OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
British Columbia

Order 04-33

MINISTRY OF PUBLIC SAFETY & SOLICITOR GENERAL

Celia Francis, Adjudicator
November 10, 2004

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Summary: Applicant asked for records of investigation into his complaints against his managers and supervisors. Ministry severed report and withheld interview notes. Ministry argued summary under s. 22(5) not possible. Ministry found in some cases to have applied s. 22 correctly. Ministry ordered to disclose other information withheld under s. 22 and to prepare summary of remaining personal information of applicant in report and in interview notes.

Key Words: personal privacy – unreasonable invasion – workplace investigation – opinions or views – submitted in confidence – employment history – public scrutiny – fair determination of rights – unfair exposure to harm – inaccurate or unreliable personal information – unfair damage to reputation.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(c) & (f), 22(3)(d) & (g), 22(4)(e), 22(5).

Authorities Considered: B.C.: Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-19, [2001] B.C.I.P.C.D. No. 20; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-21, [2002] B.C.I.P.C.D. No. 21; Order 02-44, [2002] B.C.I.P.C.D. No. 44; Order 02-56, [2002] B.C.I.P.C.D. No. 58; Order 03-24, [2003] B.C.I.P.C.D. No. 24; Order 04-22, [2004] B.C.I.P.C.D. No 22.

1.0 INTRODUCTION

[1] The applicant in this case is an employee of the Ministry who made a series of complaints against supervisors and managers in his workplace with respect to a number of administrative decisions they made about him, which he alleged were harassment and discrimination. An investigation took place in order to determine whether the respondents had misused their managerial authority or had harassed or discriminated

against the applicant. The investigation initially involved three respondents (whom the Ministry describes as "senior managers") and expanded to include about ten respondents. The investigator (an employee of another ministry) concluded that the applicant had not been harassed or discriminated against. He also concluded that the managers and supervisors had, in good faith, exercised their managerial and supervisory rights and responsibilities.

[2] The applicant then requested a copy of the records related to the investigation. The Ministry responded by providing some information and withholding information and records under ss. 13, 15, 17 and 22 of the *Freedom of Information and Protection of Privacy Act* ("Act"). The applicant requested a review of the Ministry's decision and, as a result of mediation with this Office, the Ministry disclosed more information.

[3] Because the matter did not settle fully in mediation, a written inquiry was held under Part 5 of the Act. The applicant, the Ministry and the third parties (the respondents and witnesses in the investigation) all received notice of the inquiry. Only the applicant and the Ministry made submissions. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

[4] After this Office issued the notice for this inquiry, the Ministry disclosed more information. It also abandoned the application of ss. 13, 15 and 17, leaving s. 22 as the only issue.

2.0 ISSUE

[5] The issue before me in this case is whether the Ministry is required by s. 22 of the Act to withhold information.

[6] Under s. 57(2), the applicant has the burden of proof regarding third-party personal information.

3.0 DISCUSSION

[7] **3.1 Preliminary Matters** – Aside from disputing the Ministry's decision to apply s. 22 to some of the information, the applicant listed a number of issues in his initial submission which he wished dealt with in this inquiry:

- the Ministry's extension of time for responding to his request;
- the Ministry's failure to provide "full disclosure to all records, which were responsive to the request", including its failure to identify where it withheld information in the records and the sections applied to that withheld information; and
- the Ministry's failure to identify the notes of the investigator, as well as the notes of the Ministry's own representative who accompanied the investigator during interviews.

[8] In its reply, the Ministry objected to the applicant raising issues which were not listed in the notice for this inquiry. Sections 6 and 7 of the Act (respectively, the Ministry's duty to assist the applicant and its compliance with legislated timelines) were not mentioned in the applicant's request for review or the notice of inquiry, it said, and therefore not properly before me in this inquiry. The Ministry also said that its decision letters had informed the applicant of the exceptions it had applied and that it had marked the severed records to show the exceptions it had applied. The Ministry also argued that s. 22 requires it to withhold the Ministry representative's interview notes and that it does not have custody or control of the investigator's interview notes (paras. 1-8, reply).

Extension of time

[9] I agree with the Ministry that its compliance with s. 7 is not properly before me. The applicant did not raise the Ministry's response time in his request for review nor was this issue listed in the notice of inquiry. I therefore do not consider it here.

Ministry's response

[10] Although the applicant complained in his request for review and initial submission that the Ministry had not provided "full disclosure", it is not clear if he was questioning the severing or the adequacy of the Ministry's search for records. If the latter, he must first raise this issue with the Ministry.

[11] The applicant did specifically comment in his request for review on the lack of details as to where the Ministry had withheld information and what sections it had applied. I agree with the Ministry that s. 6 was not listed as an issue in the notice for this inquiry and that this aspect of the applicant's concerns is not properly before me here. In any case, in its decision letters, the Ministry told the applicant the exceptions it was applying and said in its reply submission that it had marked the records with the various exceptions. Certainly, in the case of the Ministry's final decision, it is clear that the Ministry was applying only s. 22 to the records. It also marked the severed records accordingly, as shown in the set provided to me for this inquiry.

[12] The Ministry's decision letters do not, however, specify the nature of the fully withheld records. Such information would have been helpful to the applicant. Nevertheless, para. 4 of the Portfolio Officer's Fact Report that accompanied the notice for this inquiry states that, at the end of mediation, the applicant continued to challenge the Ministry's withholding of the investigative notes compiled by the author of the report and the Ministry's representative who assisted in the investigation. I gather, therefore, that the applicant became aware at some point that the Ministry was not disclosing these two individuals' notes. In any event, this aspect of the Ministry's response is also not properly before me here and I do not consider it here. If the applicant still has concerns about it, he must first raise it with the Ministry.

Custody and control of investigator's notes

[13] It appears that the Ministry took the position that it does not have custody or control of the investigator's notes for the first time in its reply submission. It is not clear from the material before me if the Ministry has provided the applicant with a decision under the Act on this issue. Again, the issue of custody or control of the investigator's notes is not listed in the notice for this inquiry and the parties made no submissions on it. This issue is not properly before me here and I do not consider it in this decision.

[14] If the applicant wishes to pursue this issue, the Ministry must provide the applicant with a decision under the Act on custody or control of the investigator's notes. If the applicant is not satisfied with the Ministry's response, he may ask this Office to review it.

[15] **3.2 Application of Section 22** – Numerous orders have dealt with the application of s. 22. See, for example, Order 01-07, [2001] B.C.I.P.C.D. No. 7, Order 01-53, [2001] B.C.I.P.C.D. No. 56, and Order 02-56, [2002] B.C.I.P.C.D. No. 58. Without repeating them, I will apply here the same principles.

[16] The relevant parts of s. 22 read as follows:

> **Disclosure harmful to personal privacy**
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> 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.
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> (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
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> …
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> (c) the personal information is relevant to a fair determination of the applicant's rights,
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> …
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> (f) the personal information has been supplied in confidence,
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> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> …
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> (d) the personal information relates to employment, occupational or educational history,
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> …
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> (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,

> (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
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> …
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> (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,
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> …
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> (5) 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 the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

Functions of public body employees

[17] Some of the information in the records relates to the third parties' current duties or responsibilities. This type of information relates to their functions as employees of a public body and therefore falls under s. 22(4)(e) of the Act. Disclosure of such information is not an unreasonable invasion of third-party privacy. The Ministry did not address this section in its submissions.

[18] In a few areas, the Ministry withheld information which in my view falls under s. 22(4)(e), for example, descriptions of the three principal respondents' current responsibilities on pp. 8-9 of the report (pp. 9-10 as the records are hand-numbered in the material before me). I have included these types of information with that which the Ministry must disclose in the re-severed report and the notes of interviews with the three original respondents.

Information that is not personal and applicant's personal information

[19] Intermixed with the other types of information in the records are interviewees' factual accounts or descriptions of normal workplace activities, policies and practices which are not anyone's personal information. There are also some factual descriptions by interviewees of the incidents about which the applicant complained.

[20] In Order 01-19, [2001] B.C.I.P.C.D. No. 20, the Commissioner had the following to say about this type of information:

> ***Witnesses' Factual Observations***
>
> [24] I do not agree that witnesses' observations about relevant facts – namely daily events and practices at the worksite and events surrounding the fatal accident – must be withheld under s. 22(1) or (3). These observations form approximately half of the remaining interview notes (*i.e.*, one page). Such information does not qualify as the "personal views or opinions" of those making the statements. Nor are these factual statements otherwise personal information of the individuals making the statements.

[25] The notes also contain descriptions by the workers about their duties and their actions (and those of other workers) before, during and after the accident, including the duties and actions of the applicant's husband. I do not consider that an individual's recounting of his or her observations of an accident must be withheld under s. 22(1). I made a similar finding at p. 31 of Order 00-42, [2000] B.C.I.P.C.D. No. 46:

> There may be cases where a witness statement of this kind contains personal information of a witness, such that s. 22 considerations arise. But an individual's statements as to his or her perceptions of what happened in an accident (including who said what at the time, about fault or other accident-related matters) do not by any stretch qualify as personal information of that witness.

[26] In this case, the contents of the witness's statements of what happened, when it happened and how it happened are not the personal information of that individual. The same applies to the information on the previous, similar, incident, as described in the other two pages of interview notes.

[27] A witness's statements about what she or he did – or when or how – are the personal information of that employee, even though they are factual observations about how that person performed his or her employment duties. Similarly, one employee's statements about the where, when and how of another employee's performance of her or his job constitutes the personal information of that other employee.

[21] I have added some portions containing factual information, as described in para. 19 above and in paras. 24-26 of Order 01-19, to that which the Ministry must disclose to the applicant in the re-severed report and relevant interview notes. I have also added some aggregate comments by the managers and supervisors, for example, on pp. 10-11 of the report. The remarks include the applicant's personal information which he is entitled to receive.

[22] **3.3 Unreasonable Invasion of Privacy** – The Ministry provided argument on s. 22(3)(d) only, although its final decision letter to the applicant cited both s. 22(3)(g) and s. 22(3)(d).

Employment history

[23] Although the applicant has the burden of proof regarding third-party personal information, as explicitly set out in the notice for this inquiry, he said little on this issue. His entire submission on this point is found in the last paragraph of p. 2 of his initial submission, as follows:

> The information severed and withheld from the applicant consists of personal information, evaluations and opinions about the applicant. The information was disclosed by third parties with the knowledge that the applicant has filed a complaint and would be privy to the information disclosed. The applicant is not seeking to invade the privacy of a third party by requesting personal information

> about the third party, but instead, the applicant is merely requesting disclosure of personal information, evaluations and opinions about the applicant.

[24] The applicant offered no support for these assertions and did not reply to the Ministry's initial submission.

[25] The Ministry said the information in this case was collected in the course of an investigation into complaints about the workplace conduct of third parties. As such, the Ministry argued, the information relates to the employment history of these individuals and its disclosure is presumed to be an unreasonable invasion of their privacy. The applicant's allegations were serious, it went on, and if substantiated, the third parties could potentially have faced discipline. The information is not factual information about these individuals' discharge of their official functions, the Ministry said, but about whether they had performed their job functions satisfactorily. It referred to Order 01-07, Order 02-21, [2002] B.C.I.P.C.D. No. 21, and Order 01-19 in support of its position and suggested that this case warrants a similar outcome to that in Order 02-21 (paras. 4.32-4.42, initial submission).

[26] The Ministry disclosed several portions of the investigation report: the introduction; mandate and methodology; general comments on how to assess credibility; information on harassment law; background and context; information about the applicant's work history to date; the applicant's allegations and complaints, including information he provided in interviews with the investigator about incidents involving the third parties; a list of the respondents, witnesses and complainant (the applicant) who are cited in the report; and the investigator's findings and conclusions, which include some information provided by third parties. In severing the report, the Ministry disclosed the initials of most interviewees cited in the report but withheld the responses themselves.

[27] The Ministry also disclosed a few e-mail messages in full. It withheld in full the handwritten notes of the Ministry's representative who accompanied the investigator during the interviews. The investigator's notes (if any exist) are not among the records in dispute that the Ministry provided to me for this inquiry. As I noted above, the Ministry has taken the position that these records are not in its custody or under its control.

[28] Little of the withheld information in the records relates solely to the third parties. Where it does, it primarily concerns their work history and their current duties. I discussed above the portions that relate to the duties and functions of the third parties as public body employees. The portions which relate solely to their past jobs, their individual actions, reactions, personal views, behaviour and other employment history, however, fall under s. 22(3)(d). Disclosure of this type of information is presumed to be an unreasonable invasion of third-party privacy and the Ministry was correct to withhold it.

[29] Most of the withheld information in the records is, in my view, the employment history of both the third parties and the applicant, in that it consists of the third parties' responses to the applicant's complaints and allegations or their comments about their involvement in the workplace incidents in question, as well as related matters, involving

both the applicant and the third parties. In these portions, the third parties describe decisions they made about certain workplace administrative matters involving the applicant, recount their dealings with the applicant in the workplace, make comments about his actions or behaviour or describe their part in certain incidents involving the applicant. These portions all relate to the matters about which the applicant complained and incidents in which the applicant took part. Not surprisingly, there are occasional differences of opinion between the applicant and the third parties over what happened, what was said and the motives of the various individuals.

[30] Disclosure of employment history information as it relates to third parties is presumed to unreasonably invade third-party privacy. The Ministry acknowledged that some of the withheld information relates to the applicant but took the position that it cannot reasonably be severed from third-party personal information without unreasonably invading third-party privacy (paras. 4.43-4.46, initial submission). I agree with the Ministry that most of the withheld information is employment history information and that the presumption in s. 22(3)(d) therefore applies as it relates to third parties. Insofar as the personal information provided by the three original respondents is concerned, however, I do not agree with the Ministry that disclosure this type of joint personal information would unreasonably invade third-party privacy. I do agree with it regarding the remainder of the report, partly because of the way it was severed, and regarding the remaining interview notes, partly given their content and structure. I say more about these things below.

Evaluations

[31] I noted above that the Ministry said nothing about s. 22(3)(g) in its submissions although its final decision letter cites this section. Upon reviewing the withheld information, I can see that there are some evaluative comments about third parties (for example, on p. 32 of the report) which, in my view fall under s. 22(3)(g). Disclosure of this information is therefore presumed to be an unreasonable invasion of their privacy.

[32] **3.4 Relevant Circumstances** – The Ministry said that it took into account the factors in ss. 22(2)(c) and (f). The Ministry also argued that it was appropriate to consider the information already disclosed as a factor.

Relevant to applicant's rights

[33] The Ministry reminded me that the Information and Privacy Commissioner found in Order 01-07 that "rights" in s. 22(2)(c) mean "legal rights". That is, in order for this section to apply, the applicant must have at stake a legal right related to a proceeding which is existing or contemplated, not one that is completed; the personal information in issue must have some bearing on or be significant to the determination of the right in question; and the personal information must be required to prepare for the proceeding or to ensure an impartial hearing (para. 4.23, initial submission).

[34] The Ministry said that s. 22(2)(c) does not apply and provided argument and evidence which supported its views (para. 4.24, initial submission; para. 10 and

Exhibit "F", Street affidavit). The Ministry also stated at para. 4.16 of its initial submission that the labour relations dispute at issue was resolved. The applicant said nothing about this factor.

[35] The material before me confirms that, at the time of the inquiry, the applicant had no live issue or legal rights at stake to which the withheld information might be relevant, as contemplated by s. 22(2)(c). Section 22(2)(c) is not relevant here.

Confidential supply

[36] The applicant is of the view that the third parties provided information in the knowledge that he had filed a complaint and "would be privy to the information disclosed" (p. 2, initial submission). As the Ministry noted at para. 9 of its reply, the applicant provided no support for this assertion.

[37] The Ministry set out its arguments on s. 22(2)(f) at paras. 4.17-4.22 of its initial submission. With reference to the issue of confidential supply, it said:

> 4.18 ***(In camera* portion in bold**) The Ministry submits that the evidence demonstrates that the information provided by most of the third parties (not the original three respondents, being **[names of three original respondents]**) was supplied in confidence. The Ministry refers the Commissioner to the affidavit of Tony Arimare, paragraph 8, and the affidavit of Randy Street, paragraph 11.

[38] The Ministry conceded that the third parties might anticipate that the information they supplied might ultimately be disclosed in a labour relations arbitration proceeding. The Ministry argued that it is reasonable to presume, however, that none of the third parties would have expected the Ministry to disclose information relating to allegations of harassment made against third parties to the applicant or others, after the labour relations dispute was resolved. It provided no support for this last argument.

[39] It was reasonable, the Ministry went on, for it to receive information from the third parties in confidence. The Ministry also suggested that the reasons for which employees might be reluctant to provide information in workplace investigations are relevant. If employees could not be assured of confidentiality, they might refuse to provide information, the Ministry argued. Furthermore, it said, workplace relationships might be damaged, trust diminished and stress created. Section 22(2)(f) favours non-disclosure of much of the information at issue, the Ministry concluded.

[40] In support of these arguments, the investigator deposed that, in his experience, employees are more willing to open up if they know the information they provide will be treated in confidence (para. 10, Arimare affidavit)

[41] These are essentially arguments on the supposed "chilling effect" and the resultant harm to the investigation process that the Ministry argues would occur on disclosure. The Information and Privacy Commissioner has considered and rejected

similar arguments on potential harm to investigations a number of times, for example, in Order 02-21:

> [34] The Ministry also argues that employees would be reluctant to participate in complaint or grievance interviews if there was no confidentiality. It provides a number of suppositions in support of this aspect of its case, including that employees would be concerned about possible damage to their working relationships or fear retribution. Again, the Ministry supports this argument with affidavit evidence from the investigator and with *in camera* affidavit evidence.
>
> [35] These harm arguments do not assist the Ministry's [*sic*] that the information was supplied in confidence. They really go, in my view, to the "chilling" argument that public bodies often introduce in such cases, *i.e.*, that investigations or other activities will be compromised if information is released under the Act. Such arguments are really harm arguments and are, in one respect, really a form of resistance to the right of access under the Act. I have rejected this argument on previous occasions. See, for example, para. 9 of Order 01-07.

I reject this aspect of the Ministry's argument here for the same reasons.

[42] Returning to the issue of whether the personal information was supplied in confidence, the investigator stated on p. 1 of his report that he had collected the information in the investigation and had prepared the report in confidence, for the purposes of s. 22 of the Act. He said he had informed the witnesses of "the essentiality of confidentiality" in the investigation process. He also stated that he had treated all information supplied by witnesses in strictest confidence and had revealed it only on a need to know basis.

[43] The investigator's opening remarks in his report are at odds with the Ministry's submission at para. 4.18, which I quote above, and with his own affidavit evidence to this inquiry where he deposed that he told all employees, except the original three respondents (*i.e.*, the three "senior managers"), that the information they provided would be kept confidential. He said he believed that those employees understood that the information they provided was being provided in confidence. The investigator also said some (unspecified) employees expressed concern about the release of the information they provided (although he did not say why the employees were concerned) and that he explained to them the protection afforded by s. 22 of the Act (paras. 8-9, Arimare affidavit).

[44] The Ministry also supplied an affidavit from the information and privacy analyst responsible for the applicant's request. He deposed that five named individuals told him that they understood that they were providing information in confidence to the investigator during his investigation into the applicant's allegations (para. 11, Street affidavit). These five named individuals do not include the senior managers who the Ministry said were the three original respondents but do include respondents who were added to the investigation later.

[45] Some of the third parties were not respondents to the applicant's complaints but were other employees who witnessed some of the incidents. The material before me indicates the respondents were supervisors or managers in a position of authority as regards the applicant or otherwise in a position to make administrative decisions about him.

[46] The third parties did not make any submissions on this or any other point, although they were given the opportunity to participate in the inquiry. This is regrettable, as their comments might well have been helpful to me in considering the issues before me.

[47] I conclude from the material before me, including the investigator's specific affidavit evidence on this point, that the original three respondents (those described as "senior managers") did not supply personal information to the investigator in confidence. I therefore find that s. 22(2)(f) does not apply to personal information they provided.

[48] The evidence on confidential supply regarding the other third parties, while less equivocal, establishes that they provided personal information in confidence. Section 22(2)(f) therefore applies to information they provided, favouring its non-disclosure.

Information already disclosed

[49] The Ministry argued that a relevant factor in this case was the amount of information already disclosed to the applicant. It pointed out that it had disclosed portions of the investigator's report, including information on his methodology, his approach to assessing witnesses' credibility and most of his findings and conclusions. It has only withheld third-party personal information to which the applicant is not entitled, the Ministry said, and fails to see why it should disregard third-party privacy interests when the underlying labour relations matter has been resolved and it has disclosed the findings (paras. 4.15-4.16, initial submission).

[50] I rejected a similar argument at paras. 54-57 of Order 04-22, [2004] B.C.I.P.C.D. No 22, noting that the issue was whether an applicant is entitled under the Act to information. I said that the amount of information already disclosed is irrelevant in such a case. I remarked that the Information and Privacy Commissioner has also rejected such arguments in past orders, for example, in Order 01-07. I reject the Ministry's argument here for the same reasons as those I gave in Order 04-22.

Applicant's awareness of information and other relevant circumstances

[51] The information in this case principally concerns what I consider to be routine administrative matters in the context of the workplace, for example, decisions made by the respondents about requests the applicant made or their responses to issues he raised. The applicant complained about these matters, alleging that the third parties

discriminated against him or harassed him. The report reveals that the applicant was interviewed extensively about the incidents that led to his complaints.

[52] The applicant is evidently aware of his own allegations and complaints, how the incidents unfolded and the identities of the third parties about whom he complained or who he said were otherwise involved in the incidents.

[53] As I noted above, there are some differences of opinion in the report as to what transpired and what motivated the various individuals, including the applicant, to act as they did. In many cases, however, the third parties corroborated the applicant's version of events. From the severed report, the applicant is also aware of the investigator's findings, which include some information provided by, and comments about, identifiable third parties. The applicant also received with the severed report a list of the third parties whose interview information appears in the report. These include the respondents. It is not clear if the applicant is aware of the names of all the third parties whom the investigator interviewed, as shown in the interview notes.

[54] A number of orders have found that an applicant's awareness or knowledge of the withheld information is a relevant circumstance that public bodies should consider in applying s. 22. (See, for example, Order 01-53 and Order 03-24, [2003] B.C.I.P.C.D. No. 24). This circumstance can favour disclosure of personal information in a given case, for example, if the applicant provided the personal information to the public body or where the applicant is otherwise aware of the information.

[55] In this case, it is clear that the applicant is already aware of much of the withheld information in the report, as it is almost exclusively about his interactions with third parties. Such information is necessarily also about, and intertwined with that of, the third parties. The issue therefore is whether disclosure of this type of intertwined personal information about the applicant (the complainant) and the third parties will unreasonably invade third-party privacy.

[56] I concluded above, in the case of personal information supplied by the three original respondents, that s. 22(2)(f) does not apply. Nor do any other relevant circumstances favouring the withholding of that information apply. The applicant's awareness of and involvement in the incidents that the three original respondents describe in the report favour disclosure of the information they provided in the report and interview notes in this case.

[57] The nature of the information in this case is also relevant, in my view. At para. 53 of Order 02-44, [2002] B.C.I.P.C.D. No. 44, the Information and Privacy Commissioner considered whether the third party's death had diminished his privacy rights. In finding that it had not, the Commissioner was influenced by the "highly sensitive nature" of the third-party personal information in issue, which was psychiatric and other medical information.

[58] The information in this case is, as I have noted, principally of a routine administrative nature involving both applicant and the respondents and other third parties.

I am also influenced by the fact that the three original respondents, described as senior managers, are in positions of authority over the applicant. These factors also favour disclosure of the personal information that they provided as it relates to both the applicant and the three original respondents in this case.

[59] Thus, in the circumstances of this case, I find that disclosure of the personal information that was provided by the original three respondents and that relates to both the applicant and those three original respondents, would not unreasonably invade third-party privacy.

[60] As for the other third parties, I found above that s. 22(2)(f) favours withholding in the report the personal information that they supplied. Given the severing of the report and the structure of the notes, I consider that this factor outweighs the ones just discussed. However, I note that, in one or two cases, the Ministry disclosed some of this information in the findings section of the report, presumably because it did not view such disclosure as unreasonably invading third-party privacy. I fail to see how disclosing the same information in the portions of the report dealing with the interviews would unreasonably invade third-party privacy. In these cases, therefore, the applicant's knowledge of the withheld information favours its disclosure.

[61] **3.5 Summary Under Section 22(5)** – The Ministry said at para. 4.47 of its initial submission that it would not be practicable to prepare a summary in accordance with s. 22(5) without unreasonably invading third-party privacy, due to the intertwined nature of the personal information in the disputed records. I do not agree with the Ministry. It is possible, in my view, to provide the applicant with a summary of his remaining withheld personal information in the report and the interview notes, where it would not reveal the identities of those who provided personal information in confidence.

[62] In some cases, more than one third party provided similar information in response to the applicant's complaints or provided information of which the applicant is aware, due to his involvement in the incidents described. I believe it is possible to create a summary of such information without revealing the identities of third parties who provided information in confidence. There may be other cases where only one person could have provided information in confidence and summarizing that information may reveal that person's identity.

[63] In preparing its summary, the Ministry should endeavour to provide the applicant with as much of his own personal information as possible. My comments above and paras. 46-48 of Order 02-21 will provide additional guidance on preparing the summary.

4.0 CONCLUSION

[64] For the reasons above, I make the following orders:

1. Subject to para. 2 below, I require the Ministry to withhold the information it withheld under s. 22.

2. I require the Ministry to provide the applicant with access to the information it withheld under s. 22, as highlighted in yellow in the copies of the relevant pages provided to the Ministry with its copy of this order.

3. I require the Ministry perform its duty under s. 22(5) to provide the applicant with a summary of the applicant's remaining personal information in the report and in the interview notes.

4. As a condition under s. 58(4), within 30 days of the date of this order, I require the Ministry to provide me with a copy of the severed records it discloses, and the summary it prepares under para. 3 above, together with a copy of its covering letter to the applicant.

November 10, 2004

ORIGINAL SIGNED BY

Celia Francis
Adjudicator