



Order F24-80

## MINISTRY OF EDUCATION

Lisa Siew  
Adjudicator

September 4, 2024

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**Summary:** An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to a report (Report) about the board of education for School District No. 33 and other related records. The Ministry of Education (Ministry) provided the applicant with partial access to the requested records but withheld information in the Report under s. 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. The applicant requested the Office of the Information and Privacy Commissioner review the Ministry’s decision and the matter was later forwarded to inquiry. The adjudicator determined the Ministry correctly applied s. 22(1) to the information at issue in the Report.

**Statutes and sections considered in the order:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, Schedule 1 (definitions of an “educational body”, “local public body”, “public body”, “third party”), ss. 22(1), 22(2)(a), 22(2)(f), 22(3)(d), 22(3)(g) and 22(4)(e). *School Act*, RSBC 1996, c 412, ss. 65 and 171.1.

## INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the Ministry of Education (Ministry)<sup>1</sup> provide access to a report (Report) about the board of education for School District No. 33 (Board) and other related records.

[2] In response, the Ministry entirely withheld the requested records under ss. 13(1) (advice or recommendations) and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Ministry’s decision to refuse access.

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<sup>1</sup> Now known as the Ministry of Education and Child Care. At para. 14 of its initial submission, the Ministry notes this name change occurred in 2022.

[3] The OIPC's investigation and mediation process resulted in the applicant clarifying they were not seeking access to any third-party personal information that was not about the trustees who made up the Board at that time. However, the dispute between the parties was not resolved and the matter was forwarded to inquiry.

[4] The OIPC's registrar of inquiries (Registrar) adjourned the inquiry until the completion of another inquiry, involving the Ministry but a different access request, where the sole record at issue was the Report. The other inquiry resulted in Order F23-28 which concluded the Ministry had correctly applied s. 22(1) to some but not all the information that it had withheld in the Report.<sup>2</sup> I was the adjudicator who decided the inquiry that resulted in Order F23-28.

[5] As a result of Order F23-28, the Ministry reconsidered its severing of the records for this inquiry to reflect the decision I made in Order F23-28 about the application of s. 22(1) to the Report. The Ministry's re-severing of the records resulted in the disclosure of previously redacted information in the Report. The applicant in this inquiry was provided with a copy of the revised records package and Order F23-28. However, the Ministry's reconsideration decision did not resolve the matter for the applicant, and the applicant requested that the inquiry proceed.

[6] The Registrar restarted the inquiry and notified five individuals of the applicant's request for review.<sup>3</sup> Those five individuals were invited to participate in the inquiry; however, only one individual made submissions. I will refer to this individual as the Third Party. The Third Party supports the Ministry's decision to refuse access to the information withheld in the Report.

[7] During the inquiry, the Ministry decided to release additional information to the applicant and provided the applicant with any previously redacted information in the Report that qualified as the applicant's personal information. The Ministry also decided to withdraw its reliance on s. 13(1) to withhold information in the responsive records. Therefore, I conclude that information and s. 13(1) are no longer at issue in this inquiry.

### **PRELIMINARY MATTER: THE IMPACT OF ORDER F23-28 ON THIS INQUIRY**

[8] As noted above, this present inquiry involves the Report which is the same record that was at issue in the inquiry that resulted in Order F23-28. Throughout

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<sup>2</sup> Order F23-48, 2023 BCIPC 32 (CanLII).

<sup>3</sup> Under s. 54(b) of FIPPA, the OIPC has the authority to provide a copy of the applicant's request for review to any person the Commissioner considers appropriate. Under s. 56(3), that person must be given an opportunity to make representations to the Commissioner or their delegate during the inquiry.

its submissions, the Ministry cites various parts of Order F23-28 and argues the same approach and findings should be made for this inquiry.<sup>4</sup>

[9] I note that courts are bound by the doctrine of *stare decisis*, which usually requires courts to follow prior judicial decisions or precedents. However, administrative decision-makers are not bound by their previous decisions in the same manner as courts.<sup>5</sup> Although consistency in decision-making is preferred, administrative decision-makers can depart from a previous decision, a longstanding practice or from established internal authority, but they must provide reasons for doing so.<sup>6</sup>

[10] Moreover, the findings and conclusions in Order F23-28 were based on the parties' submissions and arguments in that inquiry. The applicant in this inquiry is different from the other inquiry which clearly impacts the parties' arguments and the analysis required under s. 22 for this inquiry. Therefore, for all those reasons, I do not consider myself bound by the analysis and findings in Order F23-28.

## **ISSUE AND BURDEN OF PROOF**

[11] The issue I must decide in this inquiry is whether the Ministry is required to withhold the information at issue under s. 22(1).

[12] Section 57(2) of FIPPA places the burden on the applicant to establish that disclosure of the information at issue would not unreasonably invade a third-party's personal privacy under s. 22(1). However, the public body has the initial burden of proving the information at issue is personal information.<sup>7</sup>

## **DISCUSSION**

### ***Background***

[13] The Board consists of seven elected trustees.<sup>8</sup> There has been some controversy surrounding the Board, which has impacted the school district and the community. The applicant was a trustee on the Board at that time.

[14] In 2020, the then Minister of Education (Minister) publicly appointed a two-person special advisory committee (Committee) to inspect and evaluate the Board on several matters. The Minister publicly stated that the review was

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<sup>4</sup> For example, Ministry's initial submission at para. 47.

<sup>5</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII) at para. 129.

<sup>6</sup> *Ibid* at para. 131.

<sup>7</sup> Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

<sup>8</sup> The information in this background section is compiled from the parties' submissions and evidence.

required to ensure the decision-making of all Board trustees supports student achievement and wellness and that all trustees were adhering to the Board's code of conduct.

[15] The appointment of the Committee was made pursuant to a ministerial order under s. 171.1 of the *School Act*.<sup>9</sup> This provision gives the Minister the authority to appoint a special advisory committee to review an education board's progress on certain matters or as directed by the Minister. In the ministerial order, the Minister directs the Committee to review six matters, including the Board's ability to work co-operatively to fulfill its duties.

[16] In early 2021, the Committee completed its review and provided the Report to the Minister. The Ministry then issued a news release about the review and its findings. As part of the news release, the Minister directed the Board to, amongst other things, review and revise its policies to ensure the promotion of a safe, welcoming and inclusive school community for all students.

### ***Records and information at issue***

[17] The records responsive to the applicant's access request total 35 pages and consists of the Report and its two appendices and three letters from the Minister. The Ministry disclosed all the information in the three letters and the Report's two appendices. The Ministry only redacted information on 20 pages of the Report, including most of the information that reveals the Committee's findings and observations about the Board.

[18] As previously mentioned, the Report that is the focus of this inquiry is also the same record that was at issue in the inquiry that resulted in Order F23-28. However, the information at issue in this inquiry is different because the Ministry disclosed additional information to this applicant, including some previously redacted information in the Report that qualified as the applicant's personal information.

[19] As well, as noted above in the introduction section of this order, the applicant clarified they were not seeking access to any third-party personal information that was not about the trustees of the Board. Therefore, I conclude any personal information in the Report that is about individuals who are not Board trustees is not at issue in this inquiry because the applicant does not dispute the Ministry's decision to withhold that information under s. 22(1).<sup>10</sup>

### ***Unreasonable invasion of third-party personal privacy – s. 22***

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<sup>9</sup> *School Act*, RSBC 1996, c. 412.

<sup>10</sup> For example, information withheld on pp. 2, 8, 13, 18 and 20-21 of the Report.

[20] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information that would unreasonably invade a third-party's personal privacy. A "third party" is defined in Schedule 1 of FIPPA as any person, group of persons or organization other than the person who made the access request or a public body. Numerous OIPC orders have considered the application of s. 22(1) and I will apply the same approach in this inquiry under the sub-headings that follow.

### **Personal information**

[21] Section 22 applies only to personal information; therefore, the first step in the s. 22 analysis is to determine if the information at issue is personal information under FIPPA.

[22] "Personal information" is defined in FIPPA as "recorded information about an identifiable individual other than contact information."<sup>11</sup> Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.

[23] "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."<sup>12</sup>

[24] The Ministry submits the information at issue is the personal information of several "identifiable Trustees."<sup>13</sup> The Ministry also argues that any references to "the Board in its entirety" is about identifiable individuals because the Board "consists of individuals whose identities are known or easy to determine given the relatively small number of individuals involved and the attention the matters addressed in the Report have received from the media and the public."<sup>14</sup> It also says, "it is very common in the Report that the withheld personal information is about more than one individual and therefore jointly personal information of numerous individuals, including the Applicant."<sup>15</sup>

[25] The applicant submits the Board is a "corporate board" and "does not have personal opinions" and says, "The two are incongruent."<sup>16</sup>

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<sup>11</sup> Schedule 1 of FIPPA.

<sup>12</sup> Schedule 1 of FIPPA.

<sup>13</sup> Ministry's initial submission at para. 41.

<sup>14</sup> Ministry's initial submission at para. 42.

<sup>15</sup> Ministry's initial submission at para. 45.

<sup>16</sup> Applicant's submission provided by email dated December 2, 2023.

[26] For the reasons that follow, I find the information at issue in this inquiry under s. 22(1) is about the elected trustees who were members of the Board, including the applicant. This information includes their names, their comments and opinions about others and what others have said about them, including a description of their actions and behaviour. I am satisfied that this information is clearly about identifiable individuals.

[27] Regarding information specifically about the applicant, I note the Ministry has disclosed most of the information in the Report that is about the applicant and which is easily severable from information about the other trustees.<sup>17</sup> However, I can see there is other information about the applicant that has been redacted, including some comments or observations that the Committee made about the applicant.<sup>18</sup> I find this information is clearly about the applicant.

[28] I note that some of the information withheld in the Report references or discusses the Board as a whole and its activities. Under the *School Act*, the Board is a corporation.<sup>19</sup> I understand the applicant is arguing any references to the Board in the Report is not personal information because it is a “corporate board.”<sup>20</sup> Normally, corporations and organizations do not have personal privacy rights under s. 22(1) of FIPPA.<sup>21</sup> However, for the reasons that follow, I am satisfied this information about the Board would be about several identifiable individuals rather than the activities of a corporation.

[29] In Order F19-19, a senior adjudicator determined that references to the activities of a larger group, specifically a ministry, in certain investigation reports qualified as personal information under s. 22. The senior adjudicator concluded it was reasonable to expect that someone could determine that the term “ministry” in the investigation reports referred to the actions and behaviour of certain identifiable individuals because of the widely known nature of the investigations, the relatively small group of people whose activities and decisions were under investigation and considering the specific information at issue.<sup>22</sup>

[30] I find those same factors and considerations are relevant and applicable here. It is not in dispute that the review leading to the Report, the terms of the review and the Report’s overall conclusions are publicly known. As previously noted, the Ministry issued press releases about that information. Furthermore, the ministerial order that sets out the terms of the review is publicly available. The ministerial order directs the Committee to consider several matters that focus on the Board’s activities and the actions of the elected trustees. Therefore,

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<sup>17</sup> Information located on pp. 5, 9, 10, 12, 16, 19 of the Report.

<sup>18</sup> Information located on pp. 5 and 20 of the Report.

<sup>19</sup> Section 65 of the *School Act*, RSBC 1996, c 412.

<sup>20</sup> Applicant’s submission provided by email dated December 2, 2023.

<sup>21</sup> Order F17-39, 2017 BCIPC 43 at para. 75.

<sup>22</sup> 2019 BCIPC 21 (CanLII) at para. 38.

I find the purpose and focus of the review is widely known or available to the public.

[31] As well, I note the Board was made up of seven elected trustees whose identities, I conclude, are known or easy to determine. The Ministry states, and I accept, that the individuals involved in the matters addressed in the Report are widely known because those matters have received considerable attention from the media and the public and resulted in numerous published stories.<sup>23</sup> Therefore, I find there was a relatively small group of identifiable people whose actions and decisions were under review.

[32] Turning now to the specific information at issue, I find the information about the Board in the Report is situated or described in such a way that it is about identifiable individuals given the public nature of the review and the small number of identifiable Board members. Where the Report refers to the Board and its activities, I am satisfied that it would be possible to determine that this information is either about all seven trustees who made up the Board at that time or a subset of those trustees. As a result, I find the references to the Board and its activities in the Report are about identifiable individuals.

[33] Taking that into account, I can see some of the withheld information at issue in the Report reveals what people interviewed by the Committee said about the Board and the trustees or reveals the Committee members' observations and comments about individual trustees.<sup>24</sup> Considering my finding above, I find this information would qualify as the personal information of the trustees since it is someone else's opinion or comments about all or some of them.

[34] I note some of the redacted information in the Report about the trustees may also simultaneously be the personal information of the individuals providing the opinions or comments if there is information that reveals or identifies that individual as the opinion-holder.<sup>25</sup> When summarizing what the interviewees have said about the Board or the trustees, I can see that the Committee was careful not to reveal the individual identities of the interviewees. The Ministry disclosed information in the Report which shows the Committee "assured interviewees that comments would not be attributed to individuals."<sup>26</sup> Therefore, I find this information is not the personal information of the interviewees since they are not identifiable from the opinions and comments or from other information in the Report.

[35] However, I reach a different conclusion regarding the information that reveals the Committee members' observations and comments about the

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<sup>23</sup> Ministry's initial submission at para. 25.

<sup>24</sup> For example, information located on pp. 12, 17, 19 and 20 of the records.

<sup>25</sup> Order F17-01, 2017 BCIPC 1 (CanLII) at para. 48.

<sup>26</sup> Information disclosed on p. 2 of the Report under the heading "Process".

trustees. The identities of the Committee members were disclosed in the Report and publicly announced by the Minister.<sup>27</sup> Therefore, I find this information is also the personal information of the Committee members because they can be identified as the individuals who provided the opinions or comments about all or some of the trustees.

[36] I am satisfied that none of the withheld information about the trustees is contact information as defined under FIPPA and interpreted by past orders. As a result, I conclude the redacted information in the Report that is about the trustees is personal information under FIPPA.

#### **Section 22(4) – disclosure not an unreasonable invasion**

[37] The second step in the s. 22 analysis is to determine if the trustees' personal information falls into any of the types of information or circumstances listed in s. 22(4). If it does, then the disclosure of the personal information is not an unreasonable invasion of a third party's personal privacy and the information cannot be withheld under s. 22(1).

[38] The Ministry submits that none of the provisions in s. 22(4) apply to the redacted information. The applicant made no identifiable submissions about s. 22(4). I have considered the types of information and circumstances listed under s. 22(4) and find none apply.

#### **Section 22(3) – disclosure presumed to be an unreasonable invasion**

[39] The third step in the s. 22 analysis is to determine whether any of the presumptions set out in s. 22(3) apply to the trustees' personal information. Section 22(3) creates a rebuttable presumption that the disclosure of personal information of certain kinds or in certain circumstances would be an unreasonable invasion of third-party personal privacy. The Ministry submits the presumption under s. 22(3)(g) applies. I will consider this presumption below.

[40] The parties did not identify any other s. 22(3) presumptions that may apply, and I am satisfied there are no other s. 22(3) presumptions that are relevant in this case.

#### *Personal evaluation - s. 22(3)(g)*

[41] Section 22(3)(g) creates a rebuttable presumption that it is an unreasonable invasion of a third party's personal privacy to disclose personal information that consists of personal recommendations or evaluations, character references or personnel evaluations about a third party.

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<sup>27</sup> Page 21 of the Report and Affidavit of NH at para. 7.



[42] The Ministry submits s. 22(3)(g) was previously found to apply to an investigator's evaluative comments about employees in the context of a formal workplace investigation.<sup>28</sup> Citing the ministerial order and information in the Report, the Ministry argues the Committee was similarly tasked with evaluating, investigating, observing and inspecting certain matters related to the Board and its trustees.<sup>29</sup> Therefore, the Ministry says s. 22(3)(g) applies in this case because the information withheld in the Report reveals the Committee's evaluative comments about the Board and its trustees which qualifies as a personal evaluation under s. 22(3)(g).

[43] For information to be considered a personal evaluation under s. 22(3)(g), there must be a formal assessment or evaluation of a third party's performance.<sup>30</sup> I can see the information withheld in the Report is the Committee's evaluation of the Board and its trustees or would reveal that information. I am satisfied that the review done by the Committee is a formal evaluative process that was initiated and authorized through a ministerial order in accordance with the *School Act*.

[44] With one exception, I also find the individual trustees are third parties under FIPPA. Although the Board is a public body under FIPPA, I am satisfied that any references to the "Board" in the Report are about all or some of the trustees. Therefore, in this case, I find the Committee's evaluation of the Board and its trustees is about one or more third parties. As a result, I conclude the presumption under s. 22(3)(g) applies to most of the redacted information in the Report about the trustees.<sup>31</sup>

[45] The one exception is the redacted information in the Report that is about the applicant. In this case, the applicant is not a third party as defined in FIPPA. The presumption under s. 22(3)(g) only applies to a personal evaluation about a third party and not to a personal evaluation about an applicant. Therefore, I conclude the presumption under s. 22(3)(g) does not apply to the redacted information about the applicant.

### **Section 22(2) – relevant circumstances**

[46] The final step in the s. 22 analysis is to consider the impact of disclosing the trustees' personal information in light of all relevant circumstances. Section 22(2) requires a public body to consider the circumstances listed under ss. 22(2)(a) to (i) and any other relevant circumstances to determine whether disclosing the personal information at issue would be an unreasonable invasion of a third party's personal privacy. One or more of these circumstances

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<sup>28</sup> Ministry's initial submission at para. 54, citing Order F21-08, 2021 BCIPC 12 (CanLII) at para. 138.

<sup>29</sup> Ministry's initial submission at para. 55.

<sup>30</sup> Order 01-07, 2001 CanLII 21561 at paras. 21-22.

<sup>31</sup> For example, information located on pp. 5 and 20 of the Report.

may rebut the s. 22(3)(g) presumption that I found applies to most of the trustees' personal information withheld in the Report.

[47] The applicant submits s. 22(2)(a) (public scrutiny) weighs in favour of disclosure. The applicant also argues the cost of the Committee's review of the Board and the use of taxpayer funds to conduct that review favours disclosure. The applicant further submits they are seeking access to the Report because they were evaluated as part of the review and were given no feedback or follow-up afterwards.

[48] The Ministry submits s. 22(2)(a) does not weigh in favour of disclosure, while s. 22(2)(f) (supplied in confidence) favours withholding the information in the Report.

[49] I will consider the circumstances identified by the parties. I have also considered whether there are any other circumstances that may be relevant, including those listed under s. 22(2). I find a relevant circumstance is the fact that some of the redacted information in the Report is the applicant's personal information. I will also discuss this circumstance below. Based on the materials before me, I find there are no other relevant circumstances to take into consideration.

*Subjecting a public body's activities to public scrutiny – s. 22(2)(a)*

[50] Section 22(2)(a) requires a public body to consider whether disclosing the personal information is desirable for the purpose of 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 be a relevant circumstance that weighs in favour of disclosing the information at issue.<sup>32</sup>

[51] The applicant submits s. 22(2)(a) is a relevant circumstance in this case because "Board decisions are made by a majority vote, therefore all comments made pertaining to the functioning of the corporate board...need to be made available to the public."<sup>33</sup>

[52] The Ministry submits s. 22(2)(a) is not a circumstance that favours disclosure because none of the information withheld in the Report would subject its activities to public scrutiny. The Ministry says the information at issue "is about various individuals and is very personal in nature" and would only subject several individual trustees to public scrutiny which is not the intent of s. 22(2)(a).<sup>34</sup>

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<sup>32</sup> Order F05-18, 2005 CanLII 24734 at para. 49.

<sup>33</sup> Applicant's submission provided by email dated December 2, 2023.

<sup>34</sup> Ministry's initial submission at para. 59.

[53] The Ministry argues disclosure would only serve the applicant's private interests and to disclose information that contains "very sensitive personal information of numerous third parties" is not in the public interest.<sup>35</sup> The Ministry also submits s. 22(2)(a) is not a circumstance that favours disclosure because it believes that its "current level of disclosure about the Board's activities and the Committee's findings is sufficient for public scrutiny."<sup>36</sup>

[54] One of the purposes of s. 22(2)(a) is to make public bodies more accountable.<sup>37</sup> Therefore, for s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting a public body's activities to public scrutiny as opposed to subjecting an individual third party's activities to public scrutiny.<sup>38</sup> For the reasons that follow, I find disclosing the information withheld in the Report about the trustees is not desirable for subjecting the Ministry or another public body's activities to public scrutiny.

[55] Normally, information about a board of education would be about a public body under FIPPA. However, given the circumstances leading up to and surrounding the Report and the content of the Report itself, I find the withheld information is really about the individual trustees and their behaviour and actions. Therefore, although the Board is a public body under FIPPA, I find most of the references to the "Board" in the Report is really about all or a few of the individual trustees who make up the Board. As a result, I am satisfied that the information withheld in the Report would only subject the collective and individual activities of the trustees to public scrutiny rather than a public body's activities.

[56] I also find disclosing the information in the Report is not *desirable* for subjecting the Ministry or the Board's activities to public scrutiny. The Ministry has already publicly shared the Report's overall findings and conclusions about the Board's governance practices and commitment to student safety and success. This public information identified concerns with, among other things, the Board's ability to govern.<sup>39</sup> It also noted that the Minister directed the Board to take specific actions by a set date.<sup>40</sup>

[57] I find this information allows the public to scrutinize the Board's activities as a whole. One can easily determine from this public information that the Board failed to meet its statutory duties and responsibilities. Therefore, I find the Ministry's current level of disclosure about the Board's activities in relation to the Report and the Committee's findings is sufficient for public scrutiny. In this case, I agree with the Ministry that any further disclosure of the information in the

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<sup>35</sup> Ministry's initial submission at para. 60.

<sup>36</sup> Ministry's initial submission at para. 62.

<sup>37</sup> Order F18-47, 2018 BCIPC 50 (CanLII) at para. 32.

<sup>38</sup> Order F16-14, 2016 BCIPC 16 (CanLII) at para. 40.

<sup>39</sup> Affidavit of NH at para. 13.

<sup>40</sup> Affidavit of NH at para. 14.

Report would be subjecting an individual's activities to public scrutiny rather than a public body's activities. Therefore, I conclude s. 22(2)(a) is not a circumstance that favours disclosing the information withheld in the Report.

*Supplied in confidence - 22(2)(f)*

[58] Section 22(2)(f) requires a public body to consider whether the personal information was supplied in confidence. For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information to another and, at the time the information was provided, there was an objectively reasonable expectation of confidentiality.<sup>41</sup>

[59] The Ministry argues s. 22(2)(f) is a relevant circumstance which favours withholding the information at issue in the Report. The Ministry says it has not publicly released the Report, nor has it engaged in any public commentary about the Report except for its press releases.<sup>42</sup> It says the contents of the Report have been treated in a confidential manner and was only shared with "individuals whose roles necessitate knowing the contents."<sup>43</sup> The Ministry submits treating the Report confidentially is "consistent with expectations across government."<sup>44</sup> It says, "this confidentiality is critical to ensure individuals feel safe in coming forward with issues and that these individuals can trust the Ministry with these highly sensitive, highly personal matters."<sup>45</sup>

[60] The Third Party objects to the disclosure of the Report to the applicant. The Third Party says "everything shared was done so with the understanding that it would remain confidential" but they do not explain or identify the source of their belief.<sup>46</sup>

[61] The applicant did not make any identifiable arguments about s. 22(2)(f) or address the other parties' arguments about s. 22(2)(f).

[62] For s. 22(2)(f) to apply, the information about the trustees in the Report must have been supplied in confidence by a third party. I find there is personal information withheld in the Report in the form of the Committee's comments and observations about the Board and individual trustees. I find the Committee is a third party under FIPPA since it is not the person who made the access request or a public body.<sup>47</sup>

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<sup>41</sup> Order F11-05, 2011 BCIPC 5 (CanLII) 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).

<sup>42</sup> Affidavit of NH at para. 22.

<sup>43</sup> Ministry's initial submission at para. 63.

<sup>44</sup> *Ibid* at para. 64.

<sup>45</sup> *Ibid*.

<sup>46</sup> Third Party's submission provided by email dated November 27, 2023.

<sup>47</sup> Definition of a "third party" under Schedule 1 of FIPPA.

[63] In terms of the confidential supply of the above-noted information, I find this information was *supplied* by the Committee when it provided the Report to the Minister as required under the ministerial order. The Ministry also disclosed the heading “Cabinet Confidential” on the first page of the Report which suggests the Committee provided the personal information in the Report to the Minister on a confidential basis and with the understanding that it should only be disclosed to Cabinet. There is also no evidence that this information was publicly disclosed by the Minister, which suggests the Minister understood this information was being provided in confidence by the Committee and that the Minister treated this information in a confidential manner. Taking all this into account, I am satisfied the Committee supplied some, but not all, of the personal information at issue in the Report about the trustees to the Minister in confidence for the purposes of s. 22(2)(f).

[64] Some of the personal information withheld in the Report consists of what people interviewed by the Committee think about the Board, the trustees and their actions or people providing information to the Committee about the Board and trustees.<sup>48</sup> I am satisfied that this information about the Board and the trustees would be personal information supplied by a third party. However, the Committee was careful to anonymize their identities and “assured interviewees that comments would not be attributed to individuals.”<sup>49</sup> I find this assurance of anonymity speaks to the Committee’s expectation that they would have to share what the interviewees said with others, but not who said it, and that any privacy concerns would be addressed by the de-identification of those comments and opinions. There is also nothing in the Report itself which indicates the Committee told people before or during the interviews that any comments and opinions would not be shared with others. Therefore, I am not persuaded the interviewees expected the Committee to keep their comments and opinions about the Board and the trustees confidential for the purposes of s. 22(2)(f). As a result, I find s. 22(2)(f) is not a circumstance that favours withholding this information.

#### *Cost and funds for the review*

[65] The applicant submits the cost of the review that resulted in the Report favours disclosure of the redacted information in the Report. The applicant says, “In excess of \$200,000 of tax payer funds were used to conduct this review as well as estimated \$50,000 spent from the operational budget of the school district.”<sup>50</sup> Therefore, the applicant argues the public “has the right to see the fruit of their tax payer dollars at work for them.”<sup>51</sup>

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<sup>48</sup> For example, information located on pp. 4, 9, 11, and 12 of the Report.

<sup>49</sup> Information disclosed by the Ministry on p. 2 of the Report under the heading “Process”.

<sup>50</sup> Applicant’s submission provided by email dated December 2, 2023.

<sup>51</sup> Applicant’s submission provided by email dated December 2, 2023.

[66] In response, the Ministry says in enacting FIPPA, “the Legislature has put in numerous measures to balance the public’s right to access the records of public bodies with [an] individual’s right to the protection of their personal privacy.”<sup>52</sup> It submits s. 22(1) is one of the provisions that protects “our citizens’ right to privacy by requiring public bodies to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of third-party personal privacy.”<sup>53</sup> The Ministry argues the s. 22 analysis favours withholding the information at issue.

[67] I understand the applicant is arguing the Report should be disclosed because a significant amount of public funds was used to create the Report. However, I am not persuaded that this is a relevant factor that favours disclosure. In my opinion, the amount of public funds spent on creating a record is not relevant as to whether disclosure of the redacted information would be an unreasonable invasion of a third party’s personal privacy under s. 22(1). Instead, the focus is on the impact to a third-party’s personal privacy. For example, there may be records that were not costly to create, however, the disclosure of any personal information in that record may have a significant impact on a third-party’s personal privacy.

[68] Moreover, if the applicant’s arguments were accepted, then the effect would be to assess under s. 22 whether the cost of creating a record outweighs a third party’s privacy rights. I do not think that is what the Legislature intended. Under FIPPA, the public has the right to access records in the custody or control of a public body regardless of the cost that went into creating the record. However, that right of access is subject to some specified exceptions which favour other rights or interests over the public’s right of access, such as the protection of a third-party’s personal privacy under s. 22(1). For all those reasons, I am not persuaded that the cost of the review and the source of the funds are factors that favour disclosure of the Report.

#### *Applicant’s personal information*

[69] A factor that supports disclosure is that some of the withheld information is the personal information of the applicant. Previous OIPC orders have stated that it would only be in rare circumstances where disclosure to an applicant of their own personal information would be an unreasonable invasion of a third-party’s personal privacy.<sup>54</sup>

#### *Applicant’s motives*

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<sup>52</sup> Ministry’s reply submission at para. 7.

<sup>53</sup> Ministry’s reply submission at para. 8.

<sup>54</sup> Order F14-47, 2014 BCIPC 51 (CanLII) at para. 36, citing Order F10-10, 2010 BCIPC 17 (CanLII) at para. 37 and Order F06-11, 2006 CanLII 25571 at para. 77.

[70] An access applicant's motivation or purpose for wanting the personal information at issue may be a relevant circumstance that weighs in favour or against disclosure.<sup>55</sup> In this case, the applicant was evaluated as part of the review conducted by the Committee. The applicant questions the purpose of the Committee's review and why the review was undertaken if they "were given no feedback or follow up afterwards."<sup>56</sup> In response, the Ministry submits the reason for the Committee's review is not at issue and says it is not relevant to this inquiry.

[71] I find the fact that the applicant has some unresolved questions and concerns about the Committee's review is a factor that weighs in favour of disclosure. However, I give this circumstance little weight because the purpose and results of the Committee's Review were publicly announced by the Minister.<sup>57</sup> As well, the matters addressed in the Report have received considerable attention from the media and the public and resulted in numerous published stories.<sup>58</sup> I find it is easy to determine the purpose and outcome of the Committee's review from this public information.

[72] Moreover, I find the Minister provided feedback and follow up related to the Report to the Chair of the Board via a letter dated April 6, 2021.<sup>59</sup> The Ministry disclosed the entire letter to the applicant. In the letter, the Minister communicates their concerns arising from their review of the Report and identifies certain actions the Board is required to complete. The letter also indicates that one of the Committee members was appointed as a special advisor to assist the Board and evaluate its progress completing the required actions. The Ministry's submission indicates the applicant would have been involved in this process.<sup>60</sup> It is unclear why this process did not provide sufficient feedback for the applicant.

[73] As a result, although I find the applicant's motives for seeking access is a relevant circumstance, I assign it little weight given the information already disclosed or available to the applicant and the opportunity they had to seek feedback through an evaluative process made available to them.

### **Conclusion on s. 22(1)**

[74] I found the redacted information in the Report of interest to the applicant is "personal information" under FIPPA because it is about the individual trustees or the Committee members' opinions or comments about one or more of those

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<sup>55</sup> Order F14-32, 2014 BCIPC 35 (CanLII) at paras. 39-41.

<sup>56</sup> Applicant's submission provided by email dated December 2, 2023.

<sup>57</sup> Affidavit of NH at paras. 9-10 and 12-15.

<sup>58</sup> Ministry's initial submission at para. 25.

<sup>59</sup> Letter located at p. 3 of the records.

<sup>60</sup> Ministry's initial submission at para. 27.

identifiable individuals. As previously mentioned, the applicant was only interested in any information in the Report about the trustees who made up the Board at that time and, therefore, my analysis under s. 22 focused on that information.

[75] I concluded most of the personal information about the trustees is subject to the presumption under s. 22(3)(g) because it is a personal evaluation of the individual trustees who make up the Board. I considered whether there were any factors that would rebut this presumption or that weigh in favour of disclosing this personal information to the applicant and found there were no such factors. Specifically, I do not find the applicant's motives for seeking access to this information or the costs and source of funds for the Committee's review are sufficient to rebut the s. 22(3)(g) presumption, nor is the disclosure of the redacted information desirable for subjecting the Ministry or another public body's activities to public scrutiny under s. 22(2)(a).

[76] I found there was some information about the applicant that was not subject to the presumption under s. 22(3)(g).<sup>61</sup> However, I find it would unreasonably invade a third-party's personal privacy to disclose this information because it was supplied in confidence by the Committee to the Minister in accordance with s. 22(2)(f). Therefore, based on the materials before me, I find disclosing the personal information in the Report that I found is about the trustees would be an unreasonable invasion of the personal privacy of one or more third parties under s. 22(1).

#### **Summary of a record under s. 22(5)(a)**

[77] Subject to certain conditions, s. 22(5) requires a public body to give an applicant a summary of any personal information supplied in confidence about them by a third party. The parts of s. 22(5) that are relevant for this inquiry states:

On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless

(a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information...

[78] Section 22(5) is only relevant when an adjudicator decides that a third party confidentially supplied information about an applicant. In this case, the Ministry withheld some information about the applicant that I found further above was supplied in confidence by the Committee to the Minister, specifically comments that the Committee made about the applicant.<sup>62</sup>

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<sup>61</sup> Information located on pp. 5 and 20 of the Report.

<sup>62</sup> Information located on pp. 5 and 20 of the Report.



[79] The Ministry says it is not possible to provide the applicant with a summary of this information because the redacted information “is intertwined with the personal information of other Trustees and/or of the special advisors that authored the Report.”<sup>63</sup> However, the analysis under s. 22(5)(a) does not consider whether the information about the applicant in the disputed record can be easily severed from another third party’s personal information.

[80] Instead, s. 22(5)(a) requires the public body to give the applicant a summary of any personal information supplied in confidence about them if the summary can be prepared without revealing the identity of the third party who supplied the personal information. Under s. 22(5)(a), the focus is on the identity of the third party who supplied the confidential information about the applicant.

[81] In this case, the relevant third parties who supplied the confidential information about the applicant are the members of the Committee. I find the applicant already knows the identity of those individuals because it is disclosed in the Report and their identities were publicly announced by the Minister.<sup>64</sup> Therefore, I conclude it is not possible for the Ministry to provide the applicant with a summary of the relevant information in accordance with s. 22(5)(a).

## **CONCLUSION**

[82] For the reasons discussed above, under s. 58(2)(c) of FIPPA, I require the Ministry to refuse access to the information at issue in the Report under s. 22(1).

September 4, 2024

## **ORIGINAL SIGNED BY**

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Lisa Siew, Adjudicator

OIPC File No.: F21-86491

<sup>63</sup> Ministry’s initial submission at para. 72.

<sup>64</sup> Page 21 of the Report and Affidavit of NH at para. 7.