



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— *for* —
British Columbia

Order F06-12

INSURANCE COUNCIL OF BRITISH COLUMBIA

Celia Francis, Adjudicator
July 11, 2006

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Summary: Applicant requested access to her personal information in complaint letters. Insurance Council denied access to third-party personal information and to some of applicant's own personal information—in the form of other people's opinions about her—under s. 15(2)(b) and s. 22(1). Section 15(2)(b) found not to apply and s. 22(1) found not to apply to applicant's own personal information, including identities of opinion holders.

Key Words: expose to civil liability—unreasonable invasion—identifiable as part of an investigation into a possible violation of law—opinions or views—submitted in confidence—personal privacy—employment history—fair determination of rights—unfair exposure to harm—unfair damage to reputation.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(2)(b), 22(1), 22(2)(c), (e), (f), (h), 22(3)(b) & (d).

Authorities Considered: B.C.: Order 01-27, [2001] B.C.I.P.C.D. No. 27; Order 01-36, [2001] B.C.I.P.C.D. No. 37; Order 01-53, [2001] B.C.I.P.C.D. No. 56, Order F06-11, [2006] B.C.I.P.C.D. No. 18.

Cases Considered: *Canada (Information Commissioner) v. Canada (Ministry of Citizenship and Immigration)*, [2002] FCA 270 F.C.J. (C.A.).

1.0 INTRODUCTION

[1] This order is a companion to Order F06-11,¹ which involves the same public body, the Insurance Council of British Columbia (“Council”), two of the same records and one of the same third-party complainants as in this case. The issues and arguments are almost identical, as well. The applicant in this case is an employee of the same insurance agency as the applicant in Order F06-11 and was the subject of a complaint by the same third-party complainant as in that case. I refer to this third party as the “complainant” in Order F06-11 and as “Complainant A” here. The applicant in this case was also the subject of a separate complaint by another third party (“Complainant B”).

[2] Upon receiving notice of the complaints, the applicant in this case responded to the Council’s request for comments and then asked for copies of the complaints themselves. In its response, the Council referred to the two complainants by name and denied access to the complaint letters, saying

Council takes the position that letters of complaint are confidential and can only be released as necessary for the due administration of the *Financial Institutions Act* (the “Act”) or as required by law. Disclosure of a complaint or investigation is made only if it is consistent with the principals [sic] of administrative law and natural justice. At this stage, our investigation is continuing and release of the documents you have requested would not be necessary for administration of the Act. In accordance with the principals [sic] of natural justice, the documents you requested may be released at some future date.

We also considered whether we could disclose the information to you pursuant to the *Freedom of Information and Protection of Privacy Act* (“FOIPPA”). However, Council has consistently taken the position that disclosure of this type of information is exempt from the general right of access pursuant to sections 15(1)(a), 15(2)(b), 22(2)(e), 22(2)(f) and 22(3)(b) of FOIPPA.

[3] The applicant requested a review of the Council’s denial of access. Mediation through this office led to the disclosure of the complaint letters in severed form. The Council’s decision letter repeated its position on confidentiality of complaints and continued as follows:

After consultation with the Office of the Information and Privacy Commissioner, we have concluded that it is justifiable to release some of the information you requested, given that you are the subject of the complaint, you are aware of the complainant’s identity and you have already received information about the complaint as a necessary part of our investigation.

¹ [2006] B.C.I.P.C.D. No. 18.

Accordingly, please find enclosed a copy of the records you requested. We have severed information from the records which was not of concern to Council and did not form part of our investigation, as well as the personal information of third parties. Where information has been severed, I have made a note of the reason.

[4] Because the matter did not settle fully in mediation, a written inquiry took place under Part 5 of the *Freedom of Information and Protection of Privacy Act* ("Act"). This office invited and received representations from the applicant, the Council and the two third-party complainants.

[5] There is considerable overlap between this case and the one in Order F06-11. Thus, to avoid repetition in this order, I have, as appropriate, applied my reasoning there to the evidence before me in this case.

2.0 ISSUE

- [6] The notice for this inquiry said that issues before me in this case are:
1. Whether the Council is authorized to refuse access under s. 15.
 2. Whether the Council is required to refuse access under s. 22.

[7] Under s. 57(1) of the Act, the Council has the burden of proof regarding s. 15 while, under s. 57(2), the applicant has the burden of proof regarding third-party personal information.

3.0 DISCUSSION

[8] **3.1 Preliminary Matters**—Complainant A made the same objections in this inquiry as he did in the inquiry for Order F06-11. I make the same comments here respecting those objections and I reject them.

[9] **3.2 Background**—The Council provided the same background information on its mandate under the *Financial Institutions Act* ("FIA") and its investigation and complaint handling processes as in Order F06-11. The Council said that the applicant in this case is an employee of an insurance agency and that the complainants made complaints about the applicant to the Council. It noted that the applicant is aware of the complainants' identities. It said that the applicant was told of the investigation and provided with a summary of the complaints that, on their face, were within the Council's jurisdiction and a concern to the Council and that she was given the opportunity to respond to those issues. The Council said that it has concluded its investigation into Complainant B's complaint and that it "did not identify any conduct by the Applicant that gave rise

to any discipline or penalty under s. 232 of the [FIA]". Its investigation into Complainant A's complaint is still ongoing.²

[10] The Council said that the records at issue are:

- a letter of complaint dated July 4, 2004 from a client of the insurance agency (Complainant B) regarding the applicant;
- an undated one-page letter of complaint about the applicant from the other complainant (Complainant A) with three attached pages numbered 3, 4 and 5, date stamped May 11, 2004; and
- an unsigned letter dated May 4, 2004 from Complainant A.

[11] The second and third records listed above are the disputed records in Order F06-11. The Council said that portions of the records in dispute were not part of the investigation as they were irrelevant or outside the Council's jurisdiction.³

[12] **3.3 Legislative Framework**—The Council provided the same information on the legal authority under which it regulates insurance agents and investigates complaints as it did in Order F06-11.

[13] **3.4 Exposure to Civil Liability**—As it did in the companion case, the Council's first decision letter referred to ss. 15(1)(a) and 15(2)(b) but in its initial submission, the Council said that it was relying only on s. 15(2)(b). It confirmed this in its reply submission.⁴ I do not therefore consider s. 15(1)(a) here.⁵

[14] The relevant part of s. 15(2) reads as follows:

Disclosure harmful to law enforcement

15(2) The head of a public body may refuse to disclose information to an applicant if the information ...

- (b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record, ...

² Lines 18-64, initial submission; paras. 3-14 & 18-20, Wallace affidavit.

³ Lines 65-81, initial submission; paras. 15-17, Wallace affidavit.

⁴ Lines 28-29, reply submission.

⁵ Lines 84-87, initial submission.

[15] Schedule 1 to the Act defines “law enforcement” as follows:

“law enforcement” means

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to a penalty or sanction being imposed, or
- (c) proceedings that lead or could lead to a penalty or sanction being imposed;

[16] The Council and the applicant made the same arguments on s. 15(2)(b) in this case as the Council and the other applicant did in Order F06-11.⁶ I make the same comments and findings on s. 15(2)(b) in this case as I did in Order F06-11. I find that s. 15(2)(b) does not apply here.

[17] **3.5 Personal Privacy**—The Council said that it also applied s. 22(1) to the severed information. The relevant parts of s. 22 read as follows:

Disclosure harmful to personal privacy

- 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy, the head of a public body must consider all the relevant circumstances, including whether ...
 - (c) the personal information is relevant to a fair determination of the applicant’s rights, ...
 - (e) the third party will be exposed unfairly to financial or other harm,
 - (f) the personal information has been supplied in confidence, ...
 - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if ...
 - (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation, ...
 - (d) the personal information relates to employment, occupational or educational history,

⁶ Lines 217-325, Council’s initial submission; pp. 5-6, applicant’s initial submission.

[18] Numerous orders have considered the principles for applying s. 22. See, for example, Order 01-53.⁷ I will not repeat those principles but have applied them in this decision.

Whose personal information is in issue?

[19] “Personal information” is defined in Schedule 1 of the Act as “recorded information about an identifiable individual other than contact information”. The Council made the same arguments here as it did in Order F06-11, which I summarize below:⁸

- some of the severed information is third-party personal information
- some is other people’s opinions about the applicant and thus her personal information
- who holds an opinion about the applicant is not her personal information
- the applicant is not entitled to know that a third party holds a specific opinion about her, as this would be an unreasonable invasion of the third party’s privacy⁹
- it is not possible to sever the identity of the opinion holder from the opinion

[20] I make the same comments in this case as I did in Order F06-11. See also *Canada (Information Commissioner) v. Canada (Ministry of Citizenship and Immigration)* (C.A.).¹⁰ For the reasons I gave in Order F06-11, I make the same findings here, that is, not only are the third parties’ opinions of and comments about the applicant her personal information but the identities of those opinion holders—while their personal information—are an integral part of the applicant’s personal information, which is not otherwise “about” the third parties. Acknowledging that the third parties have a privacy interest in the disclosure of the fact that they are identifiable as having made comments or expressed opinions about the applicant, I consider below whether disclosure to the applicant of the third parties’ opinions and comments about her would be an unreasonable invasion of their privacy.

Other information

[21] As with the companion case, among the severed information are references to matters that Complainant A had apparently discussed earlier with a Council employee. It is not always clear to whom, if anyone, Complainant A is referring in some of these portions, although he appears to be referring to

⁷ [2001] B.C.I.P.C.D. No. 56.

⁸ Lines 371-388, initial submission.

⁹ As in Order F06-11, the Council did not explain why it thinks this nor did it point to any relevant orders in support of this argument.

¹⁰ 2002 FCA 270.

individuals other than the applicant. Because of this, I have treated these portions as third-party personal information for the purposes of this decision.

[22] The withheld information also contains some general remarks and allegations that Complainant A made about the insurance agency as a corporate entity. As the remarks are not directed at or about identifiable individuals, this information is not personal. Section 22 thus does not apply to this information. Nor does any other exception apply on its face, including s. 21(1),¹¹ and I have therefore marked it for release by the Council to the applicant.

[23] **3.6 Presumed Unreasonable Invasion of Privacy**—The applicant appears to be interested only in her own personal information. However, she also appears to want complete access to the complaint records,¹² perhaps in the belief that the severed information is all or mostly about her. As some of the severed information is the applicant's personal information in the form of third parties' opinions about her and other information is third-party personal information, I have considered whether disclosure of all of the severed portions would be an unreasonable invasion of third-party privacy.

Investigation into a possible violation of law and employment history

[24] The Council and this applicant made the same arguments on these issues as the Council and the other applicant made in the companion order.¹³

[25] For the same reasons as in Order F06-11, I find that the personal information in the complaint letters in this case is personal information compiled and identifiable as part of an investigation into a possible violation of law and is also personal employment history information. As far as the third-party personal information is concerned, therefore, I find that ss. 22(3)(b) and (d) apply and its disclosure is thus presumed to be an unreasonable invasion of third-party privacy.

[26] **3.7 Relevant Circumstances**—The parties raised a number of relevant circumstances in this case. Complainant A said he did not consent to the disclosure of the complete complaint letters and cited ss. 22(2)(e), (f) and (h) as factors, with no elaboration.¹⁴ Complainant B also said he did not want the

¹¹ For similar findings, see Order 01-36, [2001] B.C.I.P.C.D. No. 37, where the Commissioner found that s. 21(1) did not apply to a list of rubber recycling businesses that the third party had compiled. See also Order 01-27, [2001] B.C.I.P.C.D. No. 27, where the Commissioner found that s. 21(1) did not apply to a list of companies that had been the subject of complaints to the Financial Institutions Commission.

¹² p. 2, reply submission.

¹³ Lines 394-405 & 407-419, Council's initial submission; pp. 7 & 8, applicant's initial submission.

¹⁴ Initial submission.

applicant to receive any additional information.¹⁵ The applicant and the Council developed their views to some extent.¹⁶

Fair determination of rights

[27] For the same reasons it gave in Order F06-11, the Council argued that disclosure of the information in question is not relevant to a fair determination of the applicant's rights in the ongoing investigations. Thus, in its view, s. 22(2)(c) is not a relevant factor.¹⁷

[28] For the same reasons as the applicant in Order F06-11, the applicant in this case argued that, on the contrary, the information is relevant to a fair determination of her rights.¹⁸

[29] Complainant A countered that he believed the statements to be true and that there "were not deliberate actions based on any false pretenses".¹⁹

[30] For the same reasons as in Order F06-11, I find that s. 22(2)(c) does not apply to the severed information in this case.

Unfair harm and damage to reputation

[31] The Council said that the applicant and Complainant A have an acrimonious relationship. It said that both complainants have expressed concern to the Council about the applicant's motives for requesting the complaint information and how she may use it, if it is disclosed. The Council referred to its arguments on possible exposure to civil liability and suggested that disclosure might result in other harm including harm to the complainants' reputations or retaliatory action by the applicant.²⁰ It did not explain how disclosure might result in any such harm nor what retaliatory action it anticipated the applicant might carry out on disclosure.

[32] For the same reasons as the applicant did in the other case, the applicant here argued that ss. 22(2)(e) and (h) do not apply to the severed information.²¹

[33] Complainant B provided an *in camera* submission which appeared to address the factor in s. 22(2)(e). He expressed concerns regarding the negative effect that disclosure of his remarks might have.²² However, he provided no

¹⁵ Initial submission.

¹⁶ Initial submission.

¹⁷ Lines 423-432, initial submission; lines 86-104,, reply submission.

¹⁸ Page 7, initial submission.

¹⁹ Page 4, reply submissions.

²⁰ Lines 434-443, initial submission; para. 21, Wallace affidavit.

²¹ Page 8, initial submission.

²² Initial submission.

specifics as to what he thought the applicant might do to harm him if she received the severed information. He also did not say whether or not the applicant had done anything to his detriment as a result of the information she has already received about his complaint.

[34] As with the companion case, the severed information here that relates to the applicant consists of the third parties' remarks and complaints about things the applicant said and did in the workplace and their (subjective) opinions and views about her actions in the workplace. Complainant A contends that what he said about the applicant is true.²³ Neither complainant provided any support for an argument that unfair harm under ss. 22(2)(e) and (h) might occur on disclosure. From the material before me, I do not see how disclosure to the applicant of her own personal information in the form of other people's opinions or complaints about her could cause unfair harm to any third party nor damage to any third party's reputation. I agree with the applicant that ss. 22(2)(e) and (h) are not relevant here.

Supplied in confidence

[35] The Council gave the same arguments and evidence here as in Order F06-11.²⁴ This applicant also made the same arguments as the applicant did in that case.²⁵

[36] Although the Council said that both complainants explicitly stated that their complaints were confidential, only Complainant A said he understood his complaints to be confidential, although he did not explain the basis for this belief. In addition, his complaint is marked "confidential". I could find no indication in Complainant B's complaint and initial submission that he made his complaint in confidence.

[37] I have the same comments as I did in Order F06-11 and for the same reasons I do not consider that the Council and the third parties have established confidentiality of supply of the complaint records in this case. I find that s. 22(2)(f) does not apply in this case.

Is the applicant entitled to more information?

[38] I found above that the withheld third-party personal information falls under ss. 22(3)(b) and (d) and that the relevant circumstances in ss. 22(2)(c), (e), (f) and (h) do not apply to it. There is nevertheless a presumption that disclosure of the third-party personal information which falls under ss. 22(3)(b) and (d) would be an unreasonable invasion of third-party privacy. The applicant confined her arguments to her entitlement to her own personal information and did not attempt

²³ Page 4, reply submission.

²⁴ Lines 445-474, initial submission; Exhibit "A", Wallace affidavit.

²⁵ Page 7, initial submission.

to argue that she should have access to personal information that relates to third parties. She has not discharged her burden regarding the personal information of third parties and I find that s. 22(1) applies to it.

[39] I also found above that some of the withheld information, which consists of other people's opinions about the applicant, is her personal information and that this personal information includes the fact that the third parties are identifiable as holding those opinions. I then noted that the third parties have a privacy interest in the disclosure of those opinions which would necessarily reveal their identities as the opinion holders. As in Order F06-11, I have considered whether disclosure of the applicant's own personal information to her would be an unreasonable invasion of the privacy of those third parties, because the applicant would know both the things the third parties said about her and who said those things, but whose personal information is not otherwise involved. I have the same comments here as I did in that order and, for the same reasons, I find here that disclosure of the applicant's personal information would not be an unreasonable invasion of third-party privacy.

4.0 CONCLUSION

[40] For the reasons given above, under s. 58 of the Act, I make the following orders:

1. Subject to para. 2 below, I require the Council to refuse the applicant access to the information it withheld under s. 22(1).
2. I require the Council to give the applicant access to the information it withheld under s. 22(1), as highlighted in yellow on the copies of the records in dispute provided to the Council with its copy of this order.

July 11, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator