



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

March 9, 2018

Ron Bolin
3165 King Richard Drive
NANAIMO BC V9T 4A1

Dear Ron Bolin:

**Re: Request for Review - Partial/Severed Release;
City of Nanaimo File FOI00141;
OIPC File F17-72834**

Further to our conversation of March 6, 2018, I am writing to confirm the results of my review. On October 25, 2017, you asked our office to review the decision of the City of Nanaimo ("the City") to sever information under sections 13, 14 and 22 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") from the records you requested. The City's decision was in response to your August 25, 2017 request for the report produced by Roslyn Goldner ("*the Goldner Report*"). I will review the application of sections 13, 14 and 22 of FIPPA to the information the City withheld.

Background

You requested a copy of the *Goldner Report*, which examined the strained relationship between some Nanaimo City council members and staff. The Goldner report interviewed a number of Nanaimo City council members and staff members. The report also made recommendations to improve the relationship between some Nanaimo City council members and staff members.

In addition, during mediation, the City advised it was withdrawing its reliance on section 14 of FIPPA.

Section 13

Section 13(1) reads as follows:

Policy advice, recommendations or draft regulations

13 (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

In order for a public body to withhold information under section 13(1), the record must contain advice or recommendations prepared by or for a public body or minister. As the former Commissioner noted in Order 01-15:

Section 13(1) is a discretionary exception that protects advice or recommendations prepared by or for a public body or minister... This exception is designed, in my view, to protect a public body's internal decision-making and policy-making processes, in particular while the public body is

considering a given issue, by encouraging the free and frank flow of advice and recommendations.

In Order 03-27, the Adjudicator dealt with advice and recommendations involving a labour relation issue. In that Order, the Adjudicator found that the public body had correctly applied section 13(1) to the records. I am of the opinion that the City has correctly applied section 13(1) to the records here, since the information contains similar advice and recommendations on how the the City should handle this labour relations issue between a number of Nanaimo City council members and staff members.

Section 22

In this case, the City severed information from the records under section 22 of FIPPA. A public body must consider section 22 where an individual requests access to records containing a third party's personal information.

The relevant portions of section 22 reads:

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...

(f) the personal information has been supplied in confidence,

...

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(d) the personal information relates to employment, occupational or educational history...

Section 22(1) of FIPPA is a mandatory exception to disclosure which requires a public body to refuse to disclose personal information if the disclosure would be an unreasonable invasion of the third party's personal privacy.

In several Orders, the former Commissioner has discussed the application of section 22 in determining whether the disclosure of personal information would constitute an invasion of personal privacy. In Order 01-53¹, after determining that the information at issue was personal information, the former Commissioner provided the following guidance:

¹ [2001] B.C.I.P.C.D. No. 56. This document can be viewed at: <http://www.oipc.bc.ca/orders/2001/Order01-53.pdf>
Additional Orders under FIPPA can be viewed by navigating to <http://www.oipc.bc.ca> and following the links for Orders in the "Public Sector".

...information created in the course of a complaint investigation and disciplinary matter in the workplace that consists of evidence or statements by witnesses or a complainant about an individual's workplace behaviour or actions is information that "relates to" the third party's "employment history". I also consider that an investigator's observations or findings, in the investigator's interview notes and in an investigation report itself, about an individual's workplace behaviour or actions are part of the third party's employment history. All of this information will be personal information that is subject to the presumed unreasonable invasion of personal privacy created by s. 22(3)(d).

I have reviewed an unsevered version of the records you requested. I can confirm that the severed information is third party personal information. The information withheld primarily consists of names and statements of third parties interviewed as part of the workplace investigation.

Pursuant to section 22(3)(d) of FIPPA, the disclosure of a third party's employment, occupational or educational history is a presumed unreasonable invasion of a third party's personal privacy. In my opinion, the information withheld from the records falls within this category of records. Section 22(2)(f) of FIPPA would be a relevant circumstance in this case, as the third parties interviewed supplied the information in confidence. Therefore, in my opinion, the City properly withheld third party personal information from the records as required by section 22 of FIPPA.

Conclusion

In summary, it is my opinion that the City has properly severed the information from the records under sections 13 and 22 of FIPPA. As I have the delegated authority to determine whether an inquiry into this matter is warranted, if you disagree with my analysis, please provide me with your reasons or rationale for why you believe the exceptions have not been appropriately applied and on what basis you are entitled to additional information or records. Please forward this information to me before March 23, 2018. If I have not heard from you by this date, I will consider the matter settled and I will close the file.

If you have further questions about this letter or about the inquiry process, please call me at (250) 387-0289 or 1-800-663-7867. If I have not heard from you by March 23, 2018, I will assume you do not wish to proceed to inquiry and I will close our file. I am informing the City by copy of this letter.

Sincerely,



Trevor Presley
Investigator

Cc: City of Nanaimo