning of s. 13(1).

³⁸ Pages 6 and 16 of the records in dispute.

³⁹ TRU's initial submission at para 38-40; TRU's reply submission at para 5.

⁴⁰ Applicant's submission at p. 2.

a TRU employee to consider in dealing with the Complaint; however, none of that information contains a decision or reasons for a decision.

[51] I also find that the records have not been in existence for 10 or more years. The oldest records at issue were created in 2020. Consequently, s. 13(3) does not apply.

[52] Given my findings respecting ss. 13(2) and (3), I conclude that s. 13(1) authorizes TRU to withhold some of the information⁴¹ in dispute, but that it does not authorize TRU to withhold the rest of the information.

Unreasonable Invasion of Personal Privacy, s. 22

[53] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.⁴²

Personal information

[54] Since s. 22(1) only applies to personal information, the first step in the s. 22(1) analysis is to determine whether the information in dispute is "personal information" within the meaning of FIPPA.⁴³

[55] Personal information is defined in Schedule 1 of FIPPA as "recorded information about an identifiable individual other than contact information." Previous orders have said that information is about an identifiable individual when it is reasonably capable of identifying an individual, either alone or when combined with other available sources of information.⁴⁴

[56] 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." Contact information is not "personal information" for the purposes of FIPPA. Whether information is "contact information" depends on the context in which it appears.⁴⁵

[57] TRU submits "the fact that unproven allegations of a conflict of interest were made about such individuals constitutes their personal information."⁴⁶ The

⁴¹ For added clarity, pages 3 and 5 of the records in dispute.

⁴² Schedule 1 of FIPPA says: "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

⁴³ See, for example, Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

⁴⁴ Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

⁴⁵ Order F20-13, 2020 BCIPC 15 at para 42.

⁴⁶ TRU's initial submission at para 48.

applicant submits that the email addresses TRU withheld are contact information.⁴⁷

[58] I will first consider whether the information at issue is about identifiable individuals.⁴⁸ I will then consider whether any of the information that I find is about identifiable individuals is contact information.

[59] There is some information that I find is not about identifiable individuals. For example, there are instances where the information is about a factual nature or the author's comments about a topic.⁴⁹ I cannot see, and TRU does not explain, how it qualifies as information about identifiable individuals or is reasonably capable of identifying an individual.

[60] I am satisfied that the balance of the information TRU is refusing to disclose under s. 22 meets the definition of personal information.⁵⁰ It includes some TRU employee work email addresses that in another setting might be contact information. However, I find in the context of a workplace investigation, none of the information is contact information.⁵¹

Disclosure not an Unreasonable Invasion of Privacy, s. 22(4)

[61] The second step in the s. 22 analysis is to determine whether the personal information falls into any of the types of information listed in s. 22(4). If so, its disclosure is not an unreasonable invasion of third-party personal privacy.

[62] TRU argues that none of the categories under s. 22(4) applies to the personal information.⁵² The applicant does not specifically mention s. 22(4); however, he asserts that the information "is likely to include the individuals engaging in activities TRU pays them to undertake."⁵³ This argument suggests that the applicant believes s. 22(4)(e) applies to the information.

[63] Under s. 22(4)(e), the disclosure of personal information about a third party's position, functions, or remuneration as an officer, employee or member of a public body or a member of a minister's staff is not an unreasonable invasion of

⁴⁷ Applicant's response submission at p. 3.

⁴⁸ TRU applied ss. 13, 14 and 22 to information in pages 2-6, 7-12, 17-18, 20 and 23; I already found s. 13 and 14 applies to some of that information. So, it is not necessary for me to consider whether s. 22 also applies to the information repeated here.

⁴⁹ Pages 3, 6, 16 and 22 of the records in dispute.

⁵⁰ Pages 2, 3, 5, 6, 12, 13, 14, 15, 16, 22 and 23 of the records in dispute.

⁵¹ For similar findings, see Order F20-13, 2020 BCIPC 15 at para. 42; and Order F20-08, 2020 BCIPC 9, at para 52.

⁵² TRU's initial submission at para 50.

⁵³ Applicant's submission at p. 4.

personal privacy. Past orders have held that the names of a public body's employees generally fall under s. 22(4)(e).⁵⁴

[64] Having reviewed the information at issue, I find that s. 22(4)(e) does not apply in this case. It is apparent that the information at issue contains personal information of several TRU employees. However, none of that information is about an employee's job duties in the normal course of work-related activities, such as objective factual information about what employees said or did in the normal course of doing their jobs. Instead, the information is very specific to the alleged conflict of interest, so I conclude that s. 22(4)(e) does not apply.⁵⁵

[65] The parties did not raise any of the other circumstances listed in s. 22(4), and I conclude that none apply.

Presumption of Unreasonable Invasion of Privacy, s. 22(3)

[66] The third step in the s. 22 analysis is to determine whether any provision under s. 22(3) applies to the personal information at issue. If one or more do, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[67] TRU submits s. 22(3)(d) applies to the information because it constitutes occupation or employment history of a public body's employees.⁵⁶ The applicant says that the TRU's argument of s. 22(3)(d) is "unlikely to be the case here."⁵⁷

[68] Section 22(3)(d) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to employment, occupational or educational history. Past orders have said that descriptive information about a third party's behaviour or actions in the course of a complaint investigation or disciplinary matter is information that relates to that third party's employment history.⁵⁸

[69] I find that s. 22(3)(d) applies to all of the information because the information relates to an allegation of conflict of interest involving third parties in the workplace which, in turn, led the chair of the senate steering committee of

⁵⁴ For example, Order 01-15, 2001 CanLII 21569 (BC IPC) at para 35; and Order F04-20, 2004 CanLII 45530 (BC IPC) at para 18. The BC Supreme Court found this interpretation of s. 22(4)(e) reasonable in *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para 70-71.

⁵⁵ For similar reasoning, see Order 01-53, 2001 CanLII 21607 (BC IPC) at para 40-41; Order F18-31, 2018 BCIPC 34 at para 77.

⁵⁶ TRU's initial submission at para 49.

⁵⁷ Page 4 of the records in dispute.

⁵⁸ Order F22-10, 2022 BCIPC 10 at para 96; Order F20-13, 2020 BCIPC 15 at para 52; Order 01-53, 2001 CanLII 21607 at para 32-33.

TRU to examine that the alleged conflict. Its disclosure is, therefore, presumed to be an unreasonable invasion of personal privacy of the third parties.

Relevant Circumstances, s. 22(2)

[70] 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 listed in s. 22(2). It is at this stage that any applicable s. 22(3)(d) presumption may be rebutted.

[71] I will consider circumstances the parties argue in my s. 22(2) analysis below, and I will also consider whether there are any other circumstances that may apply.

[72] Public scrutiny of a public body, s. 22(2)(a): The applicant argues s. 22(2)(a) is relevant. He says “Clearly how a public body handles a conflict of interest falls into this category. This would be true even if the public body was not corrupt and dishonest.”⁵⁹ TRU says s. 22(2)(a) does not apply to the information at issue.⁶⁰

[73] Section 22(2)(a) asks whether disclosure of personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny.

[74] I find s. 22(2)(a) does not weigh in favour of disclosure for the reasons that follow. I find that the third-party personal information here is very specific to several individuals and disclosure would provide no value in allowing the public to scrutinize TRU’s activities. I am also not persuaded that disclosing the information that identifies individuals who were mentioned in the examination of the conflict of interest would be desirable for the purpose of subjecting TRU’s activities to public scrutiny. That information is solely about a few individuals and it has no broader significance.

[75] Unfair harm and damage to reputation, ss. 22(2)(e) and (h): TRU submits ss. 22(2)(e) and (h) weigh in favour of withholding the information at issue. Section 22(2)(e) asks whether disclosure will unfairly expose a third party to “financial or other harm.” Section 22(2)(h) relates to circumstances where disclosure may unfairly damage the reputation of a person referred to in the records.

[76] TRU argues that “Disclosing unproven allegations that an employee is in a conflict of interest or suggesting in any way that they may have failed to disclose the existence of a conflict of interest in breach of TRU policies is

⁵⁹ Applicant’s submission at p. 3.

⁶⁰ TRU’s initial submission at para 52.

sensitive information that could unfairly expose an individual to criticism or reputational harm.”⁶¹

[77] I find that disclosure of the third-party personal information would identify individuals who were involved in the Complaint and individuals who participated in the examination of that matter. It is apparent that this kind of information is sensitive. That is because the context is one where these individuals were questioned about their professional actions and there is no corresponding detail about the outcome of any process that may have taken place to address the allegation. In my view, this personal information links the third parties to unproven allegations about their professional conduct, and I find disclosing it may unfairly damage their reputations.⁶² I conclude that ss. 22(2)(e) and (h) weigh against disclosure.

[78] Inaccurate or unreliable information – s. 22(2)(g): TRU also claims that s. 22(2)(g) applies.⁶³ This particular subsection asks whether the personal information at issue is likely to be inaccurate or unreliable.

[79] TRU did not link its argument respecting s. 22(2)(g) to specific information in the records. It also did not explain how the information might be unreliable or inaccurate, other than saying that it was an “unproven allegation.” It is not obvious to me that the personal information is likely to be inaccurate or unreliable. I find, therefore, that s. 22(2)(g) does not weigh in favour of withholding.

[80] Sensitivity of the information: Past orders have treated the sensitivity of the personal information as a relevant circumstance to consider. For example, where information is sensitive, it is a circumstance weighing in favour of withholding the information.⁶⁴ Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.⁶⁵

[81] While neither party made submissions respecting the sensitivity of the personal information at issue, I find it to be a relevant circumstance in this case.

[82] I have already found that disclosure may unfairly damage the reputation of a third party due to the nature of the allegation discussed in the records and absence of detail about any outcome. In these circumstances, I find that much of the personal information is sensitive. I, therefore, conclude that the sensitive nature of that information weighs against disclosure.

⁶¹ TRU’s initial submission at para 51.

⁶² For similar findings, see Orders F15-54, 2015 BCIPC 56 (CanLII) and F14-10, 2014 BCIPC 12 (CanLII).

⁶³ TRU’s initial submission at para 51.

⁶⁴ Order F19-15, 2019 BCIPC 17 at para 99.

⁶⁵ Order F16-52, 2016 BCIPC 58 at para 91.

Summary and conclusion, s. 22(1)

[83] For the reasons that follow, I find that disclosing the third-party personal information at issue⁶⁶ would be an unreasonable invasion of third-party personal privacy.

[84] I find that the s. 22(3)(d) presumption against releasing personal information related to employment or occupational history applies to the information at issue.

[85] There are several relevant circumstances to consider in assessing whether the s. 22(3)(d) presumption has been rebutted in this case. I find that s. 22(2)(a) does not weigh in favour of disclosure. I also find that s. 22(2)(g) does not weigh in favour of withholding.

[86] However, I find the circumstances under ss. 22(2)(e) and (h), unfair exposure to harm and unfair damage to reputation, weigh against disclosure based on the context in which the personal information appears. In addition, I find the sensitive nature of the information weighs against disclosure. Therefore, I conclude that the s. 22(3)(d) presumption against releasing personal information has not been rebutted and that the applicant has not met his burden of establishing that disclosure of the information would not be an unreasonable invasion of third-party personal privacy.

CONCLUSION

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

1. I confirm, in part, TRU's decision to refuse the applicant access to information under s. 14, subject to paragraph 2 below.
2. TRU is authorized to refuse to disclose only the information that I have circled in black on pages 7-12, 17-18 and 20. TRU is required to disclose the rest of the information it withheld under s. 14 to the applicant.
3. I confirm, in part, TRU's decision to refuse the applicant access to information under s. 13(1), subject to paragraph 4 below.
4. TRU is authorized to refuse to disclose only information that I have highlighted in green on pages 3, 5 and 23. TRU is required to disclose the rest of the information it withheld under s. 13(1) to the applicant.

⁶⁶ For added clarity, pages 2, 3, 5, 6, 12, 13, 14, 15, 16, 22 and 23 of the records in dispute.

5. I confirm, in part, TRU's decision to refuse to disclose information under s. 22(1), subject to paragraph 6 below.
6. TRU is required to refuse to disclose only the information that I have highlighted in green on pages 2, 3, 5, 6, 12, 13, 14, 15, 16, 22, and 23. TRU is required to disclose the rest of the information it withheld under s. 22(1) to the applicant.
7. TRU must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at items 2, 4 and 6 above.

Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by June 16, 2023.

May 4, 2023

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

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