Order F24-48

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 10 ARROW LAKES

Allison J. Shamas
Adjudicator

June 7, 2024

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Summary: The applicant requested records related to her employment from the Board of Education of School District No. 10 Arrow Lakes (the District). The District disclosed the responsive records but withheld some information under ss. 13(1) (advice and recommendations), 22(1) (unreasonable invasion of a third party's personal privacy) and various other sections of the *Freedom of Information and Protection of Privacy Act.* The adjudicator confirmed the District's decision under ss. 13(1) and 22(1) in part and ordered it to disclose the remaining information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 13(1), 13(2)(a), 13(2)(g), 13(3), 22(1), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h), 22(3)(a), 22(3)(b), 22(3)(d), and 22(4)(e) and Schedule 1 (definition of "personal information" and "contact information").

INTRODUCTION

[1] The applicant requested access to records from the Board of Education of School District No. 10 Arrow Lakes (the District) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). In response, the District disclosed responsive records but withheld some information under ss. 13(1) (advice and recommendations), 14 (solicitor-client privilege), 15(1) (harm to law enforcement), 21(1) (harm to third party business interests), and 22(1) (unreasonable invasion of a third party's personal privacy) FIPPA.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the District's decision. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry.

Preliminary Matters

Section 21(1)

[3] In its initial submission the District withdrew its reliance on s. 21(1). However, in her response submission, the applicant argued that s. 21(1) remained at issue. At my request, the parties made efforts to resolve this matter. These efforts were not successful, and accordingly my determinations about s. 21(1) are below.[1]

[4] Having compared the version of the records the District disclosed to the applicant to the version it provided to the OIPC, I can see that the District no longer relies on s. 21(1) as the basis for withholding any information that is in dispute. Therefore, I find that s. 21(1) is no longer at issue in this inquiry, and I will not consider it further.

[5] However, that is not the end of the story. In email correspondence about the s. 21(1) issue, the applicant clarified that her concern was not that s. 21(1) remained in dispute, but instead that when the District withdrew its reliance on s. 21(1), it did not disclose to her the information it had previously withheld under that section. Instead, according to the applicant, the District withheld the information under other FIPPA exceptions. In support of this assertion, the applicant pointed to specific examples in the records. She also submitted that the District's actions with respect to the information it initially withheld under s. 21(1) are evidence that the District improperly relied on FIPPA exceptions to obscure facts without adequate justification.[2]

[6] Based on the examples provided by the applicant, I find that, at least in some instances, the District did not disclose the s. 21(1) information to the applicant, but instead withheld it under other FIPPA exceptions. From the records, I can see that where the District did so, it relied on FIPPA provisions that were already in issue in this inquiry. Therefore, while I accept that the District expanded its reliance on existing FIPPA exceptions, I find that in doing so, the District did not add any new legal issues.

[7] To address the applicant's argument about improper reliance, I am not prepared to accept the applicant's argument that the District's expansion of other FIPPA exceptions to information it previously withheld under s. 21(1) is, in and of itself, evidence that the District improperly applied the remaining FIPPA exceptions. These arguments are more appropriately considered under the merits of the remaining FIPPA exceptions in dispute.

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[1] See my correspondence of April 15, 2024 and April 29, 2024 and the parties' ongoing correspondence between April 16, 2024 and May 6, 2024.
[2] The applicant's position is set out in her email correspondence dated May 6, 2024.

Sections 14 and 15(1)

[8] After reviewing the District's submissions, the applicant advised that she was no longer seeking access to the information the District withheld under ss. 14[3] or 15(1)[4]. I find that the District's application of ss. 14 and 15(1) is no longer in issue and I will not consider these provisions further.

Section 6(1)

[9] In her submissions, the applicant identified records that she says are missing from the responsive records. The District argued that to the extent the applicant is asserting that it breached s. 6(1) of FIPPA by failing to locate responsive records, that issue is outside the scope of the inquiry.

[10] In previous orders the OIPC has consistently held that new issues raised in a party's inquiry submission without the OIPC's prior authorization will not be considered.[5] The notice of inquiry that the OIPC sent to the parties expressly states, "parties may not add new exceptions or issues without the OIPC's prior consent,"[6] and s. 6 of FIPPA was not listed as an issue in the fact report or the notice of inquiry. Furthermore, the applicant did not seek the OIPC's permission to add s. 6 as an issue. I can see no compelling reason to permit the applicant to add s. 6 to the inquiry at this late stage, particularly in light of the fact that the applicant has the option to pursue a s. 6 complaint through the OIPC's ordinary process.[7] Accordingly, I will not make any determinations concerning the applicant's arguments about missing records.

ISSUES

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

1. Whether the District is authorized to refuse to disclose the information at issue under s.13(1) of FIPPA.
2. Whether the District is required to refuse to disclose the information at issue under s. 22(1) of FIPPA.

[12] Section 57(1) of FIPPA places the burden on the District to prove that the applicant has no right of access to the information withheld under s. 13(1). Section 57(2) places the burden on the applicant to prove that disclosure of any

[3] Applicant's response submission at paras 14 and 31.
[4] Applicant's response submission at para 15.
[5] For examples where the OIPC has refused to permit a party to add a s. 6(1) issue without prior permission, see Order F21-23, 2021 BCIPC 28 (CanLII) at para 7, Order F18-11, 2018 BCIPC 14 (CanLII) at para 3, Order F23-31, 2023 BCIPC 37 (CanLII) at para 5, and Order F23-101, 2023 BCIPC 117 (CanLII) at para 9. See also the OIPC's Written Instructions for Inquiries at p. 3.
[6] See Notice of Written Inquiry.
[7] See Guide to OIPC Processes (FIPPA) pp 6-9.

personal information would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, the District has the initial burden of proving the information at issue under s. 22(1) is "personal information" for purposes of FIPPA.[8]

DISCUSSION

Background

[13] The District is a public board of education governed by the *School Act*[9] that provides publicly funded educational services to school-aged children in British Columbia.

[14] The applicant commenced employment with the District in 2011. The terms of the applicant's employment are covered by a collective agreement in place between the District and her union (the union).

[15] The relationship between the applicant and the District is strained. The applicant was the subject of a misconduct investigation stemming from an incident involving a student. Also, the applicant filed a WorkSafe BC claim, was the complainant in a bullying and harassment complaint,[10] and initiated a WorkSafe BC claim against the District. The applicant also took a medical leave and was involved in a return-to-work process connected to her WorkSafe BC claim. The applicant has also filed a number of grievances against the District.

[16] More recently, the applicant initiated a human rights complaint against the District. The human rights complaint is ongoing. The applicant states that she filed the instant request to gain access to records relevant to the human rights complaint.

Records in dispute

[17] The District disclosed 2521 pages of records to the applicant, a significant number of which contain information that is in dispute (responsive records). In some cases, the District has severed a few words, in other cases entire pages. The responsive records relate to the misconduct investigation, the applicant's bullying and harassment complaint, WorkSafe BC claim, medical leave, return to work process, and various other employment related matters. They also include records related to meetings between the District and the union.

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[8] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.
[9] RSBC 1996, c. 412.
[10] As discussed in detail under s. 22(1), it is not clear what role the applicant had in preparing the complaint.

SECTION 13 – ADVICE AND RECOMMENDATIONS

[18] Section 13 allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body. The purpose of s. 13 is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.[11]

[19] The test under s. 13 is well-established, and I will apply it below.

Section 13(1) – would disclosure reveal advice or recommendations

[20] The first step in the s. 13 analysis is to determine whether disclosing the information at issue would reveal advice or recommendations developed by or for a public body.

[21] "Recommendations" involve "a suggested course of action that will ultimately be accepted or rejected by the person being advised."[12]

[22] The term "advice" has a broader meaning than the term "recommendations,"[13] and includes,

- an opinion that involves exercising judgment and skill to weigh the significance of matters of fact;[14]
- expert opinion on matters of fact on which a public body must make a decision for future action;[15]
- expert opinions that are obtained to provide background explanations or analysis necessary to the deliberative process of a public body;[16] and
- 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.[17]

[23] 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 to be drawn about advice or recommendations.[18]

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[11] *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at para 52.
[12] *John Doe v Ontario (Finance),* 2014 SCC 36 [*John Doe*] at para 24.
[13] *John Doe ibid* at para 23.
[14] *College supra* note 6 at para 113. Endorsed in *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [*PHSA*] at para 80.
[15] *College* at para 113. Endorsed in *PHSA* at para 80.
[16] *College* at para 111. Endorsed in *PHSA* at para 80.
[17] *PHSA* ibid at para 94. See also *College supra* note 6 at para 110.
[18] See for example *John Doe supra* note 30 at para 24; Order 02-38, 2002 CanLII 42472 (BCIPC), Order F10-15, 2010 BCIPC 24 (CanLII) and Order F21-15, 2021 BCIPC 19 (CanLII).

District's submissions

[24] The District submits that the information it withheld under s. 13 is advice, recommendations, and information that would reveal that advice and recommendations. It states that the information is found in email communications between its Superintendent, human resources manager, other management personnel, and third party consultants engaged to advise the District on employment related matters.

[25] In support of its argument, the District relies on evidence from its human resources manager. The manager explains that while decision making authority for human resources was the responsibility of the District's superintendent, she and consultants from the British Columbia Public Sector Employers' Association (the BCPSEA), the Okanagan Labour Relations Council (OLRC), and another school district in the province (District 23) were responsible for advising the District about human resources-related matters.[19]

Applicant's submission

[26] The applicant submits that the District took an overly broad approach to s. 13(1). According to the applicant, rather than limiting the application of s. 13 to advice and recommendations, the District used it to shield information that it did not want disclosed. The applicant also says that many of the s. 13 redactions concern day to day operational matters rather than advice and recommendations, such as a direction that a manager provided to an employee who had no freedom to accept or reject it.

Findings and analysis

[27] The information the District withheld under s. 13(1) is contained in email communications between the District's Superintendent, human resources manager and other management personnel, third party consultants from the BCPSEA, the OLRC, and District 23 (the consultants), an external lawyer, and in one instance a non-management District employee. Having reviewed this correspondence, I find that it concerns ongoing discussions about various human resources matters affecting the District. I also accept the District's evidence that the consultants were responsible for advising the District about human resources matters. Furthermore, given the nature of their roles and the kind of advice, I accept that these individuals are human resources experts.

[28] I begin with the information that I find reveals advice or recommendations.

[29] The District withheld several suggestions about what course of action the District should take from the human resources manager to the Superintendent.

[19] See District Initial submissions, affidavit of human resources manager at paras 33 - 35.

Some of the suggestions are in the form of straightforward statements, while others are in the form of questions that expressly embed the human resources manager's suggested course of action (suggestions that begin with "do you think we should [insert suggestion]" or similar language). In both cases, I find that this information is recommendations because it sets out proposed courses of action that the Superintendent, a person with authority, could accept or reject.

[30] The District also withheld opinions and supporting reasons concerning how the District should proceed regarding various human resources issues. While most of this information is found in communications amongst the human resources manager and the consultants, some of it is also found in communications involving the Superintendent or other of the District's management personnel. In each instance it is clear that the individual providing the opinion used their expertise to guide the District's deliberations by weighing the significance of various factors and explaining the potential consequences of different available options. On this basis, I find that revealing the opinions and supporting reasons would reveal advice.

[31] The District also withheld drafts and editorial suggestions about how to amend those drafts. Past orders are clear that a document is not automatically subject to s. 13(1) simply because it is a draft; rather, drafts are subject to the same test as any other piece of information under s. 13(1).[20]

[32] The drafts and proposed amendments were exchanged between the human resources manager and the consultants in the course of ongoing discussions about how to improve on proposed language. The drafts were repeatedly amended as a result of this process, which took place before the final product was sent to the Superintendent for final review.

[33] In the circumstances, I find that the drafts and editorial suggestions were part of the deliberative process through which the manager and consultants used their skill, expertise, and knowledge to improve upon draft language before final copies were presented for final review. I also find that the editorial suggestions satisfy the definition of advice, and that given the close connection between the editorial comments and the drafts, revealing the drafts would risk revealing the advice in the suggestions.

[34] The District also withheld background information that relates directly to one or more of the pieces of information that I have already found are advice or recommendations. The information is from the consultants and the human resources manager. On the face of the records, I can see that the human resources manager and the consultants – the experts – provided the background information to provide the necessary context for their advice and

[20] *Ministry of Attorney General Records*, Re, 2000 CanLII 14392 (BC IPC) at p. 6.

recommendations. For these reasons, I find that this information falls within the broader definition of the term advice.

[35] Finally, the District also withheld a small amount of information where the human resources manager described or summarized advice and recommendations provided by the consultants for the Superintendent. While not itself advice or recommendations, I find that this information would, if disclosed, reveal or allow accurate inferences about the advice or recommendations provided by the consultants.

[36] I now turn to the information that I find does not reveal advice or recommendations.

[37] The District withheld lists of topics to be discussed, requests to discuss topics, introductory statements, and questions that reference a particular topic. I find that this information reveals only the topic of advice and recommendations the District sought or obtained, not what that advice or recommendations actually was. The District does not explain how disclosing the topic information would reveal advice or recommendations. Further, the OIPC has repeatedly recognized that s. 13(1) does not apply to information that reveals only the topic of advice or recommendations.[21] I make the same finding here – disclosing the topic information would not reveal advice or recommendations.

[38] The District also withheld updates about staff assignments and training. This information communicates the outcome of decisions that were already final by the time the communications relaying them were sent and received. Section 13(1) is intended to protect a public body's deliberative process, not the outcome of those processes.[22] As such, information that only communicates the content of a finalized decision does not qualify as advice or recommendations under s. 13(1).[23] On this basis, I find that disclosing the decision information would not reveal advice or recommendations.

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[21] See for example Order F23-57, 2023 BCIPC 67 (CanLII) at para 96 in which an adjudicator found that s. 13(1) does not apply to statements and headings that reveal only the topic; Order F19-27, 2019 BCIPC 29 (CanLII) at para 29 in which an adjudicator found that topics, headings and lists of discussion matters for future meetings did not qualify as advice or recommendations; Order F18-41, 2018 BCIPC 44 at para 15, in which an adjudicator found that the general topics for an upcoming meeting did not qualify as advice or recommendations; Order F17-42, 2017 BCIPC 46 at paras. 75-76 in which another adjudicator found that the topics for a conference call did not qualify as advice or recommendations; Order F18-43, 2018 BCIPC 46 at paras 65 and 70, in which an adjudicator found that information that identified the topics addressed in a report, Cabinet submissions and presentations did not qualify as advice or recommendations.

[22] Order F23-101, 2023 BCIPC 117 (CanLII) at paras 117 and 118.

[23] See for example Order F23-101, 2023 BCIPC 117 (CanLII) at paras 117, 118; Order F21-16, 2021 BCIPC 21 (CanLII) at para 22; Order F19-27, 2019 BCIPC 29 at para 32, Order F18-04, 2018 BCIPC 4 (CanLII), at para83 in which Adjudicator Lott found that an insurance adjuster's assessment and decision about an individual's injuries did not qualify as advice or recommendations; Order F15-37, 2015 BCIPC 40 at para 22 in which an adjudicator found that

[39] The District also withheld a communication between a supervisor and an employee concerning how the employee should perform their work. In past orders the OIPC has held that instructions to staff do not qualify as advice or recommendations under s. 13(1).[24] I agree with this approach and apply it here. Accordingly, I find that disclosing the supervisor's directions would not reveal advice or recommendations.

Conclusion s. 13(1)

[40] For the reasons above, I find that with the exception of the topic information, updates about staff assignments and training, and supervisor direction information, all the information the District withheld under s. 13(1) reveals advice or recommendations.

Section 13(2) – must not refuse to disclose

[41] The next step is to decide whether the information that I have found reveals advice or recommendations, falls into any of the categories in s. 13(2). If s. 13(2) applies to any of the information, that information cannot be withheld under s. 13(1).

[42] The applicant raises s. 13(2)(g) and argues that the final report on her bullying and harassment complaint should not be withheld under s. 13(1). The District does not address s. 13(2). Given the nature of the information at issue, I find that it is also appropriate to consider the application of s. 13(2)(a).

Factual material – s. 13(2)(a)

[43] Section 13(2)(a) provides that a public body must not refuse to disclose factual material under s. 13(1).

[44] The term "factual material" is not defined in FIPPA. However, in distinguishing it from "factual information" which may be withheld under s. 13(1), the courts have interpreted "factual material" to mean "source materials" or "background facts in isolation" that are not necessary to the advice provided.[25] Thus, where facts are compiled and selected by an expert as an integral component of their advice, they do not constitute "factual material" within the meaning of s. 13(2)(a).[26]

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information related to decisions already made by a public body's staff did not qualify as advice provided by those staff members; and Order F15-33, 2015 BCIPC 36 at para 25.

[24] For example, see Order F21-16, 2021 BCIPC 21 (CanLII) at para 22 and Order F19-27, 2019 BCIPC 29 at para 32.

[25] PHSA supra note 94 at para 94.

[26] PHSA supra note 94 at para 94.

[45] As discussed above, the background information at issue was compiled by the human resources experts in order to provide the necessary context for the advice and recommendations they provided to the District. As a result, I find that it is not the kind of distinct source material or isolated background facts that courts have found to be "factual material." Accordingly, I am satisfied that the background information at issue is not "factual material" under s. 13(2)(a).

Final Report – s. 13(2)(g)

[46] Section 13(2)(g) provides that a public body must not refuse to disclose a final report on the performance or efficiency of a public body or on any of its policies or its programs or activities under s. 13(1).

[47] I understand the applicant's argument to be that the outcome of the final report from her bullying and harassment complaint falls under s. 13(2)(g).

[48] The responsive records do not include a final report into the bullying and harassment complaint. There are also no other records at issue in this inquiry that could constitute a report of the type described in s. 13(2)(g).

Section 13(3) – In Existence for 10 or More Years

[49] The third step is to consider whether the information has been in existence for 10 or more years under s. 13(3). Information that has been in existence for 10 or more years cannot be withheld under s. 13(1).

[50] The information which I find reveals advice or recommendations has not been in existence for 10 or more years. I find that s. 13(3) does not apply.

Conclusion – s. 13

[51] For the foregoing reasons, I find that apart from the topic,[27] staff assignment and training decisions,[28] and supervisor direction[29] information, the District is authorized to withhold all the information in dispute under s. 13(1).

[27] The topic information that the District is not authorized to withhold under s. 13(1) is found in Records Package 858 at pp 38, 443; Records Package 351 at pp 240, 262, 263, 264, 268 and 270.
[28] The staff assignment and training decisions that the District is not authorized to withhold under s. 13(1) is found in Records Package 858 at pp 758 and 759.
[29] The supervisor direction information that the District is not authorized to withhold under s. 13(1) is found in Records Package 858 at pp 539.

SECTION 22 – UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY

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

Personal information

[53] As 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.

[54] Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." 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."[30]

[55] "Contact information" is defined in FIPPA as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."[31]

Applicability of s. 22(1) to information about District and union officials

[56] Before considering whether the information in dispute is personal information, I will address the applicant's preliminary argument about the applicability of s. 22(1).

[57] The applicant submits that s. 22(1) does not apply to personal information about District management personnel and union officials because they are not "third parties" within the meaning of FIPPA. Pointing to the definition of the "head" of a public body in Schedule 1 of FIPPA and a statement by the Superintendent, the applicant asserts that due to their responsibilities to the District, management personnel *are* the public body to whom the request is made. The applicant makes a similar argument about union officials, emphasizing that union officials are charged with working to represent union members and that they choose to be in a public position.[32]

[58] I am not persuaded by these arguments. Since its enactment the OIPC has consistently applied s. 22(1) to the "personal information" of all individuals

[30] Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.
[31] Schedule 1.
[32] Applicant's response submission at pp 11-13.

whose information is collected by public bodies, including management personnel and union officials. This approach protects the personal privacy of individuals, while also giving access applicants access to the records of public bodies. It also upholds one of the primary purposes of FIPPA, which is "to protect personal privacy."[33] The approach advocated by the applicant would upend the OIPC's established approach to the interpretation and application of s. 22(1), eliminate protections for the personal information of union officials and managerial personnel of public bodies, and undermine the purposes of FIPPA. For these reasons, I find that information about the District's management personnel and the union officials can be personal information, if it is information about identifiable individuals.

Findings and analysis – personal information

[59] The information at issue under s. 22 is found in four categories of records: (1) records relating to the misconduct investigation which include an incident report, transcripts from interviews of District students, mediation notes, and related emails; (2) records relating to the applicant's bullying and harassment complaint including the complaint itself, a timeline, a witness list, and supporting documents to the complaint including emails, workplace complaints of other employees, an arbitration decision, seniority lists, call out lists, and bus schedules; (3) agendas and meeting notes from labour relations meetings; and (4) various other emails and documents related to other employment matters.

[60] The information the District withheld under s. 22(1) can be categorized as follows:

- Names, initials, and descriptions of individuals,
- Telephone numbers, addresses, email addresses, and professional email signature blocks,
- Standard information that typically appears in emails and letters such as headers, subject lines, dates on which emails were sent, generic salutations, pleasantries, and sign offs, and boilerplate confidentiality language in email footers,
- Factual statements, views, opinions, allegations, and evidence about individuals, workplace issues, labour relations, and union business,
- Medical information,
- Compensation information: hourly rate of pay, gross earnings, overtime pay, annual earnings),
- Position information: position, job title, and job classification number,
- Administration of employment information: seniority date, start date, leave history, discipline history, work schedules, vacation accrual, work

[33] FIPPA s. 2(1).

experience, retirement, and employment status (e.g. temporary vs. permanent, full vs. parttime), employee numbers and bus numbers,
- General biographical information such as students' age and grade,
- Information about the death of a family member, vacation plans, and statements describing personal feelings.

[61] I find that the names, initials, descriptions of individuals, employee numbers, bus numbers, telephone numbers, addresses, and email addresses either expressly identify individuals or are unique identifiers that could be used by someone familiar with the affected individuals and/or the workplace to identify them. Therefore, I find that this information is about identifiable individuals. I will consider whether some of this information is contact information below.

[62] Other severed information is found in emails in which the District disclosed the name and/or email of the sender. This is the medical information, vacation plans, personal feelings, information about the death of a family member, some of the standard information that typically appears in emails (i.e., date and subject lines, generic salutations, boilerplate email footers, etc.), and some factual statements, views, and opinions. I find that this information is the personal information of the individuals who sent the emails. Where the factual statements, views, and opinions are about other individuals, I also find that this information is the personal information of those individuals.

[63] The remaining information is found in records where the affected individual is either not named (or otherwise identified), or the District withheld the individuals' name. I find that this information is only about an identifiable individual if it reveals or identifies the individual whom the information is about.

[64] There is also information that relates to specific human resources matters involving identifiable student witnesses, District employees and managers. It is factual statements, views, opinions, allegations, evidence and biographical details found primarily in interview transcripts, workplace complaints, emails, and the arbitration decision. This information is often specific and found in records that contain a good deal of detail about the individual providing the information. In the circumstances, I find that someone familiar with the workplace could use this information to identify both the individuals who provided the information and the individuals who are the subject of the statements. For these reasons, I find that all of this information is the personal information of the student witnesses, District employees and managers, and the applicant.

[65] The information that is about compensation, position, and administration of employment is found in seniority lists, call out lists, bus schedules, emails, notes, and other records. In most cases I find that the information is about identifiable individuals either because it is sufficiently detailed as to allow an individual to be identified, or because it is found in specific records that contain information about a limited number of individuals and, in my view, someone with

knowledge of the workplace could use the information to identify the specific employees at issue.

[66] I find that some information is not about an identifiable individual because, on its own, it is too generic to connect to any individual absent some other identifying information. This finding applies to generic information in emails such as headers, dates, salutations, and boiler plate confidentiality language where the District severed the name and email address of the sender and recipient. It also applies to employees' employment status and job classification numbers where all other information was withheld, as this information is the same for a large group of employees. Finally, it applies to factual statements about the workplace, and labour relations where the information is found in notes and agendas that do not indicate who wrote them. Where the author is not identifiable, workplace and labour relations information is not about an identifiable individual.

[67] I now turn to the contact information exclusion. Most of the information that I have found is about an identifiable individual is not contact information because it clearly does not relate to how to contact the affected individuals. However, the District withheld several telephone numbers, addresses, email addresses, associated names, and email signatures that I will consider under the contact information exclusion.

[68] The District withheld the telephone numbers and an address of District employees that were used to contact the employees about specific work issues, on a one-off basis, while they were away from work. From the context, it is clear that this information relates to the affected employees' personal phone and home address. I do not accept that this kind of one-off work communication renders the employees' personal telephone numbers and home addresses "contact information" for the purposes of FIPPA.

[69] The District also withheld email addresses of District employees from communications with union officials. The email addresses do not have a District-related email handle, and for this reason, I find that they are the employees' personal email addresses. From the content of the emails, I can see that they relate to union representation, not the employees' employment. I find that the email addresses are not contact information because they do not relate to a business purpose.

[70] Finally, the District withheld the telephone number of a job applicant's reference. In my view, the decision about whether or not to provide a job reference is a personal decision as opposed to a business-related decision. Accordingly, I find that the job references telephone number is not contact information because, it does not relate to a business purpose.

[71] However, I find that the remaining information is contact information within the meaning of s. 22(1). The District withheld two telephone numbers provided by members of management so that they could be contacted with respect to a WorkSafe BC matter affecting one of their subordinates. It is clear that telephone numbers were provided for a purpose related to the managers' work responsibilities – or for a business purpose. In this context, I find that the managers' telephone numbers are contact information.

[72] The District also withheld email addresses of District employees, members of management, third parties, and union officials in instances where it is clear from the context that the individual was using the email address in a professional capacity and in the ordinary course of conducting their business or work-related affairs. In this regard, the management personnel and third parties discussed District business; the union officials discussed union and labour relations business; and the employee repeatedly used the email address for routine work-related communications. In these circumstances, I find that the information is contact information.

[73] Finally, in a few instances the District withheld the email signature block of District officials and union representatives. I find that the purpose of a professional email signature is to enable an individual to be contacted at their place of business and accordingly, I find that the email signatures are contact information.

Conclusion about personal information

[74] In conclusion, I find that the information listed below may not be withheld under s. 22(1) because it is not "personal information."

- telephone numbers of the members of management who provided those numbers to be contacted in relation to a WorkSafe BC matter;[34]
- professional email signatures and email addresses used in the ordinary course of business,[35]
- Where it is found in records that do not name the affected individual:
    - employment status and job classification numbers,[36]
    - standard information that typically appears in emails (eg., date and subject line, boilerplate language, generic pleasantries, etc.),[37]

[34] Records Package 858 at pp 600.
[35] Records Package 433 at pp 72, 73, 82, 90, 108, 109, 112, 113, 114, 139, 199, 201, 226, 227, 229, 230, 232, 237, 238, 240, 241, 241, 291, 305, 306, 319, 341-343; Records Package 756 at pp 1, 2, 727, 739, 740; Records Package 858 at pp 771.
[36] Records Package 433 at pp 39-65.
[37] Records Package 433 at pp 67, 229, 232

- factual statements about the workplace, union business, labour relations issues.[38]

[75] I find that the remaining information is "personal information" within the meaning of s. 22(1).

Section 22(4) – circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy

[76] The second step in the s. 22 analysis is to consider whether s. 22(4) applies to any of the information that I have found is "personal information." Section 22(4) lists circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. If information falls into one of the circumstances enumerated in s. 22(4), the public body is not required to withhold the information under s. 22(1).

[77] The District argues that s. 22(4)(e) does not apply to any of the information. The applicant references s. 22(4)(e) but does not provide any specific arguments regarding its application.

Third party's position, functions, or remuneration – s. 22(4)(e)

[78] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions, or remuneration as an officer, employee, or member of a public body. Section 22(4)(e) applies to information about public body employees' position, functions, and remuneration. Previous OIPC orders clarify that while s. 22(4)(e) applies to objective, factual statements about what the third party did or said in the normal course of discharging their job duties, it does not apply to qualitative information about how they performed their job duties.[39]

[79] The District submits that s. 22(4)(e) does not apply to any of the withheld information because the information at issue is not the type that is covered by s. 22(4)(e), and because s. 22(4)(e) does not apply to information that was collected and used in the context of a workplace complaint and investigation. In this regard, the District asserts that the fact that information was "provided, collected or used in the context of a workplace complaint allegation and investigation removes it from the scope of section 22(4)(e)."[40]

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[38] Records Package 33 at pp 2, 4, 6, 7, 8, 10, 12, 15, 17, 18, 20, 32; Records Package 351 at pp 223, 224.
[39] Order 01-53, 2001 CanLII 21697 (BC IPC) at para 40, and Order F23-56, 2023 BCIPC 65 (CanLII) at para 57.
[40] Initial submission of District at para 50.

[80] While numerous OIPC orders have declined to apply s. 22(4)(e) to information that relates to a workplace investigation, the reasoning in these cases is not as broad as the District suggests. On its own, the mere fact that records were gathered for an investigation does not remove them from the scope of s. 22(4)(e).[41] Whether or not information relates to a workplace investigation, the question is the same: considered in its full context, what does the information reveal about the affected individual?[42] For example, in one previous order the OIPC held that s. 22(4)(e) did not apply to an employee's name and title because they appeared in the context of a workplace investigation and would reveal additional personal information about the third party such as disciplinary action and severance information.[43] Conversely, in another order the OIPC held that information about the routine work of public body employees whose actions were described in, but not the subject of, the investigations were captured by s. 22(4)(e).[44]

[81] Some of the information in dispute is District employees' compensation, position, job title, and job classification number. Some of the factual statements at issue describe what District employees and managers did or said in the ordinary course of their job duties. Finally, the District withheld names of some individuals which connect them to information discussed above. This is the kind of objective, factual information to which s. 22(4)(e) routinely applies. While some of it is found in records were used to substantiate the applicant's bullying and harassment complaint and related mediation notes, the affected employees were not the subject of the complaint, and the complaint contains no qualitative statements about them.

[82] I find that the information itself does not reveal anything more about the affected employees than their position, functions, remuneration, and the fact that they were referred to in a complaint or mediation. In the circumstances, I see no reason that the fact this information was part of a workplace complaint should alter the analysis. Therefore, consistent with Order F21-08,[45] I find that s. 22(4)(e) applies to this information.[46] As s. 22(4) operates without regard to

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[41] Order 01-07, 2001 CanLII 21561 (BC IPC) at para 8. See also Order F21-08, 2021 BCIPC 12 (CanLII) at para 126 and 127.
[42] See for example Order F23-28, 2023 BCIPC 32 at para 42; Order F21-08, 2021 BCIPC 12 (CanLII) at paras. 126-129; Order F10-21, 2010 BCIPC 32 (CanLII) at para 24; Order F08-04, 2008 CanLII 13322 (BC IPC) at para 27; Order 00-53, 2000 CanLII 14418 (BC IPC) at p. 7; and Order 01-53, 2001 CanLII 21607 (BC IPC) at para 40.
[43] Order F10-21, 2010 BCIPC 32 (CanLII) at para 24.
[44] Order F21-08, 2021 BCIPC 12 (CanLII) at para 129.
[45] *Ibid.*
[46] Section 22(4)(e) applies to the following information: Compensation information - Records Package 351 at pp 9, 12, 14, 16, and Records Package 858 at pp 747, 748, 753, 330. Position, job title, and job classification number - Records Package 33 at pp 7, Records Package 351 at pp 12, 14, 16, Records Package 433 at pp 289, 297, 324, 330, 340, 343, Records Package 756 at pp 586, and Records Package 858 at pp 192, 214, 773. Work location - Records Package 858 at pp 466, 470. Factual information about ordinary course of their job duties - Records Package 33

ss. 22(2) or (3), I will not consider the information described above further under these sections.

[83] I have considered the other circumstances in s. 22(4), and I find that no others apply.

Section 22(3) – disclosure presumed to be an unreasonable invasion of third-party personal privacy

[84] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The District argues that ss. 22(3)(a), 22(3)(b), and 22(3)(d) apply. The applicant states that s. 22(3) does not apply.

Section 22(3)(a) – medical, psychiatric, or psychological history

[85] Section 22(3)(a) creates a presumption that it is an unreasonable invasion of a third party's personal privacy to disclose personal information that relates to the third party's medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation.

[86] The District withheld employee medical information such as details about MSP reimbursements, accommodations requirements, requests for medical updates, and other medical information. This information relates to the affected individuals' medical diagnosis, condition, and treatment, and I find that s. 22(3)(a) applies.

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

[87] Section 22(3)(b) creates a presumption against disclosure of information that was compiled and is identifiable as part of an investigation into a possible violation of law.

[88] The District asserts that s. 22(3)(b) applies to all personal information related to the applicant's bullying and harassment complaint. In support of its position, the District relies on the 2012 amendments to the *Workers Compensation Act*[47] (WCA) which added bullying and harassment to the list of hazards from which all workplace parties are required to protect workers and requires employers to investigate and prevent workplace bullying and harassment. It argues that "as employers are expressly required to investigate bullying and harassment under [the WCA], it is necessarily the case that all bullying and harassment complaint processes and investigations constitute

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at pp 32, Records Package 433 at pp 96, 163 – 168, 201, 330, 331-332, 341-343, and Records Package 858 at pp 140, 731, 732.

[47] RSBC 2019, c. 1.

"investigation[s] into a possible violation of law" within the meaning of section 22(3)(b)."[48]

[89] I do not accept that District's argument that the effect of the inclusion of bullying and harassment in the WCA means all bullying and harassment complaint processes are investigations into a possible violation of law. The OIPC has considered substantially the same argument in two recent orders. In both cases, the adjudicators held that the workplace bullying and harassment investigations did not engage s. 22(3)(b) because there was no evidence to indicate that the investigation was into a violation of the WCA.[49] I agree with this approach and adopt it here. The relevant issue under s. 22(3)(b) is whether the investigation at issue is *into a violation of* law, not whether it is required by law.

[90] In this inquiry, the investigation concerned whether or not the applicant's allegations of bullying and harassment were substantiated, and the District hired an external lawyer to investigate the applicant's complaints. There is no suggestion that the complaint was ever referred to the Workers Compensation Board for investigation under the WCA, or that the external lawyer investigated whether or not the District or any individual violated the WCA. In the circumstances, I find that the lawyer's investigation was not into a possible violation of the WCA, but rather into the merits of the applicant's bullying and harassment complaint. Therefore, I find that s. 22(3)(b) does not apply.

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

[91] Section 22(3)(d) creates a presumption against disclosure where personal information relates to the employment, occupational, or educational history of a third party.

[92] **Workplace Complaint and Investigation Information:** The District withheld entire workplace complaints initiated by employees other than the applicant; information about individuals who were the subject of, or discussed in, workplace complaints, investigations, and mediations; and information about employees who participated in investigations as witnesses.

[93] In past orders, the OIPC has held that "employment history" includes personal information about individuals who initiate workplace complaints.[50] I agree with this approach because the fact of initiating a workplace complaint is a significant employment event that, in my view, forms part of an individual's employment history. The workplace complaints at issue are detailed, specific, and in some cases prepared in distinctive and recognizable formats. For these

[48] Initial submission of the District at para 62.
[49] Order F23-71, 2023 BCIPC 84 (CanLII) at paras. 54-57 and Order F23-106, 2023 BCIPC 122 (CanLII) at paras 26-29.
[50] Order F22-07, 2022 BCIPC 7 (CanLII) at paras 42-44.

reasons, I find that revealing any part of the workplace complaints would risk revealing the identities of the complainants. Accordingly, I find that s. 22(3)(d) applies to the workplace complaints filed by individuals other than the applicant.

[94] Further, I find that disclosing information about individuals who were the subject of, or discussed in, workplace complaints, investigations, and mediations would reveal that these employees were the subject of evaluative comments and complaints about their workplace behaviour and actions. It is well-established that s. 22(3)(d) applies to evaluative information about a third party's workplace behaviour and actions.[51] I make the same finding here.

[95] The information about the employee witnesses reveals only that they were asked to participate or considered as witnesses, not that they actually did participate. In Order F01-53, former Commissioner Loukidelis considered precisely this kind of information and concluded that information that identified the witnesses to an investigation was not covered by s. 22(3)(d) because it did not "relate to their employment history in the way it does for [the individual who was the subject of the complaint]."[52] I agree with this reasoning. In my view, the simple fact that an employee was asked to participate in a workplace investigation is not sufficiently significant to constitute a part of an individuals' employment history. Accordingly, I find that s. 22(3)(d) does not apply to the information that reveals only the identities of individuals who were asked to participate in investigations as witnesses.

[96] **Administration of Employment Information:** The District also withheld employees' seniority date, start date, leave history, discipline history, work schedules, vacation accrual, work experience, retirement, and employment status employment status.

[97] Section 22(3)(d) has been found to apply to personal information relating to the administration of a third party's employment, such as information relating to job applications,[53] resumes,[54] personal identifiers,[55] personal leave (for example, the type, amount or balance of parental, vacation, or sick leave),[56] scheduling, availability, workload,[57] and discipline.[58] I agree with this line of

[51] Order 01-53, 2001 BCIPC 21607 (CanLII) at paras 32-33, Order F16-28, 2016 BCIPC 30 (CanLII) at para 94, Order F20-08, 2020 BCIPC 9 (CanLII) at para 56, Order F20-13, 2020 BCIPC 15 (CanLII) at para 54; Order F23-13, 2023 BCIPC 15 (CanLII) at para 90; and Order F23-56, 2023 BCIPC 65 (CanLII) at paras 70 and 73-77.
[52] 2001 CanLII 21607 (BC IPC) at para 41.
[53] Order F16-28, 2016 BCIPC 30 (CanLII) at para 94.
[54] Order 01-18, 2001 CanLII 21572 (BCIPC) at para 15.
[55] Order F14-41, 2014 BCIPC 44 (CanLII) at paras 46-47.
[56] Order F21-62, 2021 BCIPC 71 (CanLII) at paras 22-25.
[57] Order F23-56, 2023 BCIPC 65 (CanLII) at paras 78 and 79.
[58] Order 01-53, 2001 CanLII 21607 (BCIPC) at paras 32-33; Order F16-28, 2016 BCIPC 30 (CanLII) at para 94; and Order F23-56, 2023 BCIPC 65 (CanLII) at para 70.

cases, and I find that it applies to the administration of employment information described above. Therefore, I find that s. 22(3)(d) applies to this information.

[98] **Student information:** Finally, the District withheld the personal information of students who participated in the misconduct investigation and who were referenced in the applicant's bullying and harassment complaint. In past orders, the OIPC has held that information relating to the educational institution an individual attended, details about their programs and courses,[59] and details of an individual's academic activities and interactions with personnel[60] form part of their educational history.

[99] Some of the information details the student's interactions with District personnel. I also find that the student information in dispute would clearly reveal the students' status as enrolled at a specific educational institution at a specific time. For these reasons, I find that s. 22(3)(d) applies to all this information.

Summary – s. 22(3)

[100] In summary, I find that the presumption against disclosure in s. 22(3)(a) applies to:

- the medical information of District employees and members of management,

and that the presumption against disclosure in s. 22(3)(d) applies to:

- the administration of employment information,
- all information that reveals that an individual initiated, was the subject of, or was discussed in a workplace complaint, investigation, or mediation, and
- all personal information of students.

[101] Having considered the other sections of s. 22(3), I find that no other presumptions apply to the information at issue.

Section 22(2) – All Relevant Circumstances

[102] Section 22(2) provides a non-exhaustive list of the circumstances that a public body must consider when determining whether disclosure of personal information is an unreasonable invasion of a third party's personal privacy. It is at this stage of the analysis that the applicable s. 22(3) presumptions, may be rebutted.

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[59] Order F10-11, 2010 BCIPC 18 at paras 17 and 19.
[60] Order F18-19, 2018 BCIPC 22 (CanLII) at para 53, Order F20-06, 2020 BCIPC 7 at para 36. and Order F23-60, 2023 BCIPC 70 (CanLII) at para 26.

[103] The District states that ss. 22(2)(a), (c), (e), (f), and (h) weigh against disclosure and that the applicant's prior knowledge of some of the records is relevant. The applicant states that ss. 22(2)(a) and (c) favour disclosure.

Public scrutiny of a public body – s. 22(2)(a)

[104] Section 22(2)(a) requires a public body to consider whether disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny.

[105] For s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting the public body's activities to public scrutiny as opposed to subjecting an individual third party's activities to public scrutiny.[61]

[106] The applicant submits that s. 22(2)(a) favours disclosure. Subjecting the District to scrutiny and holding it accountable for the treatment and rights violations that are the basis for her human rights complaint and grievances is the reason she filed her access request.

[107] The District argues that s. 22(2)(a) is not relevant because the public interest is best served by protecting the highly sensitive information at issue and the privacy of individuals who agree to participate in workplace investigations.

[108] I find that most of the information in dispute does not engage s. 22(2)(a) because it is exclusively about third parties and reveals nothing about the District's activities. Further, while some statements, views, and opinions expressed in the records do relate to the District, I find that they relate to mundane, day to day operations. In my view, revealing this kind of information will not assist anyone in subjecting the activities of the District scrutiny.

[109] However, some of information in dispute is allegations and evidence about the workplace that describes the District's conduct. This information is found in workplace complaints and emails from the third party employees making the complaints. Furthermore, while I cannot provide details of these allegations without revealing information that is in dispute, I find that some of the complaints contain similar themes.

[110] In my view, bringing to light the fact that similar allegations were made against a public body is desirable for the purpose of subjecting the activities of that public body to public scrutiny. However, in this case the allegations have not been tested and there is no evidence before me to establish their accuracy. Therefore, while I find that s. 22(2)(a) favours disclosing the consistent allegations, I also find that the weight of this factor is diminished by the fact that the allegations are unproven.

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[61] Order F16-14, 2016 BCIPC 16 (CanLII) at para 40.

Fair determination of the applicant's rights – s. 22(2)(c)

[111] Section 22(2)(c) requires a public body to consider whether the personal information is relevant to a fair determination of the applicant's rights.

[112] Past orders establish a four-part test, each step of which must be met in order for s. 22(2)(c) to apply:

> 1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
>
> 2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
>
> 3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
>
> 4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[62]

[113] The applicant submits that she meets each step of the test. In this regard, the applicant submits that she has an ongoing human rights complaint against the District that relates to differential treatment, harassment, bullying, failure to provide a safe work environment, and failure to investigate incidents of bullying and harassment, and that she requires the withheld information to prove her allegations. It is also clear from the applicant's submissions that she takes issue with the way the District dealt with the misconduct investigation into her conduct and her bullying and harassment complaint.

[114] The District does not dispute the applicant's assertions. Instead, it submits that even if the records are relevant to the human rights complaint or other grievances, disclosure is not necessary to a fair determination of the applicant's rights because she has rights of access to relevant evidence and documents in the course of those proceedings and those decision makers are better positioned to make decision about what information is relevant to those matters.[63]

[115] There is no dispute that the applicant has an ongoing human rights complaint against the District that is grounded in alleged violations of the

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[62] Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 at para 24; and Order F24-09, 2024 BCIPC 12 (CanLII) at para 48.

[63] The District also states that the information in dispute that relates to the misconduct investigation and the bullying and harassment complaint were concluded in 2019. It does not, however, go on to suggest that this fact has any bearing on the applicant's ability to rely on these matters in the human rights complaint. For this reason, it is not clear to me what, if any, relevance this statement has to the s. 22(2)(c) analysis.

applicant's rights under the *Human Rights Code*.[64] I find that these facts satisfy the first two steps of the test.

[116] To satisfy step three of the s. 22(2)(c) test, the applicant must establish that there is a "demonstrable nexus" or connection between the withheld information and the legal right in question.[65]

[117] The District does not dispute the applicant's descriptions of the allegations in the human rights complaint. Accordingly, based on the information before me, I accept that in the human rights complaint the applicant alleges that the District violated her human rights by, among other things, failing to investigate incidents of bullying and harassment.

[118] The District withheld a considerable amount of information from the applicant's own bullying and harassment complaint. From the body of the applicant's complaint and timeline, it withheld names, identifying information, and specific allegations about third parties. From supporting documents she provided with the complaint, it withheld names, administration of employment information, factual statements, views, opinions, allegations, and evidence about individuals, workplace issues, labour relations, and union business, including entire emails, workplace complaints, and all substantive information from seniority lists, call out lists, and bus schedules.

[119] I accept that the information the applicant submitted in support of her bullying and harassment complaint has some significance to her ability to establish that the District violated her rights by failing to properly investigate that complaint. I am, therefore, satisfied the third part of the s. 22(2)(c) is met for all information withheld from the complaint.

[120] However, I do not accept that the remaining information satisfies step three of the test. While some other records relate to issues affecting the applicant, the information that is at issue is about third parties. On the face of the records, I can see no connection between the applicant's human rights issues and this kind of information, and the applicant has not explained how any other information connects to her human rights complaint.

[121] To satisfy the fourth step of the test, the applicant must establish that the personal information is necessary to prepare for or ensure a fair hearing.

[122] To start, I do not accept the District's argument that because the applicant has a right of access to relevant evidence and documents in the course of the human rights tribunal proceedings, the information is not necessary. In Order

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[64] RSBC 1996, c. 210.
[65] See for example Order F16-36, 2016 BCIPC 40 (CanLII) at paras. 52 and 62 and Order F16-36, 2016 BCIPC 40 (CanLII).

F16-36 the adjudicator rejected this restrictive approach because it would be inconsistent with the modern approach to statutory interpretation and because it could, in some cases circumscribe the applicant's legal rights:

> [T]he approach of reading in a requirement that part four of the test is only met in situations where the FOI process is an applicant's sole way to receive the information is inconsistent with s. 22(2)(c), as interpreted using modern statutory interpretation principles. Section 22(2)(c) is about whether the personal information itself is necessary in order to prepare for the proceeding or to ensure a fair hearing. It is not about whether disclosure of the personal information through FOI is necessary for that purpose.[66]
>
> Summarily rejecting s. 22(2)(c) because an applicant can likely get the information by another means may in some cases circumscribe the applicant's access rights, and, for example, result in the applicant needing to incur more time and costs to get information through another proceeding.[67]

[123] The adjudicator's approach has been cited with approval in subsequent OIPC orders,[68] and I adopt it here. Accordingly, my analysis will focus on whether the information is necessary in order to prepare for the proceeding or ensure a fair hearing, not whether the applicant can obtain relevant information in the human rights tribunal proceedings.

[124] Applying this approach, I find that the applicant will need to know what information the District relied on in concluding its investigation into her conduct and her bullying and harassment complaint in order to prepare for proceedings before the human rights tribunal concerning a failure to investigate that complaint.

[125] For these reasons, I find that s. 22(2)(c) weighs in favour of disclosing the information contained in the applicant's bullying and harassment complaint. However, I find that the weight of this factor depends on how clearly that information relates to the actual substance of the applicant's human rights complaint. For instance, I find that information withheld from the applicant's own allegations is more relevant to ensuring a fair hearing than the information about the administration of other employees' employment.

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[66] Order F16-36, 2016 BCIPC 40 (CanLII) at para 56, citations omitted and emphasis in original.
[67] *Ibid* at para 59.
[68] See for example Order F16-46, 2016 BCIPC 51 (CanLII) at para 47 and Order F23-13, 2023 BCIPC 15 (CanLII) at paras. 151-154

Unfair exposure to financial or other harm and unfair damage to reputation – ss. 22(2)(e) and (h)

[126] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm. Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage a third party's reputation.

[127] Past OIPC orders have held that harm under s. 22(2)(e) can include mental harm, in the form of serious mental distress or anguish, but that embarrassment, upset or having a negative reaction do not rise to the level of mental harm.[69] Under s. 22(2)(h), past orders dealing with workplace and other complaints have emphasized that the harm caused by disclosing personal information is unfair where the information amounts to unproven allegations against the individual affected and that the individual did not have an opportunity to rebut the allegations in the context of an investigative process.[70]

[128] The District argues that "it can reasonably be assumed" that disclosure of the "sensitive personal information" withheld from the records related to workplace investigations and complaints such as allegations about individuals, the fact that individuals initiated complaints or participated in investigations, information others supplied about them, and the statements individuals provided to the District or investigators would result in harm under ss. 22(2)(e) and (h).

[129] Beyond stating that the withheld information is "sensitive personal information" the District does not explain how disclosure of this information would result in harm under either of ss. 22(2)(e) or (h). Without more information, it is not clear to me how disclosing information that reveals an individual initiated or participated in a workplace investigation, or the content of the information that individual provided in an investigation, could result in "serious mental distress or anguish" or reputational harm. Therefore, I am not persuaded that ss. 22(2)(e) or (h) weigh against disclosure of this kind of information.

[130] However, some of the information relating to workplace complaints includes allegations of wrongdoing by individual managers or employees. I can see how this information could damage the reputations of those individuals if it were released. As the information is found in workplace complaints, the information has not been tested and the individuals have not had the opportunity to respond. Therefore, consistent with past orders, I find that disclosing the

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[69] Order F20-37, 2020 BCIPC 43 (CanLII) at para 120; Order 01-15, 2001 CanLII 21569 (BC IPC) at paras 49-50; and Order 01-37, 2001 CanLII 21591 (BCIPC) at para 42.
[70] Order F21-28, 2021 BCIPC 36 (CanLII) at para 124-126, Order F20-37, 2020 BCIPC 43 (CanLII) at paras 131-132; Order F17-01, 2017 BCIPC 1 (CanLII) at para 61; Order F16-50, 2016 BCIPC 55 (CanLII) at paras 52-54. Order F16-50, 2016 BCIPC 55 (CanLII) at paras 52-54; Order 01-12, 2001 CanLII 21566 (BC IPC) at paras 38-39.

names of and allegations against individuals may unfairly damage their reputations. Accordingly, I find that s. 22(2)(h) weighs against disclosure of the allegations of wrongdoing by individuals where the information is found in workplace complaints.

Supplied in confidence – s. 22(2)(f)

[131] Section 22(2)(f) provides that whether "the personal information has been supplied in confidence" is a factor to consider in determining whether disclosure would be an unreasonable invasion of a third party's personal privacy.

[132] For s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information, and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.[71]

[133] Relying on the evidence of its human resources manager, the District asserts that it has an established practice of conducting workplace investigations on a confidential basis, and that witnesses and participants are notified of the obligation to keep such matters confidential. Therefore, according to the District there was an objectively reasonable expectation of privacy in this case. I understand this argument to relate to the information provided in the context of both workplace investigations and mediations.

[134] The District also asserts that there can be no question that much of the employment history information is inherently confidential and private, and that there is a reasonable basis for concluding that employers and employees would have an expectation that such information would be kept confidential.

[135] The applicant does not address s. 22(2)(f).

[136] The District withheld information it received from student witnesses during interviews and District employees in workplace complaints. On the face of the records, I can see that this information was "supplied" for the District. Further, I accept the District's evidence that its policy and practice is to conduct workplace investigations confidentially and to notify participants in such investigations of this. Therefore, I find that when these individuals supplied evidence and workplace complaints to the District, they did so under an objectively reasonable expectation of confidentiality. I find that s. 22(2)(f) weighs in favour of withholding this information.

[137] However, I do not find that the information relating to the administration of employment of District employees and members of management was supplied in confidence. On its face, this information appears to have been created as a

[71] Order F11-05, 2011 BCIPC 5 at para 41 citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26 regarding s. 21(1)(b).

product of the employees' employment and documented by the District, rather than supplied by District employees. Accordingly, I find that s. 22(2)(f) does not favour withholding this information.

Professional capacity

[138] In past orders, the OIPC has held that where information relates to an individual's actions in a professional capacity as opposed to a personal or private capacity, this circumstance weighs in favour of disclosure.[72]

[139] Some information in dispute is found in emails, letters, and an arbitration decision written by District managers, union officials, and a labour arbitrator. From these records, the District severed factual statements, views, and opinions about the workplace, labour relations, and union business, as well as email headers, subject lines, dates on which emails were sent, generic salutations, pleasantries, and sign offs, and boilerplate confidentiality language in email footers. This information is not about anyone other than the authors of those records. On the face of the records, it is clear that these communications were prepared by individuals acting in their professional capacity. Consistent with previous OIPC decisions, I find that this factor weighs in favour of disclosure.

Applicant's prior knowledge

[140] Prior knowledge is not an enumerated factor under s. 22(2), but many past orders have held that the fact that an applicant already knows the third party personal information in dispute is a relevant circumstance that may weigh in favour of disclosure.[73]

[141] The District acknowledges that this factor is relevant to the information in the applicant's own bullying and harassment complaint and the information related to the misconduct investigation but argues that any prior knowledge the applicant may have does not favour disclosure or is outweighed by other considerations.

[142] There is a dispute between the applicant and the District about the applicant's entitlement to some of the supporting documents that accompanied the applicant's bullying and harassment complaint. The District asserts that some of the supporting documents were removed from its files without appropriate authorization. The applicant takes the position that the documents were publicly available. Both parties seem to acknowledge that the applicant had some involvement in preparing her bullying and harassment complaint. The applicant states that she had assistance from another individual in preparing the complaint,

[72] Order F13-01, 2013 BCIPC 1 at para 61, Order F18-42, 2018 BCIPC 45 at para 22, Order F23-05, 2023 BCIPC 6 (CanLII) at para 58.
[73] Order F17-02, 2017 BCIPC 2 (CanLII) at paras 28-30; Order 03-24, 2005 BCIPC 11964 (CanLII) at para 36; and Order F15-14, 2015 BCIPC 14 (CanLII) at paras 72-74.

and correspondence filed by the District suggests that the applicant may not have been the individual who filed the complaint or accessed the impugned documents.[74] Furthermore, neither party expressly states that the applicant now has or ever had a complete copy of her bullying and harassment complaint, and the supporting documents, and there is no evidence before me to establish that the applicant is in possession of the student witness interviews related to the misconduct investigation.

[143] The evidence surrounding the bullying and harassment complaint's supporting documents is murky and contentious. Neither party has provided me with a sufficient evidentiary basis to fully understand the background related to these documents. Ultimately, I find that there is insufficient evidence before me to find that the applicant has, or ever had, a copy of the complete bullying and harassment complaint and its supporting documents. Similarly, there is insufficient evidence before me to establish that the applicant has a copy of the records related to the misconduct investigation. I also find that the third party personal information withheld from these records is too detailed for anyone to reasonably recall without actual access to the records. Accordingly, while I acknowledge that the applicant may have personal knowledge of some information due to her participation in processes related to the bullying and harassment complaint and misconduct investigation, I do not give this consideration any weight.

[144] For the reasons above, I decline to give the applicant's prior knowledge any weight as it applies to the information withheld from the supporting documents to the bullying and harassment complain or the investigation into the misconduct allegation.

[145] However, the District also withheld some information (primarily names and other identifying information) from emails that appear to have been written by the applicant and I find that the applicant's prior knowledge of this information is a factor that favours disclosure.

Applicant's personal information

[146] Past OIPC decisions have recognized that if information is also the applicant's personal information, this is a factor that weighs in favour of disclosure.[75]

[147] While for the most part the District was careful to disclose information about the applicant, it withheld a student's opinion about the applicant and information from the applicant's own emails. In addition to being the personal

[74] Exhibit A to the affidavit of the District's human resources manager.
[75] Order F23-56, 2023 BCIPC 65 (CanLII) at para 90; and Order F23-101, 2023 BCIPC 117 (CanLII) at paras 194-196.

information of third parties, I find that this information is also the applicant's personal information. I find that this factor weighs in favour of disclosure of this information.

Conclusions – s. 22(1)

[148] I found that the following information is not personal information:

- telephone numbers of the members of management who provided those numbers to be contacted in relation to a WorkSafe BC matter;[76]
- professional email signatures and email addresses used in the ordinary course of business,[77]
- Where it is found in records that do not name the affected individual:
    - employment status and job classification numbers,[78]
    - standard information that typically appears in emails (eg., date and subject line, boilerplate language, generic pleasantries, etc.),[79] and
    - factual statements about the workplace, union business, labour relations issues.[80]

The District is not required to withhold this information.

[149] I found that the remaining information the District withheld under s. 22(1) is personal information. My conclusions about the "personal information" are as follows:

Compensation, position, and facts about ordinary job duties

[150] I found that s. 22(4)(e) applies to information about District employees' compensation, position, job title, and job classification number, factual statements that describe what District employees and managers did or said in the ordinary course of their job duties, and individuals' names that connect them to this information. Therefore, it would not be an unreasonable invasion of the affected employees' personal privacy to disclose this information.[81]

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[76] Records Package 858 at pp 600.
[77] Records Package 433 at pp 72, 73, 82, 90, 108, 109, 112, 113, 114, 139, 199, 201, 226, 227, 229, 230, 232, 237, 238, 240, 241, 241, 291, 305, 306, 319, 341-343; Records Package 756 at pp 1, 2, 727, 739, 740; Records Package 858 at pp 771.
[78] Records Package 433 at pp 39-65.
[79] Records Package 433 at pp 67, 229, 232
[80] Records Package 33 at pp 2, 4, 6, 7, 8, 10, 12, 15, 17, 18, 20, 32; Records Package 351 at pp 223, 224.
[81] Section 22(4)(e) applies to the following information: Compensation information - Records Package 351 at pp 9, 12, 14, 16, and Records Package 858 at pp 747, 748, 753, 330. Position, job title, and job classification number - Records Package 33 at pp 7, Records Package 351 at pp 12, 14, 16, Records Package 433 at pp 289, 297, 324, 330, 340, 343, Records Package 756 at pp 586, and Records Package 858 at pp 192, 214, 773. Work location - Records Package 858 at pp 466, 470. Factual information about ordinary course of their job duties - Records Package

Medical information

[151] The presumption against disclosure in s. 22(3)(a) applies to the medical information of District employees and members of management. No other factors or presumptions apply to this information. Therefore, I find that disclosure of this information would be an unreasonable invasion of the affected third parties' personal privacy.

Administration of employment information

[152] The presumption against disclosure of employment history information in s. 22(3)(d) applies to District employee and members of management's seniority date, start date, leave history, discipline history, work schedules, vacation accrual, work experience, retirement, and employment status.

[153] Where this information does not relate to a workplace complaint, no s. 22(2) factors apply, and, therefore, I find that it would be an unreasonable invasion of the affected third parties' personal privacy to disclose this information.

[154] Where this information is found in the supporting documents to the applicant's bullying and harassment complaint, s. 22(2)(c) weighs in favour of disclosure, but the weight of this factor is diminished because the information is secondary to the allegations in the complaint. Given its limited value to a fair determination of the applicant's rights in the human rights complaint, I find that the privacy interests of the affected District employees outweigh the applicant's interests in the information. Accordingly, I also find that it would be an unreasonable invasion of the affected third parties' personal privacy to disclose this information.

Information about students

[155] The s. 22(3)(d) presumption against disclosure of educational history applies to all the information about students. Where the information relates to the misconduct investigation, no other s. 22(3) presumptions or s. 22(2) factors apply to this information. Accordingly, I find that disclosure of this information would be an unreasonable invasion of the students' personal privacy and that the District is required to withhold it.

[156] The District also withheld students' names and a small amount of personal biographical information from records related to the applicant's bullying and harassment complaint. Some of this information is found in emails drafted by the applicant, and accordingly the applicant's pre-existing knowledge weighs in favour of disclosure. Section 22(2)(c) also favours disclosure. However, I find that

33 at pp 32, Records Package 433 at pp 96, 163 – 168, 201, 330, 331-332, 341-343, and Records Package 858 at pp 140, 731, 732.

the applicant's interests in this limited information that serves only to identify students and reveal personal biographical information about them, is insufficient to rebut the presumption against disclosure of information about the students' educational history.

[157] Accordingly, s. 22(2)(c), which concerns information relevant to a fair determination of the applicant's rights, favours disclosure of all the information. However, I find that the District struck a reasonable balance between the students' privacy interests and the applicant's interest in a fair determination of her rights by deciding to withhold their names and biographical information but disclosing the substance of the information about them. Accordingly, I find that it would be an unreasonable invasion of the students' personal privacy to disclose this information.

Personal life information

[158] The information about the death of a family member, statements describing personal feelings, information about vacation plans, and the remaining telephone numbers, addresses, and email addresses concern individuals' personal lives. No presumptions or factors apply to this information. I find that the applicant has not satisfied the onus under s. 22(1), so disclosure of this information would be an unreasonable invasion of the individuals' personal privacy. Therefore, the District is required to withhold this information.

Factual statements, views, opinions, allegations, and evidence about individuals, the workplace, labour relations, and union business

[159] This information is found in interview transcripts and mediation records that relate to the misconduct investigation; in workplace complaints and emails that form part of the applicant's bullying and harassment complaint; and in other miscellaneous emails.

[160] **Information about Third Parties:** Where the information is about third partis, it is the employment history of those individuals. Accordingly, the s. 22(3)(d) presumption against disclosure of employment history information applies to all of it.

[161] Where it is not found in records that are not part of the applicant's bullying and harassment complaint, no s. 22(2) factors weigh in favour of disclosure. In light of the s. 22(3)(d) presumption, I find that it would be an unreasonable invasion of the affected third parties' personal privacy to disclose this information.

[162] For information found in the applicant's bullying and harassment complaint, s. 22(2)(c) favours disclosure. However, s. 22(h) weighs against disclosure of allegations of wrongdoing by third parties, and s. 22(2)(f) weighs

against disclosure of all information that was provided by third parties in workplace complaints.

[163] The District withheld only the names and a small amount of third-party biographical information from the body of the applicant's complaint. Given the nature this information, I find that withholding it will have a limited impact on the applicant's ability to obtain a fair determination in the human rights complaint. Conversely, disclosing this information would allow a reader to connect the affected third parties to a considerable amount of personal information about them. Therefore, balancing the interest at issue, I find that the privacy interests of the third parties (reflected in ss. 22(3)(d) and 22(2)(h)) outweigh those of the applicant in obtaining this information. Accordingly, I find that it would be an unreasonable invasion of the third parties' personal privacy to disclose this information.

[164] The District withheld considerably more personal information from the emails and workplace complaints of third parties. While the applicant's ability to view this information may have some significance to a fair determination of her rights in the human rights complaint, the weight of s. 22(2)(c) is diminished because the information is secondary to the applicant's complaint as it is found in supporting documents. Sections 22(2)(f) and (h) favour withholding this information. Again, I find that the applicant's interest in this information is insufficient to rebut the presumption in favour of withholding employment history information. I find that it would be an unreasonable invasion of the third parties' personal privacy to disclose this information.

[165] **Allegations and evidence about the District:** Some of the allegations and evidence about the workplace are specifically about the District's conduct. This information is found in emails and the workplace complaints of other employees that comprise the supporting documents to the applicant's bullying and harassment complaints. The s. 22(3)(d) presumption against disclosure of employment history information applies to this information, and the fact that some of this information was supplied in confidence under s. 22(2)(f) weighs against disclosure. However, both the interest in subjecting the District's actions to public scrutiny (s. 22(2)(a)) and the relevance of this information to a fair determination of the applicant's rights (s. 22(2)(c)) favour disclosure. As the allegations are about the District rather than an individual, I find that the relevance to public scrutiny and a fair determination of the applicant's rights outweigh the privacy interest of the individuals who made the complaints. Therefore, I find that it would not be an unreasonable invasion of the affected third parties' personal privacy to disclose this information.[82]

[82] Records Package 433 at pp 121, 156, 227, 228, 229, 232

[166] **Other:** The remaining factual statements, views, opinions, allegations, and evidence are statements made by District and union officials about the workplace, labour relations, and union business in emails. While the author can be identified, these statements are not about any other individual. These statements were made in a professional capacity, and no factors favour withholding this information. Accordingly, I find that it would not be an unreasonable invasion of the affected third parties' personal privacy to disclose this information.[83]

Standard information that typically appears in emails

[167] Finally, I find that the District is not required to withhold the standard information that typically appears in emails such as date and subject lines, *dates,* generic salutations, pleasantries, and sign offs, boilerplate confidentiality language in email footers, and automatic email replies. This information is found in emails that were sent in the authors' professional capacity, and no factors favour withholding it. Therefore, I find that disclosure of this information would not be an unreasonable invasion of a third parties' personal privacy, and that the District is not required to withhold this information.[84]

CONCLUSION

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

1. Subject to item 3, below, I confirm the District's decision to refuse access to the information withheld in the records under s. 13(1).

2. Subject to item 3, below, I require the District to refuse access to parts of the records in dispute under s. 22(1).

3. I require the District to give the applicant access to the information that I have found the District is not authorized or required to withhold under ss. 13(1) and 22(1).[85] I have highlighted in green the information the District is required to provide to the applicant in a copy of the records that will be provided to the District with this order.

[83] Records Package 351 at pp 223, 224, and Records Package 433 at pp 121, 157, 169–172, 176, 201.
[84] Records Package 351 at pp 232, 247,168, Records Package 433 at pp 121, 201, 226, 227, 228, 230, 232, and Records Package 858 at pp 99, 133.
[85] The information the District is required to disclose is set out in notes 76-84.

4. The District must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records/pages described at item 3 above.

[169] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **July 22, 2024**.

June 7, 2024

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

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