



**OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
Prince Edward Island**

Order No. FI-20-004

Re: Public Schools Branch

March 10, 2020

**Prince Edward Island Information and Privacy Commissioner
Karen A. Rose**

Summary:

An applicant requested access to the report of a workplace harassment investigation from the Public Schools Branch. The Applicant was the complainant in relation to the investigation.

The Public Schools Branch provided a copy of the responsive record to the Applicant, severing some information on the basis that disclosure would be an unreasonable invasion of third parties' personal privacy, pursuant to section 15 of the *FOIPP Act*. The applicant sought a review.

The Commissioner found that disclosure of most of the withheld information from the investigation report would constitute an unreasonable invasion of personal privacy for the individuals to whom the personal information relates. However, the Commissioner also found that some of the withheld information was not personal information, and some of the withheld information was personal information the disclosure of which would not constitute an unreasonable invasion of personal privacy of a third party.

The Commissioner ordered the Public Schools Branch to provide the Applicant with access to this information, but otherwise confirmed the decision of the Public Schools Branch.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, 1(i), 7, 15, 16, 37(1)(z.1), 65, 68(1.1)

Decisions Cited: Order FI-16-007, *Re: Health PEI*, 2016 CanLII 48833 (PE IPC)

Order 97-002, *Re: Family and Social Services*, 1997 CanLII 15913 (AB OIPC)

Order FI-19-001, *Re: Workers Compensation Board*, 2019 CanLII 7110 (PE IPC)

Order 98-007, *Re: Alberta Family and Social Services*, 1998 CanLII 18636 (AB OIPC)

Order F2012-21, *Re: High Prairie School Division No. 48*, 2012 CanLII 70631 (AB OIPC)

Order 03-004, *Re: Prince Edward Island Workers Compensation Board*, 2003 CanLII 52561 (PE IPC)

Order No. FI-11-001, *Re: Department of Agriculture*, 2011 CanLII 91839 (PE IPC)

Order F14-10, *Re: University of British Columbia*, 2014 BCIPC 12 (CanLII)

Other resources: *Workplace Harassment Policy, Eastern School District*, policy in effect December 19, 2007

I. BACKGROUND

[1] An applicant (“the Applicant”) made an access to information request under section 7 of the *Freedom of Information and Protection of Privacy Act* (“the FOIPP Act”) to the Public Schools Branch (“the PSB”).

- [2] The Applicant requested access to an independent investigators' report prepared for the PSB due to the Applicant's claim of harassment against a supervisor. The report was prepared in mid to late November, 2018.
- [3] The PSB located the investigation report and provided the Applicant with a six-page summary. Following disclosure of this summary, the PSB asked if the Applicant would like to continue to pursue their access to information request. The Applicant chose to continue.
- [4] The PSB decided that they were not permitted to disclose certain personal information in the report, as disclosure would be an unreasonable invasion of third parties' personal privacy under section 15 of the *FOIPP Act*. The PSB provided the Applicant with access to the report, severing information they decided is subject to section 15.
- [5] The Applicant requested a review by the Information and Privacy Commissioner ("the Commissioner").

II. RECORD AT ISSUE

- [6] The responsive record is an investigation report dated November 13, 2018, entitled *In the Matter of a Complaint Investigation Pursuant to the Workplace Harassment Policy*. It is 55 pages in length, with three appendices, A, B and C, for a total of 114 pages. The responsive record will be referred to as "the Report" throughout this order. Several pages contain two page numbers at the bottom right corner of the page. I shall refer to individual pages by the upper page number.
- [7] The Report describes an investigation into a complaint by the Applicant about a third party, the respondent. The investigation which resulted in the Report was conducted by an outside firm, pursuant to the PSB's Workplace Harassment Policy applicable at that time. The investigation involved gathering background information, interviewing the

complainant (the Applicant) and the respondent, and interviewing other witnesses. The Report is marked "Private and Confidential".

[8] The information which the PSB withheld from the Report may be divided into 5 categories:

1. Evidence of the respondent;
2. Names of non-parties (individuals who are neither the complainant nor the respondent);
3. Evidence of non-party witnesses;
4. Opinions of the investigators regarding the credibility of the respondent; and
5. Opinions of the investigators regarding the credibility of non-party witnesses.

[9] At the beginning of the review, there were six categories of withheld information. However, the PSB decided to provide the Applicant with Appendix C, a two-page list of documents provided by the Applicant and the respondent, subject to withholding one non-party name. While Appendix C is no longer at issue, the non-party name falls under category 2 above.

III. ISSUE

[10] There is one issue in this review:

Did the head of the PSB properly apply section 15 of the *FOIPP Act* to information they withheld in the Report?

IV. BURDEN OF PROOF

[11] Section 65 of the *FOIPP Act* describes who bears the burden of proof during an inquiry by the Commissioner, and states, in part, as follows:

65. Burden of proof

(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.

Idem, third party personal information

(2) Notwithstanding subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

...

[12] Pursuant to subsection 65(2), it is the PSB's burden to show that the withheld information is personal information. It is the Applicants' burden to prove that disclosure of the personal information would not be an unreasonable invasion of personal privacy of third parties under section 15 of the *FOIPP Act*.

[13] It is often challenging for applicants to meet their burden under section 15 of the *FOIPP Act*, as the information at issue has been withheld from them. In this review, the PSB submits that, as they have disclosed the headings in the Report, and as they have provided a summary to the Applicant describing the five categories of information withheld from the Report, the Applicant has been provided with enough information to make meaningful submissions with respect to the withheld information. The PSB submits that the Applicant is not at a disadvantage as they have been provided with sufficient information to draw conclusions about the information which has been withheld.

[14] I agree that the Applicant is in a position to make submissions relating to the categories of information which have been withheld, if it is determined that this information is personal information. However, as only the PSB is aware of the specific contents of the withheld information in the Report, it is helpful to have submissions of the PSB to show what circumstances they considered in deciding that disclosure would constitute an unreasonable invasion of personal privacy of third parties. As the PSB provided only limited submissions in this regard, I rely primarily on the submissions of the Applicant, and my review of the records at issue.

V. ANALYSIS

[15] Subsection 15(1) of the *FOIPP Act* states:

15. Disclosure harmful to personal privacy
(1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

...

[16] The remainder of section 15 sets out the circumstances a public body must consider to assess whether disclosure of personal information of a third party would be an unreasonable invasion of their personal privacy. Many orders of the Commissioner, including Order FI-16-007, *Re: Health PEI*, 2016 CanLII 48833 (PE IPC), at paragraph 11, outline the steps of a section 15 analysis:

Section 15 of the *FOIPP Act* is a mandatory exception to disclosure, requiring the head of a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. The established two-step process in determining whether section 15 applies to the information in the records at issue has been used by this office for reviews of section 15 since 2003 [i.e. Order No. 03-003, *Department of Tourism, Re*, 2003

CanLII 52560 (PE IPC), pages 5-6]. These two steps are more particularly described below.

Step One - Is the information withheld from the Records "personal Information"?

...

Step Two - Would disclosing the personal information be an unreasonable invasion of a third party's personal privacy?

Step one: Is the information withheld from the Report personal information?

[17] "Personal information" is defined at clause 1(i) of the *FOIPP Act*, and lists types of information that meet the definition. The list of types of personal information under subsection 1(i) is not exhaustive, and information that is not listed may still meet the definition. The specific types of information under clause 1(i) that are relevant to this review include:

(i) "personal information" means recorded information about an identifiable individual, including

...

(i) the individual's name,...

...

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

...

Names of individuals

[18] Personal information must be about an identifiable individual. The names of individuals, including the respondent and non-parties, appear in the Report. I find that the withheld names are their personal information, pursuant to clause 1(i)(i) of the *FOIPP Act*.

Opinions

[19] The PSB submits that the remaining categories of information are "opinions", pursuant to clauses 1(i)(viii) and (ix) of the *FOIPP Act*.

[20] A decision of Alberta's Information and Privacy Commissioner, Order 97-002, *Re: Family and Social Services*, 1997 CanLII 15913 (AB OIPC), sets out a widely accepted definition of "opinion" as follows:

[42.] The Concise Oxford Dictionary defines "fact", in part, to mean "a thing that is known to have occurred, to exist, or to be true; an item of verified information". An "opinion" is defined, in part, to mean "a belief or assessment based on grounds short of proof; a view held as probable." As an example of each, a "fact" would be a person's employment position, date of employment, or reason for leaving employment. An "opinion" would be a belief that a person would be a suitable employee, based on that person's employment history.

[43.] By definition, a "fact" may be determined objectively. An "opinion" is subjective in nature, and may or may not be based on facts. [underlining added]

[21] There are two types of opinions that are included in the definition of personal information: opinions about other individuals, and an individual's personal views or opinions about anything else. Under the *FOIPP Act*, opinions about another individual are personal information of that other individual, and personal views or opinions about anything else, are personal information of the opinion holder.

[22] With regard to the evidence of the respondent and non-party witnesses, the PSB submits that these third parties' evidence is intertwined with their opinions. I have carefully reviewed the evidence of the respondent and non-party witnesses described in the Report. I note that these individuals' evidence is subjective in nature, as they describe their own personal perspective of events about which they were interviewed during the investigation. Rather than simply a recitation of facts, the evidence of the witnesses consists of their personal perceptions which are combined with factual matters, so that these may not be separated without rendering the evidence meaningless.

[23] The PSB also points out that, if any of the evidence of the respondent and non-party witnesses were disclosed, it would be “nearly impossible for the Applicant to not connect the evidence back to an identifiable individual”, as it is very case and individual specific. Upon my review of the withheld information, I agree that this is so.

[24] I find that the withheld information in the Report contains personal views and opinions, and that these may be divided into the following categories:

- The investigators’ views or opinions in relation to the credibility of the respondent and non-party witnesses named in the Report. These are the personal information of the respondent and the non-party witnesses, respectively.
- The respondent’s and non-party witnesses’ personal views or opinions expressed during the investigation.

Not personal information

[25] I have thoroughly reviewed the information withheld from the Report by the PSB. I find that the following information does not satisfy the definition of personal information under subsection 1(i) of the *FOIPP Act*:

- Page 17 (first paragraph under “Credibility of Witnesses”) – This is introductory information, and does not offer personal views or opinions of identifiable individuals. In contrast, the remaining paragraphs are personal information, as they are opinions assessing the credibility of the respondent and non-party witnesses.
- Page 25 (most of the fourth paragraph, and the final paragraph), 26 (top partial paragraph and most of the middle paragraph), and 29 (bottom paragraph) of the Report – This information reveals findings of the investigators, but does not

reveal personal information such as personal views or opinions of third parties.

[26] As the above bulleted information is not personal information, the PSB is not required by subsection 15(1) of the *FOIPP Act* to withhold it from the Applicant.

Applicant's personal information

[27] I note that the Public Body decided to provide the Applicant with access to their own personal information, including the Applicant's viewpoints and evidence, and investigators' findings of credibility relating to the Applicant. In my review of all the information withheld from the Report, I have determined that the following two paragraphs also contain the Applicant's personal information, which should be provided to the Applicant by the Public Body on the basis that it is not personal information of a third party:

- Page 115 (bottom paragraph); and
- Pages 116-117 (bottom of page 116 and top of page 117).

[28] As the above bulleted information is not personal information of a third party, subsection 15(1) of the *FOIPP Act* does not authorize the PSB to withhold it from the Applicant. Under certain circumstances, set out at section 16 of the *FOIPP Act*, a public body may refuse to provide an applicant with access to their own personal information. However, such circumstances do not apply here, nor have they been claimed by the PSB.

[29] For clarity, I am attaching a copy of pages 17, 25, 26, 29 and 115-117 to the copy of this Order which I provide to the PSB, highlighting the information which is not personal information of a third party, and is therefore not subject to section 15 of the *FOIPP Act*.

[30] I will continue to review whether disclosure of the personal information withheld from the Report would constitute an unreasonable invasion of personal privacy of third parties.

Step two: unreasonable invasion of personal privacy

[31] The second step of a section 15 analysis is to determine whether disclosure of the personal information would constitute an unreasonable invasion of personal privacy for the third parties to whom the personal information relates. The process of step two is set out in several orders, including Order FI-19-001, *Re: Workers Compensation Board*, 2019 CanLII 7110 (PE IPC), at paragraph 23:

In step two, if the information at issue is found to be personal information, it must be decided whether disclosure of the personal information would constitute an unreasonable invasion of personal privacy. This analysis may involve the other subsections of section 15 of the *FOIPP Act*, as follows:

(a) If a party wishes to raise subsection 15(2), it should be dealt with first. This is a deeming provision, so that certain circumstances are deemed not to be an unreasonable invasion of a third party's personal privacy. If one of the exceptions in subsection 15(2) is found to apply, the analysis is at an end, and the information should be disclosed.

(b) The next analysis involves subsection 15(4), and is only reached if subsection 15(2) does not apply. Subsection 15(4) contains examples of circumstances that are presumed to be an unreasonable invasion of privacy. If one or more of the presumptions listed in subsection 15(4) applies to the information at issue, then disclosure of that information is presumed to constitute an unreasonable invasion of privacy of the third party to whom the information relates. Despite any presumptions, however, a factor under subsection 15(5), or a combination of factors, including the other circumstances listed below, may rebut the presumption(s), and lead to disclosure of the information.

(c) In all cases, even if no presumptions of subsection 15(4) apply, all relevant factors favoring disclosure must be balanced against those favoring nondisclosure, pursuant to subsection

15(5), so that a decision can be made regarding whether disclosure would constitute an unreasonable invasion of a third party's personal privacy.

Subsection 15(2)

[32] The Applicant raises the following clauses of subsection 15(2) of the *FOIPP Act*:

15(2)A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party;

...

(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council;

...

(j) subject to subsection (3), the disclosure is not contrary to the public interest and reveals only the following personal information about a third party:

...

(iii) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip,

Unreasonable invasion

(3) The disclosure of personal information under clause (2)(j) is an unreasonable invasion of personal privacy if the third party whom the information is about has requested that the information not be disclosed.

[33] The test to be met in order to invoke clause 15(2)(b) of the *FOIPP Act* was set out in Alberta Order 98-007, *Re: Alberta Family and Social Services*, 1998 CanLII 18636 (AB OIPC), where clause 16(4)(b) of Alberta's freedom of information legislation was equivalent to clause 15(2)(b) of the *FOIPP Act*, as follows:

[47] In order to establish that the disclosure of the record at issue is not an unreasonable invasion of a third party's personal privacy

under section 16(4)(b), an Applicant must prove two things: (i) that there are, indeed, compelling circumstances affecting anyone's health or safety; and (ii) that there is a causal connection between disclosing the personal information and the compelling circumstances affecting anyone's health or safety. In order to fall within the parameters of section 16(4)(b), then, the Applicant in this case must establish that the release of the information requested is likely to have a direct bearing on a compelling health or safety matter.

[34] The Applicant does not argue that disclosure would affect anyone's safety. Based on the Applicant's submission, the question to be posed under clause 15(2)(b) is whether disclosure of the withheld information to the Applicant would affect their or anyone else's health. In relying on clause 15(2)(b), the Applicant describes the incidents which led to the harassment complaint, and the deleterious effects it has had on the Applicant, including upon the Applicant's or others' health. The Applicant's submissions relate to the effect of the workplace incidents, but not to disclosure of the personal information in the Report. I do not have sufficient evidence that disclosure would affect anyone's health, as submitted by the Applicant. As noted in Order F2012-21, *Re: High Prairie School Division No. 48*, 2012 CanLII 70631 (AB OIPC):

[para 40] It is not sufficient, for the purposes of section 17(2)(b), that the personal information in question relates to past circumstances that affected the health or safety of someone, as there must be present compelling circumstances that warrant disclosure now (Order 97-002 at para. 104)....

[35] Clause 15(2)(e) was interpreted in Order 03-004, *Re: Prince Edward Island Workers Compensation Board*, 2003 CanLII 52561 (PE IPC). The information at issue must be about the third party's classification, salary range, discretionary benefits or employment responsibilities. The information withheld from the Report does not fall into these categories of information. Rather, as noted above, the personal information includes personal views or opinions of the respondent and non-party witnesses, and investigators' opinions of credibility of third parties. Order 03-004, *supra*, states that

the purpose of clause 15(2)(e) is to release information about the employment benefits and responsibilities of public employees, allowing a degree of transparency in relation to the compensation and benefits provided to public employees (paragraph 63). The Applicant submits that the withheld information centres on the duties of the respondent. In my view, this is a mischaracterization of the withheld information. The Report relates to a workplace harassment complaint. Therefore, I find that clause 15(2)(e) does not apply to the information withheld from the Report.

[36] With regard to subclause 15(2)(j)(iii), the Applicant submits that the events described in the Report were related to normal activities in the workplace. However, subclause 15(2)(j)(iii) applies to attendance at or participation in a *public* event or activity related to a public body. The personal information withheld from the Report does not relate to a public event or activity. Therefore, I find that clause 15(2)(j)(iii) does not apply.

[37] Based on the foregoing, I find that the subsection 15(2) deeming provision does not apply to the personal information withheld from the Report.

Subsection 15(4)

[38] The Applicant submits that none of the presumptions of subsection 15(4) of the *FOIPP Act* apply. The PSB has not raised any presumption, and I have not identified any. I will move on to the analysis of relevant circumstances, under subsection 15(5) of the *FOIPP Act*.

Subsection 15(5)

[39] In order to decide whether disclosure of personal information would be an unreasonable invasion of a third party's personal privacy, I must consider all relevant circumstances, including those enumerated in subsection 15(5) below. The Applicant relies upon clause 15(5)(c) and (i). I have also considered clauses 15(5)(f):

Circumstances considered

15(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

...

(c) the personal information is relevant to a fair determination of the applicant's rights;

...

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

...

(i) the personal information was originally provided by the applicant.

[40] The relevant circumstances listed at subsection 15(5) are not exhaustive. Other relevant circumstances may be considered by a public body in determining whether disclosure of personal information constitutes an unreasonable invasion of personal privacy. Several potential factors are listed in orders of the Commissioner, such as Order No. FI-11-001, *Re: Department of Agriculture*, 2011 CanLII 91839 (PE IPC), at paragraph 89. The Applicant submits disclosure would affect the Applicant's career opportunities, and that the existence of a power imbalance between the parties should favour disclosure. These factors are set out as follows, with the three enumerated factors of subsection 15(5), and other relevant factors which I have considered:

1. the fact that the names of individuals requested by the Applicant were provided solely in their professional capacity;
2. Clause 15(5)(c): the personal information is relevant to a fair determination of the applicant's rights;
3. if disclosure of the information would affect the applicant's career opportunities, it is a relevant circumstance that weighs in favour of disclosing a third party's personal information;
4. the existence of a power imbalance between the parties;
5. clause 15(5)(f): the personal information has been supplied in confidence;

6. the nature and content of the records;
7. the fact that the Applicant was previously given some other information; and
8. clause 15(5)(i): the personal information was originally provided by the applicant.

1. *Names provided solely in professional capacity*

[41] In making an assessment about whether disclosure would be an unreasonable invasion of personal privacy, I have considered whether each name withheld from the Report was provided solely in their professional capacity. If applicable, this factor would favour a finding that disclosure of the name would not be an unreasonable invasion of personal privacy for the named individual. Under clause 37(1)(z.1) of the *FOIPP Act*, for example, public bodies are permitted to disclose without an access to information request an individual's name if it is routinely disclosed in a business or professional context, and if it does not reveal other personal information about an individual.

[42] The names of non-party witnesses appear in the Report with their personal views or opinions, which have also been withheld by the PSB. These names are not provided solely in their professional capacity. Their roles are as witnesses in a workplace harassment investigation. For non-party witnesses, I find that this factor is not a relevant circumstance for or against disclosure of the names.

[43] In contrast, the name of the non-party individual withheld on page 2 of Appendix C, is described solely in the professional capacity of that employee, and does not reveal other personal information about them. In addition, I have been provided with no evidence that this name was supplied in confidence. Considering these factors, I find that it would not be an unreasonable invasion of personal privacy to disclose to the Applicant the name of the third party on page 2 of Appendix C.

2. *Relevant to a fair determination of Applicant's rights*

[44] The Applicant states that disclosure is relevant to a fair determination of the Applicant's rights, pursuant to clause 15(5)(c). The Applicant submits that, in order to determine whether the findings of the investigation were correct, they need to see all of the evidence that was presented in the investigation.

[45] British Columbia's equivalent of clause 15(5)(c) of the *FOIPP Act* was examined in Order F14-10, *Re: University of British Columbia*, 2014 BCIPC 12 (CanLII). It was determined at paragraph 25, and I agree, that in order for this clause to apply, the following circumstances must be met:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds.
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed.
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question.
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[46] There is no evidence before me that the Applicant has a right to disclosure of the personal information in the Report, nor that the Applicant has some other right about which disclosure of this personal information is relevant. The Applicant was entitled to an investigation of their harassment complaint, pursuant to the PSB's Workplace Harassment Policy in effect at that time. The Policy itself states, at section 5, as follows:

Confidentiality

All complaints under this policy, both formal and informal, and any information and materials related to the complaints will not be disclosed except where such disclosure is necessary for the purposes of investigating the complaint, taking disciplinary measures or as required by force of law.

[47] An employee is entitled to make a workplace harassment complaint, and a complainant is entitled to an impartial investigation. In accordance with section 6F of the Workplace Harassment Policy, both the complainant and the respondent are required to be informed in writing of the outcome of the investigation. The PSB fulfilled these requirements to the Applicant by having an outside firm conduct the investigation, and by providing the Applicant with a six-page summary report of the investigation and its conclusions.

[48] Although I empathize with the desire of the Applicant to have the PSB disclose all information gathered during the investigation, I do not find that disclosure of the withheld personal information in the Report is relevant to a fair determination of the Applicant's rights.

3. Applicant's career opportunities

[49] The Applicant submits that disclosure of the personal information in the Report would affect their career opportunities. The Applicant has not provided sufficient evidence for me to conclude that disclosure of the personal information would have any effect on their career opportunities, either positive or negative.

4. Power Imbalance

[50] The Applicant submits that there exists a power imbalance between the parties, and this is a relevant circumstance favouring disclosure of the personal information in the Report. The personal information at issue relates to either co-workers or a supervisor. While there may exist a power imbalance between a direct supervisor and the

Applicant, the workplace harassment policy adequately addresses such an imbalance. The decision of the PSB to hold an external and impartial investigation further addresses any power imbalance which may have existed between these parties. Therefore, I find that this factor does not weigh in favour of disclosure.

5. *Supplied in confidence*

[51] Pursuant to section 5 of the Workplace Harassment Policy, set out above, information provided during the investigation is considered to be provided in confidence. If personal information is supplied in confidence, this is a relevant circumstance under clause 15(5)(f) of the *FOIPP Act*. This factor weighs against disclosure of the personal information in the Report.

6. *Nature and content of record*

[52] I have also considered the nature and content of the Report, being a workplace harassment investigation. In such investigations, it is important for witnesses to feel free to provide their personal views without concern that such views will be disclosed to others. This factor weighs against disclosure of the personal information in the Report.

7. *Applicant given some information previously*

[53] A further relevant circumstance is the fact that the Applicant was already given some information. The PSB points out that they provided much of the Report to the Applicant, including the subject headings, which enable the Applicant to understand what information had not been provided. The PSB provided the Applicant with a six-page summary of the investigation, which contains the investigators' conclusions with respect to each alleged incident as well as their overall conclusions and recommendations. This factor weighs against disclosure of the withheld personal information in the Report.

[54] The relevant circumstances considered above lead me to conclude that disclosure of the personal information withheld from the Report constitutes an unreasonable invasion of

personal privacy for the third parties to whom the personal information relates. The exceptions to this finding are the name of the third party employee on page 2 of Appendix C, and the personal information described below.

8. *Information originally provided by Applicant*

[55] Schedule C of the Report indicates the Applicant provided the investigators with a copy of text messages between the Applicant and another individual. These are described at pages 115-117 of the Report. I find that information regarding these text messages was originally provided by the Applicant, pursuant to clause 15(5)(i) of the *FOIPP Act*. This relevant circumstance leads me to conclude that disclosure of personal information from the text messages would not constitute an unreasonable invasion of personal privacy of the third parties to whom the text messages relate.

[56] Again, for clarity, I will attach to this Order a copy of pages 115-117, highlighting the information which the Public Body is not permitted to withhold from the Applicant, as disclosure would not constitute an unreasonable invasion of personal privacy of a third party, under section 15 of the *FOIPP Act*.

VI. SUMMARY OF FINDINGS

[57] I find that most of the information in the Report withheld from the Applicant by the PSB is personal information of third parties, but that the following information either does not satisfy the definition of personal information at subsection 1(i) of the *FOIPP Act*, is not personal information of a third party, or is personal information which was originally provided by the Applicant:

- Page 17 (first paragraph under “Credibility of Witnesses”);
- Page 25 (most of the fourth paragraph, and the final paragraph), 26 (most of the middle paragraph), and 29 (most of the bottom paragraph) of the Report;

- Page 115 (bottom two paragraphs); and
- Pages 116-117 (bottom paragraph of page 116 and all of page 117).

[58] With respect to the name of a third party at page 2 of Appendix C (page 92 of the Report), disclosure of this personal information would not constitute an unreasonable invasion of personal privacy for the third party to whom the personal information relates.

[59] With respect to the remaining personal information in the Report withheld from the Applicant by the Public Body, which includes personal views and opinions and names of non-party witnesses, I find that disclosure would constitute an unreasonable invasion of personal privacy for the third parties to whom the personal information relates.

I. ORDER

[60] I order the head of the PSB to provide the Applicant with access to the following:

- Page 17 (first paragraph under “Credibility of Witnesses”);
- Page 25 (most of the fourth paragraph, and most of the final paragraph), 26 (partial top paragraph and most of the middle paragraph), and 29 (bottom paragraph);
- Page 115 (bottom two paragraphs);
- Page 116 (bottom paragraph);
- Page 117 (entire page); and
- Page 2 of Appendix C (page 92 of the Report, name of third party)

I am attaching pages 17, 25, 26, 29, 115, 116, 117 of the Report and page 2 of Appendix C (page 92 of the Report) to the copy of this Order which I provide to the PSB, highlighting the information which is not subject to section 15 of the *FOIPP Act*.

[61] I confirm the decision of the head of the PSB to withhold the remaining information in the Report from the Applicant.

[62] I thank both parties for their submissions. In accordance with subsection 68(1.1) of the *FOIPP Act*, the head of the PSB shall not take any steps to comply with this order until the end of the period for bringing an application for judicial review of the order under section 3 of the *Judicial Review Act*, R.S.P.E.I. 1988, c. J-3.

Karen A. Rose
Information and Privacy Commissioner