



Order F24-67

THOMPSON RIVERS UNIVERSITY

Elizabeth Vranjkovic
Adjudicator

July 18, 2024

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Summary: The applicant asked Thompson Rivers University (the University) for access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to all communications mentioning him that were sent to or received by a named individual. The University provided the responsive records to the applicant but withheld some information under a number of FIPPA exceptions. The adjudicator found that the University was authorized to withhold some but not all of the information at issue under s. 13(1) (advice or recommendations) and required to withhold some but not all of the information at issue under s. 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator ordered the University to give the applicant access to the information it was not authorized or required to refuse to disclose.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 13(1), 13(2), 13(2)(a), 22(1), 22(2), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h), 22(3), 22(3)(d), 22(4), 22(4)(e) and 22(5).

INTRODUCTION

[1] An individual (applicant) asked Thompson Rivers University (the University) for access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to communications mentioning him sent to or received by a named individual (the Associate Dean).

[2] The University provided the responsive records to the applicant but withheld some information under a number of FIPPA exceptions.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the University's decision. Mediation by the OIPC did not resolve the issues in dispute and the matter proceeded to inquiry.

[4] Prior to the inquiry, the University disclosed some additional information and withdrew its reliance on some FIPPA exceptions. As a result, only ss. 13(1) (advice or recommendations) and 22(1) (unreasonable invasion of a third party's personal privacy) remain in dispute.¹

Preliminary matters

Scope of inquiry

[5] The OIPC investigator's fact report (fact report) says that the applicant agreed that the following record categories are outside the scope of the inquiry:

- Academic integrity letters;
- Emails relating to academic integrity that have the term "academic integrity" in the subject line;
- Emails with the term "student grades" in the subject line;
- Scheduling and workload plan spreadsheets or tables; and
- Information about committee memberships.

[6] Additionally, the applicant says he is not interested in "material related to student academic dishonesty" or "material related to the course evaluations of others, job postings or teaching preferences."²

[7] The University provided two packages of responsive records. One package is records that the University says are outside the scope of the inquiry based on the fact report (the excluded records package). The balance of the responsive records are in the other package (the disputed records package).

[8] The University says that, based on the applicant's statement about what he is not interested in, it assumes that pages 1-3, 49-162, 170-177 and 182-199 of the disputed records package are not at issue.³

[9] I have reviewed the disputed records package and the excluded records package.

[10] With the exception of pages 87-88 of the excluded records package, I agree that the excluded records package contains the type of records the applicant agreed were outside the scope of the inquiry as set out in the fact report. However, pages 87-88 of the excluded records package do not fall within any of the categories of records the applicant agreed were outside the scope of

¹ From this point forward, whenever I refer to section numbers I am referring to sections of FIPPA.

² Applicant's response submission at page 1.

³ For consistency, when I refer to page numbers throughout this order, I am referring to the page number of the relevant pdf records package, not the page number marked on any individual page of the records.

the inquiry as set out in the fact report. Additionally, the information at issue on those pages is not the type of information the applicant said he is not interested in in his inquiry submission. Therefore, I find that the withheld information on pages 87-88 of the excluded records package remains in dispute.

[11] I do not agree with the University's assumption about what pages of the disputed records package remain in dispute. I find that all of the withheld information in the disputed records package remains in dispute, with the following exceptions:

- The subject line of the emails on pages 1-3 of the disputed records package is not at issue because it relates to student academic dishonesty.
- Other than the information on the top left of page 56, the information on pages 54 and 56 of the disputed records package is not at issue because it relates to the course evaluations of others.

[12] Other than the two exceptions outlined in the bullet points above, I find that all of the withheld information in the disputed records package remains in dispute.

Affidavit evidence

[13] The applicant takes issue with the University's affidavit evidence. Specifically, he says the affidavit sworn by a privacy assistant employed by the University (Privacy Assistant) is hearsay and that the University has submitted "questionable" affidavits in past inquiries.⁴

[14] The University says that the Privacy Assistant's affidavit evidence is not hearsay. The University also says the applicant's assertions about the evidence it submitted in other proceedings are unproven, unsubstantiated, made without particulars, and should be disregarded in their entirety.⁵

[15] The rules of evidence are flexible when it comes to matters before an administrative tribunal. In an administrative proceeding, hearsay evidence is admissible where it is "logically probative and may be fairly regarded as reliable."⁶

⁴ Applicant's response submission at pages 2-3.

⁵ Public body's reply submission at paras 10-12.

⁶ *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at para 36; Order F20-48, 2020 BCIPC 57 at para 34; Order F21-02, 2021 BCIPC 2 at para 4.

[16] The Privacy Assistant's affidavit is relevant to the matters at issue in the inquiry and the Privacy Assistant swears that she reviewed the records at issue. Therefore, I have accepted the Privacy Assistant's affidavit evidence for this inquiry and I will consider it along with the rest of the parties' submissions and evidence. If necessary, I will determine the weight to attribute to hearsay evidence in my analysis below.

[17] With respect to the applicant's concerns about the University's evidence in past inquiries, he did not provide any documentary evidence in support of those concerns. In any event, my responsibility in this inquiry is to assess the evidence in a fair and neutral matter. Considering evidence from past OIPC inquiries to determine whether it was "questionable" will not assist me to fulfill that duty in this inquiry.⁷ As a result, I will not consider the applicant's concerns about the University's affidavit evidence in other inquiries in assessing whether the University is authorized or required to withhold the information at issue in this inquiry.

Content of applicant's submissions

[18] The University says that in this inquiry and others, the applicant has used the inquiry process as an opportunity to make "accusations" about the "honesty or integrity" of the University and its representatives. The University submits that the applicant's "consistent and repeated barrage of unfounded attacks" is "not appropriate and should be addressed by the OIPC."⁸

[19] The University does not explain what it wants the OIPC to do to "address" the applicant's submissions. Although the University refers to the applicant's submissions in other inquiries, the University did not provide those submissions for my review in this inquiry. Additionally, the University has not adequately explained how the applicant's behaviour rises to the level that would warrant intervention or identified a legal basis on which I might intervene. Based on the materials before me, I am not persuaded that it is appropriate or necessary for me to take any action to "address" the content of the applicant's submissions.

Information severed with no explanation

[20] The University has severed e-mail headers generated while the University prepared its response to the access request.⁹ The University has not explained which section(s) of FIPPA authorize or require the severing.

⁷ For a similar finding, see Order F23-65, 2023 BCIPC 75 at para 13.

⁸ Public body's reply submission at paras 6-7.

⁹ Information on pages 1, 4, 23, 31, 36, 44, 46, 49, 53, 56, 58-59, 74, 90-91, 122, 136, 141, 149, 155, 163, 170, 172, 176, 178, 182, 188-189, 192 and 196 of the disputed records package.

[21] As noted by Adjudicator Corley in Order F24-12, a public body must release all information in responsive records unless FIPPA specifically authorizes or requires the public body to withhold information.¹⁰ The e-mail headers form part of the responsive records that were provided to the applicant. As the University does not rely on any sections of FIPPA to withhold the e-mail headers, I find that the University must release them to the applicant.¹¹

ISSUES

[22] The issues to be decided in this inquiry are as follows:

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

[23] Under s. 57(1), the University has the burden of proving that the applicant has no right to access the information in dispute under s. 13(1).

[24] Under s. 57(2), the applicant has the burden of proving that disclosure of the information in dispute under s. 22(1) would not unreasonably invade a third party's personal privacy. However, the University has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).¹²

DISCUSSION

Background¹³

[25] The University is a post-secondary educational institution located in Kamloops, British Columbia. The applicant is a former University faculty member.

[26] While he was employed by the University, the applicant published an academic article about publications in predatory journals, also known as predatory publications. The applicant defines predatory journals as journals that claim to peer-review articles but instead are "pay-to-publish" journals without quality control.

¹⁰ Order F24-12, 2024 BCIPC 16 at paras 6-7.

¹¹ I have considered whether s. 22(1) applies to the e-mail headers because s. 22(1) is a mandatory disclosure exception. While the e-mail headers are personal information, I find s. 22(4)(e) applies so disclosure is not an unreasonable invasion of a third party's personal privacy.

¹² Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

¹³ The information in this section is from the parties' submissions.

[27] The University subsequently conducted workplace investigations arising from the applicant’s public statements about University faculty members and predatory publications.

Information at issue

[28] The disputed records package and excluded records package total 300 pages. The information at issue in the disputed records package is in emails, a draft communications strategy document and a spreadsheet. The information at issue in the excluded records package is in a document titled “Staff List.”

Advice or recommendations, s. 13

[29] Section 13(1) authorizes a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister.

[30] The purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny.¹⁴

[31] Past OIPC orders and court decisions have established the following principles for the interpretation of s. 13(1):

- Section 13(1) applies not only to advice or recommendations, but also to information that would allow someone to accurately infer advice or recommendations.¹⁵
- The terms “advice” and “recommendations” are distinct, so they must have distinct meanings.¹⁶
- “Recommendations” involve a suggested course of action that will ultimately be accepted or rejected by the person being advised.¹⁷
- “Advice” has a broader meaning than “recommendations.”¹⁸ It includes setting out relevant considerations and options, and providing analysis and opinions, including expert opinions on matters of fact.¹⁹ Advice can

¹⁴ *John Doe v Ontario (Finance)*, 2014 SCC 36 at paras 45-51 [*John Doe*].

¹⁵ Order 02-38, 2022 CanLII 42472 (BC IPC) at para 135.

¹⁶ *John Doe*, *supra* note 14 at para 24.

¹⁷ *Ibid* at paras 23-24.

¹⁸ *Ibid* at para 24.

¹⁹ *Ibid* at paras 26-27 and 46-47; *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at paras 103 and 113 [*College of Physicians*].

be an opinion about an existing set of circumstances and does not have to be a communication about future action.²⁰

- “Advice” also includes factual information “compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.”²¹ This is because the compilation of factual information and weighing the significance of matters of fact is an integral component of an expert’s advice and informs the decision-making process.

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

Would the disputed information reveal advice or recommendations?

[33] The information in dispute under s. 13(1) is in a draft document about a communications strategy, emails between University employees and a spreadsheet.

[34] The University says “advice” and “recommendations” should be broadly construed.²² The applicant says that it is difficult for him to make specific submissions about s. 13 without having seen the disputed information.²³

[35] For the reasons that follow, I find that some, but not all, of the information withheld under s. 13(1) would reveal advice or recommendations developed by or for the University.

Draft communications strategy²⁴

[36] The University says that this record consists of advice and recommendations on how to engage with different stakeholders and respond to public commentary.²⁵

²⁰ *College of Physicians*, supra note 19 at para 103.

²¹ *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 94 [PHSA].

²² Public body’s initial submission at para 33.

²³ Applicant’s response submission at page 7.

²⁴ Pages 32-34 of the disputed records package.

²⁵ Public body’s initial submission at para 38(a).

[37] The applicant says that this information sounds like instructions from a superior to the Associate Dean rather than advice or recommendations.²⁶

[38] I find that most of the withheld information in the draft communications strategy would reveal advice or recommendations. I can see that the authors of the document have used their expertise and professional judgment to provide communications advice and recommendations. There is also some background information that I find is a necessary and integrated part of the advice and recommendations.

[39] However, in my view, the headings in the draft strategy are so general that they would not reveal any advice or recommendations.

Emails between University employees²⁷

[40] Based on my review of the emails, I find that some of the information in dispute would reveal advice or recommendations, in particular, the following information:

- Suggested courses of action.²⁸ I find that these are recommendations within the meaning of s. 13(1).
- An individual outlining relevant considerations and options for scheduling sessional instructors.²⁹ I find that this is advice within the meaning of s. 13(1).
- Discussion about a University department's workload planning.³⁰ I find that this is advice within the meaning of s. 13(1).
- Discussion of the implications of a decision that was made and suggestions for how to move forward in light of that decision.³¹ I find that this is advice and recommendations within the meaning of s. 13(1).

[41] However, I find that the following information in the emails would not reveal advice or recommendations:

²⁶ Applicant's response submission at page 7. The applicant refers to paragraph 18(a) however no such paragraph exists in the public body's submissions. I presume the applicant is referring to paragraph 38(a).

²⁷ Pages 49, 53, 60-61, 75-77, 90-91, 93-95, 107, 109, 122-124, 138-139, 143, 151-153, 157-158, 160, 170-171, 176-177, 185-186, 192 and 197-198 of the disputed records package.

²⁸ Information on pages 53, 90-91 and 157 of the disputed records package.

²⁹ Information on pages 61, 76-77, 94-95, 109, 123-124, 143, 152-153 and 160 of the disputed records package.

³⁰ Information on pages 139, 186 and 198 of the disputed records package.

³¹ Information on page 176 and 192 of the disputed records package.

- Information about when a meeting will occur and how a faculty member (Professor A) feels about the meeting.³² In my view, Professor A is expressing their feelings to explain why they are asking for certain information, not as advice or recommendations about the meeting.
- Information of a factual nature, including information about the completion rates of course evaluations, workloads, how a plan has been updated, a decision that was made and what the Associate Dean has done and will do in response to that decision.³³
- A question about departmental hiring.³⁴ While a question or request for advice may lead to advice or recommendations, the question itself does not amount to advice under s. 13 unless it would reveal or allow for accurate inferences about advice or recommendations actually received.³⁵ Here, the answer to the question is openly disclosed and is clearly not advice or recommendations.
- A question about whether something has changed.³⁶ While the answer to the question is openly disclosed in the records, it is a factual response that does not qualify as advice or recommendations. I am not persuaded that disclosing the question would reveal any advice or recommendations.
- Professor A and the Associate Dean's reactions to a decision that has already been made.³⁷
- Information openly disclosed elsewhere in the records.³⁸ Previous OIPC orders have found that disclosing information for a second time would not "reveal" advice or recommendations and I make the same finding here.³⁹

Spreadsheet⁴⁰

[42] The University withheld three columns of a spreadsheet created by Professor A and sent to the Associate Dean.⁴¹

³² Information on page 49 of the disputed records package.

³³ Information on page 53, 138, 171, 177 and 185 of the disputed records package.

³⁴ Information on pages 60, 75, 93, 107, 122, 151 and 158 of the disputed records package.

³⁵ For example, see Order F14-19, 2014 BCIPC 22 at para 35.

³⁶ Information on page 170 of the disputed records package.

³⁷ Information on pages 176-177 of the disputed records package.

³⁸ Information on page 139 of the disputed records package.

³⁹ Order F20-32, 2020 BCIPC 38 at para 36.

⁴⁰ Pages 194-195 of the disputed records package.

⁴¹ Information on pages 194-195 of the disputed records package.

[43] The University says that the withheld information in the spreadsheet is part of discussions and advice related to workload planning.⁴²

[44] I can see that the spreadsheet was prepared by Professor A in support of the advice he provided in an email to the Associate Dean. I am satisfied that the withheld information is factual information compiled by Professor A for the purpose of providing explanations necessary to the deliberative process of the University. I find that disclosure would reveal advice within the meaning of s. 13(1) because this type of background information is an integrated part of Professor A's advice.

Do any of the exceptions in s. 13(2) apply?

[45] Next, I will consider if s. 13(2) applies to the information that I found above would reveal advice or recommendations.

[46] The University says that none of the exceptions in s. 13(2) apply to the information in dispute under s. 13(1). The University says that any factual information is integrated with and forms part of the advice and recommendations, so s. 13(2)(a) does not apply to that information.

[47] The applicant does not make submissions about s. 13(2).

Factual material, s. 13(2)(a)

[48] Section 13(2)(a) says that the head of a public body must not refuse to disclose under s. 13(1) any factual material.

[49] 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.⁴³ Where facts are selected and compiled by an expert as an integral component of their advice, then this information is not "factual material" under s. 13(2)(a).⁴⁴

[50] I found above that some of the information in the draft communications strategy and the spreadsheet is background information. The background information in the draft communications strategy was clearly compiled by communications experts as a necessary part of their communications advice and the background information in the spreadsheet was clearly selected and compiled by Professor A as an integral component of their advice to the Associate Dean. None of this information is the kind of distinct source material or

⁴² University's initial submission at para 38(e) and table of disputed records.

⁴³ PHSA, *supra* note 21 at para 94.

⁴⁴ Order F23-82, 2023 BCIPC 98 at para 36.

isolated background facts that the courts have found is “factual material.” Accordingly, I am satisfied that the background information I have found is advice is not “factual material” under s. 13(2)(a).

[51] No other subsections of s. 13(2) are relevant to the withheld information, so I find that s. 13(2) does not apply.

In existence for 10 or more years, s. 13(1)

[52] Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. In this case, the records date from 2019-2021, so s. 13(3) does not apply.

Conclusion, s. 13

[53] I find that the University is authorized to withhold some, but not all, of the information in dispute under s. 13(1).

Unreasonable invasion of a third party’s personal privacy, s. 22

[54] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party’s personal privacy.⁴⁵

[55] There is some overlap between the University’s application of ss. 13 and 22 to the records. I will only consider below information that I have not already found the University may withhold under s. 13. This information is in communications sent or received by University employees and the Staff List.

[56] There are four steps in the s. 22(1) analysis,⁴⁶ and I will apply each step in this analysis under the headings that follow.

Personal information

[57] The first step in any s. 22 analysis is to determine if the information at issue is personal information.

[58] Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.”⁴⁷ Information is about an identifiable individual when it is reasonably capable of identifying a particular

⁴⁵ Schedule 1 of FIPPA says: “third party” in relation to a request for access to a record or for correction of personal information, means any person, group of persons, or organization other than (1) the person who made the request, or (b) a public body.

⁴⁶ Order F15-03, 2015 BCIPC 3 at para 58.

⁴⁷ Schedule 1.

individual, either alone or when combined with other available sources of information.⁴⁸

[59] FIPPA defines contact information 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.”⁴⁹ Whether information is contact information depends on the context in which it appears.⁵⁰

[60] The University says that all of the information withheld under s. 22 is the personal information of its staff and students.⁵¹

[61] Although the applicant does not say this outright, I understand from his submission that he questions whether the withheld email addresses are personal information or contact information.⁵²

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

[63] To begin, I find that the following information is not about an identifiable individual:

- The question about hiring eligibility. The question is about people who fit a particular description, not about an identifiable individual.⁵³
- Information describing the currency of the Staff List.⁵⁴
- Information indicating from what device emails were sent.⁵⁵
- A website link.⁵⁶
- A journal title.⁵⁷

[64] The University does not adequately explain how any of this information is about an identifiable individual.

⁴⁸ Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

⁴⁹ Schedule 1.

⁵⁰ Order F20-13, 2020 BCIPC 15 at para 42.

⁵¹ Public body’s initial submission at para 29.

⁵² Applicant’s response submission at page 4.

⁵³ Information on pages 60, 75, 93, 107, 122, 151 and 158 of the disputed records package.

⁵⁴ Information on page 88 of the excluded records package.

⁵⁵ Information on pages 4 and 46-48 of the disputed records package.

⁵⁶ Information on page 4 of the disputed records package.

⁵⁷ Information on page 47 of the disputed records package.

[65] In my view, the balance of the information at issue is about identifiable individuals. Most of the information is about individuals who are identified by name. Where the University has withheld the names of individuals under s. 22(1), I find that the individuals are identifiable because the applicant or other members of the public would be able to identify the individuals given the context in which the information appears in the records. Additionally, I find that information about individuals who are not named in the records is reasonably capable of identifying those individuals when combined with information from other available sources.⁵⁸ As a result, I find that all of this information is about identifiable individuals.

[66] I turn now to whether any of the information about identifiable individuals is contact information. If it is, it is not personal information.

[67] I find that the following information is contact information:

- A faculty member's (Professor B) name, job titles and website link at the end of an email.⁵⁹ I find that Professor B included this information in the email to enable him to be contacted at his place of business.
- The phone numbers of University employees in the Staff List.⁶⁰ I find that the phone numbers are included in that document to enable the employees to be contacted at their workplaces.
- The names and email addresses of University employees in instances where it is clear that the employees were using the email address in a professional capacity and in the ordinary course of conducting their work-related affairs.⁶¹

[68] I find that the balance of the information at issue under s. 22 is personal information because it is about identifiable individuals and not contact information.

Disclosure not an unreasonable invasion of privacy, s. 22(4)

[69] The second step in the s. 22 analysis is to consider s. 22(4), which sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If information falls into one of the enumerated circumstances, s. 22(1) does not apply and the public body must disclose the information.

⁵⁸ For example, information on page 4 of the disputed records package.

⁵⁹ Information on page 25 of the disputed records package.

⁶⁰ Information on pages 87-88 of the excluded records package.

⁶¹ Information on pages 47 and 189-190 of the disputed records package.

[70] The University says none of the circumstances in s. 22(4) apply. The University says that while s. 22(4)(e) has “potential relevance,” it does not apply.

[71] I have considered whether any of the subsections in s. 22(4) apply and, for the reasons that follow, I find s. 22(4)(e) applies to some of the personal information.

Public body employee’s positions or functions, s. 22(4)(e)

[72] Section 22(4)(e) says that it is not an unreasonable invasion of a third party’s personal privacy to disclose information about their position, functions or remuneration as an officer, employee or member of a public body.

[73] Previous OIPC orders have found that s. 22(4)(e) applies to information that reveals a public body employee’s name, job title, duties, functions, remuneration (including salary and benefits) or position.⁶² Section 22(4)(e) has also been found to apply to information that relates to a public body employee’s job duties in the normal course of work-related activities, namely objective, factual information about what the individual said or did in the course of discharging their job duties.⁶³

[74] The University says that the withheld information about staffing and placement of other faculty members “is not routine and does not simply related [*sic*] to their duties and responsibilities” but rather relates to their preferences and employment history.⁶⁴

[75] I find that s. 22(4)(e) applies to Professor B’s name and the name and job title of a professor at another university (the External Professor).⁶⁵ I am not persuaded that disclosing this information would reveal anything more than their names and the External Professor’s job title.

[76] I also find that s. 22(4)(e) applies to factual information about the duties and functions of University employees. For example, some of the information reveals the course sections assigned to faculty members.⁶⁶ There is also factual information about a faculty member’s previous and upcoming duties.⁶⁷ In my view, nothing in the records reveals those faculty members’ preferences or employment history. The information only reveals those faculty members’ duties and functions as University employees, so I find s. 22(4)(e) applies.

⁶² For example, Order F20-54, 2020 BCIPC 63 at para 56 and footnote 45.

⁶³ Order 01-53, 2001 CanLII 21607 at para 40; Order F18-38, 2018 BCIPC 41 at para 70.

⁶⁴ Public body’s initial submission at para 52(b).

⁶⁵ Information on page 4, 23 and 46 of the disputed records package.

⁶⁶ Information on pages 50, 173 and 189-190 of the disputed records package.

⁶⁷ Information on page 167 of the disputed records package.

[77] Finally, I find that s. 22(4)(e) applies to information that reveals what University employees said and did in the normal course of discharging their job duties. For example, some of the information is factual statements in emails between University employees who I am satisfied were communicating in the normal course of discharging their job duties.⁶⁸

[78] In summary, I find that s. 22(4)(e) applies to some of the personal information at issue. The University may not withhold that information under s. 22(1).

[79] I have considered the other circumstances listed under s. 22(4) and I find that none apply.

Presumptions of unreasonable invasion of privacy, s. 22(3)

[80] The third step in the s. 22 analysis is to determine whether s. 22(3) applies to the personal information. If so, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[81] The University says that s. 22(3)(d) relates to all of the student personal information and most of the employee personal information.⁶⁹

[82] I have considered whether any of the subsections in s. 22(3) apply and I find that only s. 22(3)(d) is relevant in this case.

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

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

[84] The University says that information about appointments, scheduling and individual workplace issues goes beyond factual information about employee's duties and reveals specific workload issues and preferences for course section assignment.⁷⁰ The University also says that communications about predatory publications are employment history information since they relate to workplace disputes and investigation.⁷¹

⁶⁸ Information on pages 138, 183 and 189-191 of the disputed records package.

⁶⁹ Public body's initial submission at para 53.

⁷⁰ Public body's initial submission at para 54.

⁷¹ Public body's initial submission at para 55.

[85] The applicant takes issue with the University's position that s. 22(3)(d) applies to communications about predatory publications.⁷²

[86] While some of the personal information at issue is about predatory publications, none of that information is about a workplace investigation or dispute.⁷³ An individual would not be able to tell from the disputed personal information that workplace disputes or investigations had occurred in relation to the issue of predatory publications. Therefore, I am not persuaded that s. 22(3)(d) applies to comments about predatory publications.

[87] However, I find that s. 22(3)(d) applies to some of the personal information because it relates to the employment and occupational history of third parties. For example, I find that some information about Professor A's workload relates to his employment history.⁷⁴ This information is not about Professor A's duties and functions as a public body employee, but instead reveals Professor A's preferences and willingness to take on certain tasks.

[88] As another example, I find that the Associate Dean's opinions and comments about Professor B's research topics and career trajectory fall under s. 22(3)(d).⁷⁵ This is the type of qualitative assessment of a third party's work performance that OIPC adjudicators have found fall within s. 22(3)(d).⁷⁶

[89] To summarize, I find that s. 22(3)(d) applies to some of the personal information at issue.

Relevant circumstances, s. 22(2)

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

[91] The University says that ss. 22(2)(e), (f), (g) and (h) support withholding some of the personal information. The applicant says that ss. 22(2)(a) and (c) are relevant. I will consider all of these circumstances in my s. 22(2) analysis. I will also consider whether there are any other circumstances, including those listed under s. 22(2), that may apply.

⁷² Applicant's response submission at pages 3-4.

⁷³ Some of the personal information at issue is about a workplace dispute, however that information is not a communication about predatory publications.

⁷⁴ Information on pages 136-138, 183-186 and 196-198 of the disputed records package. For a similar finding on third-party work schedules, see Order F24-12, 2024 BCIPC 16 at para 111.

⁷⁵ Information on pages 46-47 of the disputed records package.

⁷⁶ For example, Order F21-17, 2021 BCIPC 22 at para 18.

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

[92] Section 22(2)(a) asks whether disclosure of the personal information is desirable for subjecting the activities of the government of British Columbia or a public body to public scrutiny. Where disclosure would foster the accountability of a public body, this may weigh in favour of disclosing the information at issue.⁷⁷ Section 22(2)(a) does not apply where the disclosure of the information at issue would only result in the public scrutiny of an individual third party's activities.⁷⁸

[93] The applicant says that matters related to predatory publications are "matters of public scrutiny."⁷⁹

[94] The University says that there has already been ample public scrutiny of the University in relation to predatory publications. The University says that the applicant does not explain how disclosure of the specific information at issue would contribute meaningfully to the materials already available to the public on the topic of predatory publications.⁸⁰

[95] Having reviewed the specific personal information at issue, I do not see how its disclosure would subject the University to public scrutiny. At most, some of the information would subject Professor B to public scrutiny. Therefore, I find that s. 22(2)(a) does not weigh in favour of disclosure of any of the personal information at issue.

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

[96] Section 22(2)(c) asks whether the personal information is relevant to a fair determination of an applicant's rights. Previous orders have established the following test 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, the determination of the right in question; and

⁷⁷ Order F05-18, 2005 CanLII 24734 at para 49.

⁷⁸ Order F16-50, 2016 BCIPC 55 at para 48.

⁷⁹ Applicant's response submission at pages 4-5.

⁸⁰ Public body's reply submissions at paras 23 and 25.

4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.⁸¹

[97] The applicant says that the disputed information relates to and will help him prepare for grievance arbitrations he has filed and an unfair representation complaint against his union that he may file under s. 12 of the *Labour Relations Code*. He notes that there is no discovery process for s. 12 complaints, so access requests are the only way he can obtain the necessary information.⁸²

[98] The University says that the applicant's submission that he requires disclosure for a theoretical complaint against his union is speculative and highly unlikely to arise.⁸³ The University says that the applicant has legal rights to obtain relevant evidence and documents under the ongoing grievance proceedings, so the information at issue is not necessary in order to prepare for those proceedings or ensure a fair hearing.⁸⁴ The University also notes that the applicant has not identified which records he believes are necessary for the grievance proceedings or explained how they are relevant or necessary.⁸⁵

[99] With respect to part one of the test, I accept that the following rights are engaged here: (1) the applicant's legal right to grieve an alleged breach of the collective agreement between the University and the Faculty Association; and (2) the applicant's statutory right to complain that his union breached a duty owed to him under the *Labour Relations Code*.

[100] With respect to part two of the test, I find the grievance proceedings are clearly under way. The parties do not dispute this fact and the applicant provided a copy of the relevant grievances. I also accept that the applicant is intently considering a union complaint proceeding and I find that this qualifies as a contemplated proceeding under s. 22(2)(c).

[101] However, in my view, the applicant's evidence and argument do not satisfy the third part of the s. 22(2)(c) test, which requires that the personal information sought by the applicant have some bearing on, or significance for, a determination of the legal right in question.⁸⁶ The applicant must prove there is a "demonstrable nexus" or "connection" between the withheld information and the legal right.⁸⁷

⁸¹ Order F23-71, 2023 BCIPC 84 at para 69; Order 01-07, 2001 BCIPC 21561 (CanLII) at para 31.

⁸² Applicant's response submission at pages 5-6.

⁸³ Public body's reply submission at para 30.

⁸⁴ Public body's reply submission at paras 30-31.

⁸⁵ Public body's reply submission at paras 32-36.

⁸⁶ Order F16-36, 2016 BCIPC 40 at para 50.

⁸⁷ Order F16-36, 2016 BCIPC 40 at paras 52 and 62.

[102] The applicant has not adequately explained, and I do not see how the disputed personal information has any significance for the determination or implementation of the applicant's legal right to grieve an alleged breach of the collective agreement by the University or the applicant's statutory right to submit a complaint against his union under the *Labour Relations Code*. As a result, I am not satisfied that the third part of the s. 22(2)(c) test is met and I do not need to consider the fourth part of the test.

[103] To summarize, I find that s. 22(2)(c) does not weigh in favour of disclosure of any of the personal information at issue.

Unfair harm, s. 22(2)(e)

[104] Section 22(2)(e) asks whether a third party will be exposed unfairly to financial or other harm. If so, this factor weighs in favour of withholding the personal information.

[105] Previous OIPC orders have established that "other harm" includes "serious mental distress or anguish or harassment."⁸⁸ Such harm must exceed "embarrassment, upset or a negative reaction to someone's behaviour."⁸⁹

[106] The University says that in the context of a workplace dispute and investigation, disclosure is likely to cause third parties to experience stress, anxiety and other emotional harms.⁹⁰

[107] The University has not adequately explained, and I do not see, how disclosure of the specific information at issue would unfairly expose any third parties to the type or level of harm required under s. 22(2)(e). For example, the University has not specified which "other" emotional harms it believes third parties would be exposed to. Having reviewed the disputed personal information, I do not see how disclosure would unfairly expose a third party to financial or other harm.

[108] I find that s. 22(2)(e) does not weigh in favour of withholding the personal information at issue

Supplied in confidence, s. 22(2)(f)

[109] Section 22(2)(f) asks whether the personal information was supplied in confidence. If so, this factor weighs in favour of withholding the personal

⁸⁸ Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42; Order 01-15, 2001 CanLII 21569 (BC IPC) at para 49.

⁸⁹ Order F15-29, 2015 BCIPC 32 at para 32; Order 01-15, 2001 CanLII 21569 (BC IPC) at para 49.

⁹⁰ Public body's initial submission at paras 58-59.

information. For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information to another person and, that, when they did so, the third party had an objectively reasonable expectation of confidentiality.⁹¹

[110] The University says that third-party communications expressing concern, upset or personal opinions related to workplace disputes are inherently confidential and are protected under s. 22(2)(f).⁹²

[111] The University did not provide any evidence that any of the third parties supplied their personal information in confidence. However, the subject line of one email indicates that some personal information in that email was supplied in confidence.⁹³ Additionally, some of the information consists of Professor B's forthright views about the applicant and the University.⁹⁴ Given the personal nature and subject matter of Professor B's comments, and the fact that they were shared only with the Associate Dean, I find it reasonable to conclude that Professor B expected their comments to remain confidential.

[112] For the remainder of the disputed personal information, there are no express statements about confidentiality nor can an expectation of confidentiality be inferred from the context or content of the personal information, so I am not persuaded that s. 22(2)(f) applies.

[113] For these reasons, I find that s. 22(2)(f) weighs against disclosing some of the personal information.

Information likely inaccurate or unreliable, s. 22(2)(g)

[114] Section 22(2)(g) asks whether the personal information is likely to be inaccurate or unreliable. If so, this factor weighs in favour of withholding the personal information.

[115] The University says that the applicant's allegations are unproven and disputed, so s. 22(2)(g) supports non-disclosure.⁹⁵

[116] In my view, s. 22(2)(g) does not apply here. It is irrelevant whether the applicant's allegations are unproven or disputed for the purposes of s. 22(2)(g) because the personal information at issue does not consist of any allegations made by the applicant. It is also not obvious to me that any of the personal information at issue is likely to be inaccurate or unreliable. I find, therefore, that s. 22(2)(g) does not weigh in favour of withholding the personal information.

⁹¹ 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).

⁹² Public body's initial submission at para 57.

⁹³ Page 47 of the disputed records package.

⁹⁴ Page 46 of the disputed records package.

⁹⁵ Public body's initial submission at para 60.

Unfair damage to reputation, s. 22(2)(h)

[117] Section 22(2)(h) asks whether the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant. If so, this factor weighs in favour of withholding the personal information.

[118] For s. 22(2)(h) to apply, the unfair harm or damage to reputation must relate directly to disclosure of the information in dispute.⁹⁶ In past orders, the OIPC has held that reputational damage is unfair within the meaning of s. 22(2)(h) where the affected individual did not have the opportunity to respond to or correct the record.

[119] The University says disclosing third party communications expressing concern, upset or personal opinions about workplace disputes is likely to expose third parties to reputational harm, given that the allegations about predatory publications relate to their professional conduct as academics and researchers. The University says that the applicant has a history of publicly disseminating derogatory comments about his former co-workers and says that future publication by the applicant of the communications about predatory publications would expose the third parties to ongoing reputational risk.⁹⁷

[120] In my view, one sentence may damage the reputations of two individuals referred to in the records.⁹⁸ The sentence consists of critical comments Professor B made about those individuals. The individuals have not had the opportunity to respond to or correct that implication anywhere in the records, so the reputational damage would be unfair. Therefore, I find that s. 22(2)(h) weighs against disclosing that sentence.

[121] Additionally, I find that disclosure of information that reveals Professor B's opinions about the External Professor's work may damage the reputation of the External Professor.⁹⁹ Any such damage would be unfair because the External Professor has not had the opportunity to respond to that information anywhere in the records. Therefore, I find that s. 22(2)(h) weighs against disclosing that information.

[122] However, I am not persuaded that disclosing Professor B's opinions and comments about predatory publications would unfairly damage his reputation. The disputed personal information does not suggest that he or anyone else has engaged in any professional misconduct. In the absence of further explanation (for example, that communications were taken out of context), I find that any

⁹⁶ Order F14-10, 2014 BCIPC 12 at para 37.

⁹⁷ Public body's initial submission at para 58.

⁹⁸ Information on page 4 of the disputed records package.

⁹⁹ For example, information on page 4 of the disputed records package.

harm that might result would not be unfair because he wrote the opinions and comments himself.

[123] To summarize, I find that disclosing some of the personal information could unfairly damage the reputations of some of the individuals referred to in the responsive records. This factor weighs against disclosing that information.

Applicant's existing knowledge

[124] While not enumerated in s. 22(2), an applicant's knowledge of the personal information at issue may be a factor that weighs in favour of disclosure where there is evidence, or the circumstances indicate, that an access applicant likely knows, does know, or can infer the information at issue.¹⁰⁰

[125] The applicant says that the University previously disclosed an email exchange.¹⁰¹ The University says that no record matching the description of that email exchange is in the responsive records.¹⁰²

[126] I do not see the emails the applicant refers to anywhere in the responsive records. There is nothing else in the parties' evidence or submissions that indicates to me that the applicant knows any of the disputed personal information. I am not persuaded that the applicant has knowledge of any of the personal information at issue, so this factor does not weigh in favour of disclosure.

Applicant's personal information

[127] Past OIPC orders have recognized that the fact that information is also the applicant's personal information is a factor that weighs in favour of disclosure.¹⁰³

[128] Some of the disputed information is Professor B's opinions and comments about the applicant.¹⁰⁴ While this information is about the applicant, it is also the personal information of Professor B. Additionally, the University employee's reaction to an email from the applicant is about that employee and the applicant.¹⁰⁵

[129] Past OIPC orders have attributed diminished weight to the fact that information is about an applicant where the information is also about another

¹⁰⁰ For example, Order F17-05, 2017 BCIPC 6 at paras 54-60; Order F23-13, 2023 BCIPC 15 at para 184.

¹⁰¹ Applicant's response submission at page 3.

¹⁰² Public body's reply submission at para 13.

¹⁰³ Order F23-56, 2023 BCIPC 65 at para 90.

¹⁰⁴ Information on pages 23-24 and 46-47 of the disputed records package.

¹⁰⁵ Information on page 1 of the disputed records package.

individual.¹⁰⁶ I take the same approach here. Thus, while the fact that some information is about the applicant weighs in favour of disclosing that information, I give this factor limited weight because the information is not solely the applicant's personal information.

Published and publicly available information

[130] The information in dispute includes a list of academic articles written by Professor B and others and the title of an email attachment.¹⁰⁷ It is clear from the withheld information that the listed articles are published in academic journals and publicly available. I can also see from the responsive records that the attachment refers to a letter authored by Professor B in his professional capacity that was published in an academic journal. I find that the fact that the articles and letter are published in academic journals and publicly available weighs in favour of disclosing the attachment title and the list of articles.

Conclusion, s. 22(1)

[131] To begin, some of the information is not personal information under FIPPA. The University cannot withhold this information under s. 22(1). The balance of the information at issue under s. 22 is personal information.

[132] Section 22(4)(e) applies to Professor B's name, the External Professor's name job title, and factual information about the duties and functions of several University employees. It also applies to factual communications between University employees in the normal course of discharging their job duties. The University cannot withhold this information under s. 22(1).

[133] I find that disclosure of the list of academic articles and the attachment title would not be an unreasonable invasion of a third party's personal information because they refer to published and publicly available information and no circumstances weigh against disclosure. The University cannot withhold this information under s. 22(1).

[134] However, I find that disclosure of the remaining personal information would be an unreasonable invasion of a third party's personal privacy. Under s. 22(3)(d), disclosing some of the personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Additionally, ss. 22(2)(f) and 22(2)(h) weigh against disclosing some of the personal information. Some of the information is the applicant's personal information, however that information is also the personal information of third parties. After weighing all of the above, I find that disclosing the remaining personal information would be an unreasonable invasion of third parties' personal privacy.

¹⁰⁶ Order F15-52, 2015 BCIPC 55 at para 45; Order F22-31, 2022 BCIPC 34 at para 85.

¹⁰⁷ Information on pages 23-25 of the disputed records package.

[135] Finally, I find that there is identifying information about third parties on several pages that must be withheld under s. 22(1). However, s. 22(1) does not apply to the balance of the personal information on those pages because once the identifying information is severed, what is left is not personal information.¹⁰⁸

Summary of personal information supplied in confidence about the applicant, s. 22(5)

[136] Section 22(5)(a) says that if a public body refuses to disclose personal information supplied in confidence about an applicant, the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

[137] Neither party specifically addressed whether the University could prepare such a summary under s. 22(5).

[138] In my view, Professor B's comments about the applicants that were supplied in confidence to the Associate Dean cannot be meaningfully summarized without disclosing the identity of Professor B. Therefore, the University is not required to provide a summary of that information under s. 22(5).

CONCLUSION

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

1. I confirm, subject to item 3 below, the University's decision to refuse the applicant access to the information withheld under s. 13(1).
2. I confirm, subject to item 3 below, the University's decision to refuse the applicant access to the information withheld under s. 22(1).
3. The University is required to give the applicant access to the information that I have determined it is not authorized or required to withhold under ss. 13(1) and 22(1). I have highlighted this information in grey on the copy of pages 87-88 of the excluded records package that will be provided to the University with this order and on pages 1, 4, 23-25, 31-34, 36, 44, 46-50, 53, 56, 58-60, 74-75, 90-91, 93, 107, 122, 136-139, 141, 147, 149, 151, 155, 158, 163, 167, 170-173, 176-178, 182-186, 188-192 and 196-198 of the copy of the disputed records package that will be provided to the University with this order.

¹⁰⁸ Information on pages 137-139, 147, 170-171, 184-186 and 197-198 of the disputed records package. I have highlighted the information which s. 22(1) does not apply to in a copy of these pages that I am providing to the University along with this order.

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

Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **August 30, 2024**.

July 18, 2024

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F22-88923