



Order F24-54

TOWN OF GIBSONS

Alexander Corley
Adjudicator

June 24, 2024

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Summary: An individual complained that the Town of Gibsons publicly disclosed their personal information in violation of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator confirmed that s. 33(2)(f) of FIPPA authorized the disclosure.

Statutes Considered: *Freedom of Information and Protection of Privacy Act* [RSBC 1996, c 165], ss. 33(1), 33(2)(e) and 33(2)(f); *Community Charter* [SBC 2003, c 26], ss. 1, 82, 90, 124 and 148; *Town of Gibsons Council Procedure Bylaw* [No. 1207, 2015], ss. 5, 6, 10 and 11.

INTRODUCTION

[1] This inquiry is about whether the Town of Gibsons (Town) disclosed the complainant's personal information contrary to s. 33 (disclosure of personal information) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).¹

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

ISSUE

[3] In this inquiry, I must decide whether the Town disclosed the complainant's personal information and, if so, whether the disclosure was authorized by s. 33.

[4] Section 57 of FIPPA does not say who has the burden of proof in this case. Past orders have said, and I agree, that in the absence of a statutory

¹ Unless otherwise specified, references in this Order to a section of an enactment are references to sections of FIPPA.

burden of proof, it is incumbent upon both parties to bring forward evidence to support their positions.²

DISCUSSION

Background

[5] The Town is a regional municipality located in the Sunshine Coast region of British Columbia. The complainant is a resident of the Town.

[6] Early in 2022, the complainant and their spouse drafted a petition requesting that the Town's municipal council (Council)³ reopen two closed roads (petition).

[7] The petition asked signers to include their full name, residential address, and signature. The complainant and their spouse were first to provide this information on the petition and they then went door-to-door requesting that their neighbours do the same. After they finished gathering signatures, they submitted the petition and a cover letter to Council (cover letter). The cover letter also contains the names, residential address, and signatures of the complainant and their spouse.

[8] The complainant's spouse then contacted the Town's corporate officer (Officer) to request that they be allowed to make a presentation to Council regarding the subject matter of the petition. Ultimately, it was agreed that the matter would be considered by Council at a public Committee of the Whole meeting scheduled for March 1, 2022 (meeting).

[9] On February 21, 2022, the Officer posted a copy of the agenda for the meeting (agenda) on the Town's website. The agenda states the complainant's spouse will make a presentation and appends a full copy of the petition and cover letter.

[10] The complainant says that by posting a copy of the petition and cover letter on its website without redacting the complainant's name, address, and signature, the Town publicly disclosed the complainant's personal information without authorization and therefore violated FIPPA.⁴

² Order F07-10, 2007 CanLII 30395 (BC IPC) at para. 11. See also Order F14-26, 2014 BCIPC 29 at para. 6.

³ Throughout this Order, references to Council include references to the Town's Mayor, where appropriate.

⁴ Only the Town's decision to disclose the complainant's name, address, and signature is at issue in this inquiry so I will not consider whether the Town was authorized to disclose any additional information contained in the cover letter, such as the complainant's views regarding the Town's past efforts to measure community support for its initiatives.

Section 33 – disclosure of personal information

[11] Section 33(1) says a public body may disclose personal information in its custody or under its control only as permitted by subsections (2) to (9) or s. 33.3.

[12] The Town identifies ss. 33(2)(e) and (f) as the basis for its authority to disclose the information in issue. Those sections read as follows:

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

...

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

(f) if the information is made available to the public under an enactment that authorizes or requires the information to be made public[.]⁵

[13] Since s. 33(1) only applies to personal information, I will first decide if the petition and cover letter contain the complainant's personal information. If I find that they do, I will then consider whether ss. 33(2)(e) or (f) authorized the Town to disclose that information.

Is the information "personal information"?

[14] Under schedule 1 of FIPPA,

"personal information" means recorded information about an identifiable individual other than contact information, and

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.

[15] Therefore, "contact information" is not "personal information" under FIPPA. Whether information is contact information is context dependent.⁶

[16] As noted above, the information in issue is the complainant's full name, residential address, and signature. All of this is clearly information about the complainant. Moreover, I find that the complainant included this information in the

⁵ Section 33(2)(f) (formerly s. 33.1(1)(c.1)) has not been considered by the OIPC. However, I find that the wording of s. 33(2)(f) is, apart from its emphasis on *public* disclosures, substantially similar to the wording of s. 33(2)(e) (formerly s. 33.1(1)(c)). Therefore, I find that past analysis of s. 33(2)(e) is relevant when an adjudicator is considering whether a disclosure of personal information was authorized by s. 33(2)(f) and I rely on that analysis at places in this order.

⁶ Order F20-13, 2020 BCIPC 15 at para. 42.

petition and cover letter for the purpose of voicing their opinion to Council regarding a Council decision, not to allow them to be contacted at a place of business. Therefore, I find that in the context in which it appears, the information at issue is not contact information.

[17] Finally, prior orders have found that “publishing” personal information for public consumption is clearly a kind of disclosure that is governed by FIPPA.⁷ Given all of this, I find that the Town publicly disclosed the complainant’s personal information when it posted copies of the petition and cover letter on its website.

Was the disclosure compliant with s. 33(2)(f)?

Parties’ submissions

[18] The Town says that the *Community Charter* [*Charter*]⁸ and the Town’s *Council Procedure Bylaw* [*Bylaw*]⁹ in force at the relevant time, when read together, authorized the Officer to publicly disclose the complainant’s personal information. According to the Town, given that the *Charter* and the *Bylaw* are “enactments” for purposes of FIPPA, the requirements of s. 33(2)(f) were met regarding the disclosure and the Town did not violate FIPPA.

[19] In support of the Town’s position, the Officer explains the steps they took in publicly disclosing the complainant’s personal information, sets out their justification for taking those steps, and includes a copy of the *Bylaw* as an exhibit to their affidavit.¹⁰

[20] The complainant questions whether the Officer had specific legal authorization to post the complainant’s personal information on the Town’s website.

Are the *Charter* and the *Bylaw* “enactments”?

[21] FIPPA does not define the term enactment. However, the *Interpretation Act* (IA) does.¹¹ Section 2(1) of the IA says that the IA applies to FIPPA unless a contrary intention appears in the IA or in FIPPA. Therefore, I will rely on the IA’s definitions when considering the terms relevant to this s. 33 analysis because the IA and FIPPA contain no indication that the Legislature intended the IA definitions would not apply.

⁷ See Order F22-45, 2022 BCIPC 51 at para. 12.

⁸ SBC 2003, c 26.

⁹ Bylaw No 1207, 2015.

¹⁰ Affidavit #1 of the Town’s Corporate Officer. The Bylaw has been amended since the matters at issue took place; however, the parties agree that the copy of the Bylaw attached to the Officer’s affidavit represents its wording at the relevant time and I rely on that wording in this Order.

¹¹ RSBC 1996, c. 238.

[22] The IA defines an “enactment” as “an Act or a regulation or a portion of an Act or regulation,” and a “regulation” as including a “bylaw or other instrument enacted (a) in execution of a power conferred under an Act...”¹²

[23] I find that the *Charter* is clearly an Act, so it meets the definition of an “enactment” in the IA.¹³ I also find that the *Bylaw* is an enactment because it meets the definition of a “regulation” in the IA. Section 124 of the *Charter* requires Council to enact a bylaw to establish the general procedures to be followed by Council and its committees in conducting their business. I accept the Town’s submission that this is the purpose of the *Bylaw*. Furthermore, I accept the Officer’s evidence that the *Bylaw* was properly in force at the relevant time. Therefore, I find that the *Bylaw* is a bylaw enacted by Council in execution of a power conferred under the *Charter*.

Did the *Bylaw* authorize the disclosure at issue?

[24] The complainant takes a strict reading of the *Bylaw* and s. 33(2)(f) and submits that s. 33(2)(f) could only be satisfied in this case if there were an explicit statement in the *Bylaw* indicating that all petitions and associated cover letters received by Council must be posted, unredacted, on the Town’s website. For the following reasons, I do not accept the complainant’s submission on this point.

[25] In the first place, I find that s. 33(2)(f) clearly refers to “authorized or required” disclosures of personal information, not only to “required” disclosures as the complainant suggests.

[26] Further, prior orders have considered whether an enactment “authorizes or requires” the disclosure of personal information in the context of s. 33(2)(e) and I find the conclusions reached in those orders to be instructive in assessing public disclosures under s. 33(2)(f). These orders have found that an enactment authorizes a disclosure of personal information where the disclosure is necessarily contemplated by the enactment, in the sense that there is a direct link between the powers and duties granted or imposed by the enactment and the disclosure at issue.¹⁴

[27] The most recent of these orders also implies that when deciding whether an enactment necessarily contemplates a given disclosure of personal

¹² *Ibid* at s. 1, definitions of “enactment” and “regulation.”

¹³ This is also consistent with what prior orders have said about the meaning of “enactment” for purposes of s. 33. See, for example, Order F22-50, 2022 BCIPC 57 at paras. 43-44.

¹⁴ See, for example, Orders F22-50, *ibid* at paras. 60-73 and F19-37, 2019 BCIPC 41 at paras. 85-91 which dealt with circumstances where the disclosures at issue were necessarily contemplated by the relevant enactments. See also Order F14-26, *supra* note 2 at para. 58 which found that a section of an enactment directing a public body in how to manage its hiring and appointment processes was not specific enough to necessarily contemplate the disclosure at issue.

information, an adjudicator should not read the enactment so strictly that it renders the powers and duties granted or imposed by that enactment meaningless.¹⁵ I agree with this conclusion and adopt the same reasoning here.

[28] Applying this approach to the *Bylaw*, I find, for the following reasons, that the *Bylaw* authorized the Officer, acting on behalf of the Town, to disclose the personal information in issue.

[29] In the first place, I find that under the *Charter* one of the Officer's responsibilities is to ensure that access is provided to the records of Council and its committees as authorized by Council or otherwise required by law.¹⁶ Consistent with this responsibility, I find that the *Bylaw* requires the Officer to prepare an agenda for each Council meeting and to make that agenda publicly available several business days before the meeting.¹⁷ The *Bylaw* also says that the agenda must set out "all items for consideration" at the meeting.¹⁸ Further, the *Bylaw* spells out specific matters that an agenda contains where applicable, including petitions received by Council and "delegations" (presentations to Council by members of the public), and sets the order those items must be listed in the agenda.¹⁹ Finally, I find that there is nothing in the *Bylaw* which restricts the Officer's ability to include additional relevant documents as attachments to an agenda.

[30] The *Bylaw* is silent as to why it requires that Council meeting agendas be publicly available. However, the *Charter* highlights that, as the Town's governing body, Council is expected to act in a manner that is democratically responsible and accountable to the residents of the Town.²⁰ Further, the *Charter* and the *Bylaw* both require that, in general, Council must meet, and therefore debate and collectively consider information, in the presence of the public.²¹ Given this, it is clear to me that one reason the *Bylaw* requires Council meeting agendas to be disclosed publicly in advance of each meeting is so that the public can be informed of the matters set to come before Council in sufficient detail and with sufficient time to decide whether they have an interest in those matters.²²

[31] In this light, I find that the Officer's responsibility to create and publicly disclose meeting agendas would be rendered meaningless if the Officer had no authority to include personal information in those agendas or in supporting

¹⁵ See Order F22-50, *ibid* at paras. 66-68.

¹⁶ *Charter* at s. 148(b).

¹⁷ *Bylaw* at 6(2) and 10(3).

¹⁸ *Bylaw* at 10(1).

¹⁹ *Bylaw* at 11(1)(f).

²⁰ *Charter* at s. 1(a).

²¹ *Charter* at s. 89 and *Bylaw* at 5(1). For a list of the circumstances in which Council may hold a meeting *in camera* (that is, in the absence of the public) see *Charter* at s. 90.

²² I find that this same logic applies to supporting documents that the Officer publicly releases alongside and as part of an agenda, like the petition and cover letter at issue in this case.

documents attached to them. Without that authority there is no guarantee that the Officer would be able to draft agendas which are intelligible and provide the public with sufficient information to fulfill the purpose set out above. For example, in my view the requirement that an agenda contain information regarding a delegation set to occur at a given meeting would be rendered meaningless if the Officer were not authorized to publicly name or otherwise identify the parties who will be presenting to Council.²³

[32] Taking all of this together, I find that the *Bylaw* authorizes the Town, acting through the Officer, to publicly disclose personal information in an agenda for a Council meeting, or in supporting documents attached to that agenda, for the purpose of informing the public of the matters Council will consider at that meeting.

[33] Turning to the specific facts of this case, the evidence establishes that the complainant was an organizer of the petition, a drafter of the cover letter, and a motivating force behind bringing the petition to Council's attention. In doing all of this, I find that the complainant was exercising their democratic rights and took concrete steps to make their voice heard in the public sphere. I also find that the other signers of the petition were exercising their democratic rights in a similar way.

[34] These same participatory democratic rights are fostered by the requirement to make Council meeting agendas public. Therefore, it would be incongruent to find that information about the identity of the complainant or the other petitioners who were requesting that Council re-examine the road closures was not relevant to the Town's broader public in deciding whether to exercise their own right to participate in Council's consideration of the issue.

[35] Given this, I find that the complainant's identity as an organizer and signer of the petition, and therefore their name, would have been relevant to a resident of the Town who was considering whether they had an interest in the petition at the time it was set to be considered by Council. I make the same finding regarding the complainant's address, which identifies the complainant as a resident of the area affected by the road closures and would have provided the public with additional context regarding the complainant's potential motivations for organizing the petition and bringing it to Council's attention. Further, I note that the *Charter* says that for a petition to Council to have legal force, it must include the name and address of each petitioner.²⁴ Therefore, I find that the

²³ I make a similar finding regarding the requirement that an agenda contain information regarding, for example "Council," "Committee" or "Administration" reports, basic descriptions of which could each clearly include personal information in some cases (Bylaw at 11(1)(h), (i), and (j)); and, the adoption of "Bylaws," meaningful description of which could require referencing specific individuals and/or their properties in cases where those bylaws concern, for example, a rezoning application.

²⁴ *Charter* at s. 82(2).

information considered in this paragraph was also relevant to the public because it helped demonstrate that the petition was legitimate and warranted consideration by Council.

[36] Finally, I find that the complainant's decision to sign the petition and cover letter demonstrates that the complainant was willing to officially put their support behind the request that Council end the road closures. This demonstrates the force of the complainant's convictions regarding the road closure issue. I also find that the complainant was one of the first parties to sign the petition and that their signature would have been visible to anyone who was later approached and asked to register their support for the petition. Based on this, I find that the complainant did not intend their signature to remain confidential after they had signed the petition but accepted that the fact they had signed and supported the petition could become public knowledge. Based on all of this, I find that the complainant's signature is also information that was relevant to other residents of the Town in deciding whether and how to exercise their democratic rights regarding Council's consideration of the road closure issue.

[37] Taking all of this together, I find that the Officer's decision to disclose the complainant's personal information by attaching the petition and cover letter to the agenda was consistent with the agenda's purpose of providing the public with sufficient information to decide whether they had an interest in the matters slated for consideration by Council at the meeting. As such, I find that the disclosure was authorized by the *Bylaw*.

Conclusion – s. 33(2)(f)

[38] I found above that the *Bylaw* is an "enactment" for purposes of FIPPA and that the *Bylaw* authorizes the Officer to publicly disclose personal information by including that personal information in agendas for Council meetings, or in documents attached to those agendas, where the disclosure is consistent with an agenda's purpose of informing the public regarding matters that will be considered by Council. Further, I found that the disclosure of the complainant's personal information in this case was made by including that information in documents attached to a Council meeting agenda and that the disclosure was consistent with the agenda's purpose as described above.

[39] Therefore, I find that the *Bylaw* authorized the Town, acting through the Officer, to publicly disclose the complainant's personal information and the disclosure was authorized by s. 33(2)(f).

Conclusion – s. 33

[40] For the reasons given above, I have found above that the Town was authorized to publicly disclose the complainant's personal information by s. 33(2)(f). Given this conclusion, it is not necessary for me to consider whether

the Town was also authorized to disclose that information by s. 33(2)(e) and I decline to do so.

[41] The complainant makes several related arguments saying that regardless of whether s. 33(2) authorized the Town to disclose their personal information, the disclosure was still improper under FIPPA. While I have considered the complainant's submissions on this point, prior orders are clear that where s. 33 authorizes a disclosure of personal information, FIPPA does not dictate how the public body should make that disclosure or require the public body to weigh potential harms to personal privacy in deciding whether and how to make the disclosure.²⁵ Given this, I find that the complainant's argument that the Town violated their privacy rights by choosing to publicly disclose their personal information via the internet as opposed to via alternative means is not relevant to the matters at issue in this inquiry.

CONCLUSION

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

I confirm that the Town was authorized to disclose the complainant's personal information under s. 33 of FIPPA.

June 24, 2024

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

OIPC File No.: F22-89485

²⁵ See Order F22-45, *supra* note 7 at para. 23 and Order F22-50, *supra* note 13 at para. 75 for similar conclusions.