



Order F23-104

## VANCOUVER COASTAL HEALTH AUTHORITY

Carol Pakkala  
Adjudicator

November 30, 2023

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**Summary:** An applicant requested access to a record relating to the investigation of a professional practice complaint he filed against a nurse. The Vancouver Coastal Health Authority (Coastal Health) withheld the entire responsive record under ss. 19 (harm to individual or public safety) and 22 (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found Coastal Health properly withheld the record.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act, RSBC 1996, c. 165, ss. 19(1)(a), 22(1), 22(2), 22(2)(a), 22(2)(b), 22(2)(f), 22(3), 22(3)(a), 22(3)(b), 22(3)(d), 22(3)(g), 22(3)(h), 22(4), and 22(5).*

### INTRODUCTION

[1] This inquiry is about the Vancouver Coastal Health Authority's (Coastal Health) response to an applicant's access request for a letter authored by Coastal Health (Letter).

[2] Coastal Health withheld the Letter under s. 22 (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).<sup>1</sup> The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review Coastal Health's decision. Mediation did not resolve the matter and the applicant requested that it proceed to inquiry.

[3] After the Notice of Inquiry was issued, Coastal Health asked the OIPC to add ss. 13 (advice or recommendations) and 19(1)(a) (harm to individual safety) to the inquiry. The applicant sought to add s. 25 (public interest). The OIPC's Director of Adjudication added s. 19(1)(a) but declined to add ss. 13 or 25.

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<sup>1</sup> For clarity, unless otherwise specified, when I refer to sections in this order, I am referring to sections of FIPPA.

[4] Both the applicant and Coastal Health provided submissions in this inquiry. Portions of Coastal Health's submissions and evidence were accepted by the OIPC *in camera*.<sup>2</sup>

### **Preliminary Issue/Matter**

#### *Scope of applicant's submissions*

[5] From the entirety of his response submissions, the applicant appears to be dissatisfied with both the College's response to, and Coastal Health's role in, a complaint he made about a nurse. He expresses a public safety concern over the nurse's actions being outside the scope of her practice which he says involved her changing his narcotic orders.<sup>3</sup> He wants the College and Coastal Health to acknowledge his concerns and notify the nurse that she acted outside the scope of her practice. He further wants Coastal Health to acknowledge that it was inappropriate for it to influence the decision of a regulatory body.<sup>4</sup>

[6] The applicant summarizes this position as follows:

My motivation for pursuing this matter with the OIPC is ultimately in the interest of patient care and public safety and to establish a precedent that ensures same.<sup>5</sup>

[7] These issues are clearly very important to the applicant, but I do not have the authority under FIPPA to order the acknowledgements or notifications he seeks. My authority is limited to deciding whether Coastal Health properly withheld information under FIPPA. As a result, while I have read and considered the applicant's entire submission, I will refer only to the parts of it that relate to the issues in this inquiry.<sup>6</sup>

### **ISSUES**

[8] The issues to be decided in this inquiry are:

1. Is Coastal Health required to refuse to disclose the information at issue under s.22?
2. Is Coastal Health authorized to refuse to disclose the information at issue under s. 19(1)(a)?

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<sup>2</sup> Section 56(4)(b).

<sup>3</sup> Applicant's submissions at paras 8 and 25.

<sup>4</sup> Applicant's submissions at para 23.

<sup>5</sup> Applicant's submissions at para 61.

<sup>6</sup> The applicant refers to public safety throughout his submissions. His request to add disclosure in the public interest (s.25) was already considered and rejected by the OIPC (decision letter dated April 18, 2023).

[9] Section 57(1) of FIPPA places the burden of proof on Coastal Health to prove the information at issue is personal information under s. 22(1). The burden then shifts to the applicant to prove disclosing the information at issue would not unreasonably invade a third party's personal privacy under s. 22(1). The burden of proof under s. 19(1)(a) is on Coastal Health to prove that the applicant has no right to access the information in dispute.

## **DISCUSSION**

### **Background**

[10] The applicant, a physician, filed a practice complaint against a nurse who worked for Coastal Health. The British Columbia College of Nurses and Midwives (College) commenced an investigation into his complaint. Coastal Health says it sent the Letter to the British Columbia Nurses Union to assist the union in representing the nurse during the complaint.

### **Information in dispute**

[11] The Letter is three pages long and Coastal Health withheld all of it under both ss. 19 and 22. The Letter is about the patient care event leading to the applicant's complaint with the College and to Coastal Health's investigation of that event.

### ***Disclosure harmful to personal privacy, s. 22***

[12] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. This provision of FIPPA is mandatory, meaning a public body has no discretion and is required by law to refuse to disclose this information. Previous orders have considered the proper approach to the application of s. 22 and I apply those same principles here.<sup>7</sup>

### **Personal information**

[13] Section 22(1) only applies to personal information, so the first step in a s. 22 analysis is to decide if the information in dispute is personal information.

[14] FIPPA defines personal information as "recorded information about an identifiable individual other than contact information." 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

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<sup>7</sup> Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58 sets out a summary of the steps in a s. 22 analysis which I follow here.

individual.”<sup>8</sup> Whether information is “contact information” depends upon the context in which it appears.<sup>9</sup>

[15] I will first consider whether the information in the Letter is about identifiable individuals. I will then consider whether any of the information that I find is about identifiable individuals is contact information.

[16] There is some information in the Letter that I find is not about identifiable individuals. For that reason, it is not personal information and s. 22(1) does not apply to it. This information is the Coastal Health logo, the organization to which the Letter is addressed, the date, and page numbers.

[17] The balance of the Letter is about the nurse, a patient, other Coastal Health staff, and the person to whom the Letter is addressed. Not all of this information directly identifies these individuals by name. Given the context, it is reasonable to conclude that the applicant and others who are familiar with the complaint would be able to identify these individuals. This information is personal information and s. 22(1) applies to it.

[18] There is also some information in the Letter identifying the applicant because he was the prescribing physician and filed the complaint against the nurse. All this information is simultaneously his information and that of other identifiable individuals because it is about their interactions with him. This information is personal information and s. 22(1) applies to it.

[19] I will now consider whether the information that is about identifiable individuals is contact information. I find the address where the Letter was sent to be contact information, so it is not personal information. For that reason, s. 22(1) does not apply to it.

[20] There are also names, job titles, location of work, phone numbers, and email addresses in the Letter. While at first glance this information appears to be contact information, in the context in which it appears, I find it is not contact information. This information was provided to the College in the context of the College’s investigation of the applicant’s complaint, not to allow those third parties to be contacted as part of conducting their business affairs.<sup>10</sup> On that basis, I find that this information is not “contact information” but is personal information under FIPPA.

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<sup>8</sup> FIPPA, Schedule 1.

<sup>9</sup> Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

<sup>10</sup> For similar reasoning see Order F23-97, 2023 BCIPC 113 at para 35.

**Not an unreasonable invasion of privacy, s. 22(4)**

[21] The next step in a s. 22 analysis is to assess whether the personal information falls into any of the types of information listed in s. 22(4). If so, then its disclosure is not an unreasonable invasion of third party personal privacy. Coastal Health submits that none of the exceptions in s. 22(4) apply. The applicant makes no comment about the applicability of s. 22(4). None of the exceptions appear to me to apply. Therefore, I find that none of the personal information in the Letter falls within s. 22(4).

**Presumed invasion of privacy, s. 22(3)**

[22] Section 22(3) sets out circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. The parties' submissions only discuss ss. 22(3)(d), (g), and (h). However, I will also consider ss. 22(3)(a) and (b) because they are relevant.

*Medical treatment, s. 22(3)(a)*

[23] Section 22(3)(a) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it is related to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation. The Letter clearly contains personal information about the patient's medical treatment. The patient is not named but is identifiable from the context. For this reason, I find that s. 22(3)(a) creates a presumption against disclosure of the patient's personal information in the Letter.

*Investigation into a possible violation of law, s. 22(3)(b)*

[24] Section 22(3)(b) 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 was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[25] Section 22(3)(b) requires two things: an investigation into a violation of law and the compilation of information that is identifiable as part of that investigation. Compilation of information involves some exercise of judgment, knowledge, or skill on behalf of the public body.<sup>11</sup>

[26] For the first part of s. 22(3)(b), previous orders establish that professional regulation investigations qualify as investigations into a possible violation of

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<sup>11</sup> Order F19-02, 2019 BCIPC at para 39.

law.<sup>12</sup> The investigation here dealt with the nurse's professional practice which is governed by the *Health Professions Act*<sup>13</sup> (HPA). The College has the power under the HPA to discipline and sanction violations by its members. I find the first part of 22(3)(b) is met because the College is a professional regulator, and it investigated the applicant's complaint about the nurse.

[27] I also find that the second part of s. 22(3)(b) is met. My review of the Letter shows it was compiled by Coastal Health in response to the College's investigation. I am satisfied that the information in the Letter is "identifiable" as Coastal Health's review of the patient care event involving the nurse. I can see that compiling this information involved the exercise of judgment, knowledge, and skill on the part of Coastal Health.

[28] Section 22(3)(b) allows for disclosure of investigation information to the extent that it is necessary to prosecute the violation or continue the investigation. Both parties say the College's investigation into the applicant's complaint was completed. I find, therefore, that release of the information is not necessary for purposes of further investigation of the complaint.

[29] For all of these reasons, I find that s. 22(3)(b) creates a presumption against disclosure of all of the personal information in the Letter.

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

[30] Section 22(3)(d) says 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. Coastal Health says s. 22(3)(d) applies. For his part, the applicant says he does not want access to any information that is protected by s. 22(3)(d).

[31] Past orders have found the term "employment history" includes descriptive information about a third party's workplace behaviours or actions in the context of a workplace complaint investigation or disciplinary matter.<sup>14</sup> Past orders have also found that personal information related to a workplace investigation is information that relates to the employment history of the person being investigated (here, the nurse).<sup>15</sup>

[32] My review of the Letter shows it was Coastal Health's response to a complaint about one of its employees, the nurse. The Letter is part of that

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<sup>12</sup> Order 02-20, 2002 CanLII 42445 (BC IPC) at paras. 28-31. See also: Order F23-78, 2023 CanLII 90556 (BC IPC) at para 95 and Order F08-16, 2008 CanLII 57359 (BC IPC) at para 22.

<sup>13</sup> R.S.B.C. 1996, c.183.

<sup>14</sup> Order 01-53, 2001 CanLII 21607 (BC IPC) at paras 32-33; Order F20-13, 2020 BCIPC 15 (CanLII) at para 52; Order F15-52, 2015 BCIPC 55 (CanLII) at para 40.

<sup>15</sup> Order 01-53, 2001 CanLII 21607 (BCIPC) at paras 32 and 41; Order F20-13, 2020 BCIPC 15 (CanLII) at para 55.

employee's personnel file.<sup>16</sup> The personal information includes information about training, experience level, work assignments, interpretation and application of workplace policies and protocols, and performance of duties. I find this information is the nurse's personal information and is part of the nurse's employment history. For these reasons, I find that s. 22(3)(d) creates a presumption against disclosure of the nurse's personal information in the Letter.

*Recommendations, evaluations, or references, s. 22(3)(g)*

[33] Section 22(3)(g) creates a presumption that it is an unreasonable invasion of a third party's personal privacy to disclose personal information consisting of personal recommendations or evaluations, character references or personnel evaluations about the third party. Coastal Health says s. 22(3)(g) applies, and the applicant says he does not want access to any information that is protected by s. 22(3)(g).

[34] Past orders say that s. 22(3)(g) applies to formal evaluations of a third party such as a formal performance review, job reference, or an investigator's findings about an employee's behaviour in the context of a workplace investigation.<sup>17</sup> Past orders also say that s. 22(3)(g) applies to an investigator's evaluative comments about a third party's behaviour in the workplace.<sup>18</sup>

[35] The Letter contains a review of the nurse's actions in the patient care event. The applicant says Coastal Health has described the letter in conflicting ways. He says the descriptions of the Letter by those who have access to it include: a summary of an internal review, a review of this incident, employment history, an evaluation, an internal evaluation, and the review that Coastal Health conducted.<sup>19</sup>

[36] For the purposes of this inquiry and the application of FIPPA, I do not see the terms used by Coastal Health to describe the Letter as conflicting. The Letter contains several professionals' assessments of the nurse's actions in the context of a professional practice complaint. I find this information is clearly the type of personal evaluation that s. 22(3)(g) is designed to protect. For these reasons, I find that s. 22(3)(g) creates a presumption against disclosure of the personal information in the Letter that is the individuals' review of the nurse's actions in the patient care event.

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<sup>16</sup> Coastal Health's initial submissions at para 11.

<sup>17</sup> For example: Order F21-08, 2021 BCIPC 12 (CanLII) at para 138.

<sup>18</sup> For example: Order F16-28, 2016 BCIPC 30 (CanLII) at para 96.

<sup>19</sup> Applicant's submissions at para 59.

*Identity of supplier, s. 22(3)(h)*

[37] Section 22(3)(h) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it would reveal

- (i) the identity of a third party who supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, or
- (ii) the content of a personal recommendation or evaluation, character reference or personnel evaluation supplied, in confidence, by a third party, if the applicant could reasonably be expected to know the identity of the third party.

[38] The purpose of s. 22(3)(h) is to protect the identity of the third party who supplied the kind of information covered by s. 22(3)(g) in confidence.<sup>20</sup>

[39] The applicant disputes that s. 22(3)(h) applies. He says he knows the identity of the third parties referenced in the Letter, so giving him access to the Letter would not "reveal" their identities to him.<sup>21</sup>

[40] My review of the Letter indicates it was provided in confidence to assist in the College's investigation of the complaint against the nurse. The Letter is clearly marked "confidential". Further, I find the personal evaluations of the patient care event and actions of the nurse were provided confidentially in the specific context of the College's investigation of the applicant's complaint.

[41] I have already found above that the Letter contains personal evaluations that are protected by s. 22(3)(g). Section 22(3)(h) provides that where an applicant could identify the individuals who supplied, in confidence, the type of information that is protected by s. 22(3)(g) or could reasonably be expected to know their identity, the information must not be disclosed. I am satisfied that disclosing the Letter to the applicant would directly reveal the names of the individuals who provided the personal evaluations. Even if their names were redacted, I find the applicant could reasonably be expected to know their identities based on the content of the Letter.

[42] Disclosure of the Letter would reveal the type of information s. 22(3)(h) is designed to protect. For these reasons, I find that s. 22(3)(h) creates a presumption against the disclosure of the personal information in the Letter.

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<sup>20</sup> Order F16-46, 2016 BCIPC 51 (CanLII) at para 36. Section 22(3)(h) was amended in November 2021. This statement applies to both versions.

<sup>21</sup> Applicant's submissions at para 26.

*Conclusion on s. 22(3)*

[43] For the reasons above, I find a disclosure of the personal information in the Letter is presumed to be an unreasonable invasion of third parties' personal privacy under ss. 22(3)(a), (b), (d), (g), and (h).

**Relevant circumstances, s. 22(2)**

[44] The final step in a 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). These circumstances can weigh either in favour or against disclosure. It is at this step, after considering all relevant circumstances, that any presumptions under s. 22(3) presumption may be rebutted.

[45] Coastal Health says that none of the s. 22(2) factors weigh in favour of disclosure.<sup>22</sup> The applicant does not address the specific factors in s. 22(2) but he does say things that pertain to ss. 22(2)(a) and (b). I will consider all the relevant circumstances below.

*Public scrutiny, s. 22(2)(a)*

[46] Section 22(2)(a) states that a relevant circumstance to consider under s. 22(1) is whether the disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny.

[47] The applicant says that public and regulatory/governing bodies have a mandate, and they are responsible to the public they serve. He also says truth, responsibility, and accountability weigh heavily in favor of transparency and disclosure.<sup>23</sup>

[48] The applicant expresses concern with the actions of both the College in its investigation of the nurse's practice and of Coastal Health in participating in that investigation. The applicant says it is problematic that Coastal Health exerted influence over the College's decisions.<sup>24</sup> The applicant is clearly dissatisfied with Coastal Health's role in the outcome of his complaint against the nurse.<sup>25</sup>

[49] In my view, disclosing the third party personal information in the Letter is not desirable for the purpose of subjecting Coastal Health's or the College's activities to public scrutiny. This case is very clearly about the actions of the nurse, an employee of Coastal Health, who is regulated in her professional practice by the College. I reject the applicant's submission that Coastal Health's

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<sup>22</sup> Coastal Health's initial submissions at para 17.

<sup>23</sup> Applicant's submissions at para 61.

<sup>24</sup> Applicant's submissions at para 24.

<sup>25</sup> Applicant's submissions at para 52.

involvement in the investigation of his complaint to the College is problematic or resulted in any undue influence.

[50] I find that the personal information contained in the Letter would not add anything to further the public's understanding of Coastal Health's or the College's activities during the investigation. What the applicant says in his submissions does not persuade me that disclosing the third party personal information in this case is desirable for the purpose of subjecting Coastal Health's activities to public scrutiny under s. 22(2)(a).

*Promotion of public health and safety, s. 22(2)(b)*

[51] The applicant expresses strong concerns about what he says is "the fact that the registrant wrote her own orders for medications, and in particular narcotics". The applicant says this fact "is indeed a risk to the public".<sup>26</sup> The applicant complained to the College about his public safety concerns and the College investigated.

[52] In my view, the applicant is clearly dissatisfied with the results of that investigation. Coastal Health says that the Health Professions Review Board has exclusive jurisdiction over assessing the sufficiency of a regulatory college's investigation.<sup>27</sup> I agree. I do not see how disclosure of the information in the Letter is likely to promote public health and safety. For these reasons, I am not satisfied that disclosing the personal information in the Letter is desirable for promoting public health and safety under s. 22(2)(a).

*Information supplied in confidence, s. 22(2)(f)*

[53] Section 22(2)(f) says that a relevant circumstance to consider is whether the personal information was supplied in confidence. Section 22(2)(f) requires evidence that an individual supplied the information under an objectively reasonable expectation of confidentiality at the time they supplied the information.<sup>28</sup> I have reviewed the Letter and am satisfied that it was supplied in confidence. For these reasons, I find that s. 22(2)(f) applies to the personal information in the Letter and this factor favours withholding the information.

*Applicant's knowledge*

[54] From the record before me, I am satisfied that the applicant is already familiar with the general subject matter and some of the specific content of the

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<sup>26</sup> Applicant's submissions at para 6.

<sup>27</sup> Coastal Health's reply submissions at para 6.

<sup>28</sup> Order F23-66, 2023 BCIPC 77 (CanLII) at para 69 citing Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing Order 01-36, 2001 CanLII 21590 (BCIPC) at paras 23-26.

withheld information. This knowledge is a factor that weighs somewhat in favour of disclosure of the personal information at issue.

*Applicant's personal information*

[55] Another factor that supports disclosure is that some of the personal information in the Letter is the personal information of the applicant<sup>29</sup> because it is about his prescription orders for his patient. I find, however, that this factor carries little weight because all his personal information is also the personal information of the nurse.

*Conclusion on s. 22(1)*

[56] I found that most of the information in the Letter withheld under s. 22 was personal information. I found that s. 22(4) did not apply to any of the personal information. I found that all the personal information is subject to one or more of the presumptions against disclosure in ss. 22(3)(a), (b), (d), (g), and (h). I considered the relevant circumstances under s. 22(2) and, after weighing them all, I find that the presumptions against disclosure have not been rebutted. I find that disclosure of any of the personal information in the Letter constitutes an unreasonable invasion of third parties' personal privacy.

**Summary of applicant's personal information, 22(5)**

[57] I found that all the personal information in the Letter was supplied in confidence and that some of this information is about the applicant. He filed the complaint against the nurse, and he was the prescribing physician. Under s. 22(5)(a), the public body must give an applicant a summary of personal information supplied in confidence about the applicant unless the summary cannot be prepared without disclosing the identity of the third party who supplied the information.

[58] Coastal Health says it is under no duty under s. 22(5) to provide the applicant with a summary. Coastal Health further says the applicant already received a summary of its review of his complaint, which includes a summary of the Letter. Coastal Health submits it is impossible to provide the applicant with any information over and above what he has already received without disclosing the contents of the record.<sup>30</sup> The applicant acknowledges receipt of the College's summary of his complaint<sup>31</sup> but disagrees that he received a summary of the Letter.<sup>32</sup>

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<sup>29</sup> Order F14-47, 2014 BCIPC 51 (CanLII) at para 36, for example.

<sup>30</sup> Coastal Health's initial submissions at para 19.

<sup>31</sup> Applicant's submissions at para 2.

<sup>32</sup> Applicant's submissions at para 29.

[59] Section 22(5) only applies to the applicant's personal information not to the Letter as a whole. I find the applicant's personal information in the Letter is so closely intertwined with third party personal information that it cannot be summarized without revealing their personal information.

***Disclosure harmful to individual or public safety, s. 19(1)***

[60] I found above that most of the information in the Letter was properly withheld under s. 22(1) so I will not consider whether s. 19(1) also applies to that information. The remaining information in the Letter is the Coastal Health logo, date of the Letter, address to which the Letter is directed, and page numbers. For the reasons that follow, I find that s. 19(1) does not apply to that information.

[61] Section 19(1) provides that the head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health. Section 19(1) is a harms-based exception, and the question is whether disclosure of the information in dispute could reasonably be expected to result in the identified harms. The argument and evidence on s. 19(1)(a) have, with the OIPC's prior approval, been submitted *in camera*.

[62] Coastal Health says s. 19(1) is applicable to the entire Letter. The applicant says s. 19(1) does not apply and challenges both the sufficiency and truth of the affidavit evidence.

[63] I have considered what Coastal Health said about s. 19(1)(a) but it does not persuade me that revealing the Coastal Health Logo, date of the Letter, address to which the Letter is directed, and page numbers could reasonably be expected to threaten anyone else's safety or physical or mental health. For this reason, I find that s. 19(1) does not apply to that information.

**CONCLUSION**

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

1. Coastal Health is required to refuse to disclose all of the personal information in the Letter under s. 22(1).
2. Coastal Health is not authorized under s. 19(1)(a) to refuse the applicant access to Coastal Health's logo, the date of the Letter, the office to which it is addressed, and the page numbers. I have highlighted this information in yellow on a copy of the Letter that will be provided to the public body with this order.

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3. Coastal Health is required to disclose to the applicant the information described in item 2 above.
  4. Coastal Health must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at item 2 above.

[65] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by January 16, 2024.

November 30, 2023

**ORIGINAL SIGNED BY**

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Carol Pakkala, Adjudicator

OIPC File No.: F21-88212