Order F20-01

MINISTRY OF ATTORNEY GENERAL

Laylí Antinuk
Adjudicator

January 7, 2020

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Summary: The applicant made two access requests related to a private organization. The applicant made the first of these access requests to both the Ministry of Advanced Education and the Ministry of Justice, and made the second to the Ministry of Justice alone. The Ministry of Justice (now Ministry of Attorney General) responded to both access requests, withholding the vast majority of the information in the records under ss. 14 (solicitor client privilege) and 22 (harm to third party privacy) of FIPPA. During the inquiry, the applicant clarified that he did not want any third party personal information in the records. The adjudicator determined that s. 14 applied to much of the information at issue and ordered the Ministry of Attorney General to disclose the rest of the information in dispute to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14 and 22(1).

INTRODUCTION

[1] The applicant made two access requests related to a private organization known as Rutherford University (Rutherford).[1] The applicant made his first access request (Request 1) to both the Ministry of Advanced Education (AVED) and the Ministry of Justice (the Ministry).[2] The applicant made his second access request (Request 2) to the Ministry alone. AVED did not respond to Request 1, instead the Ministry responded to both access requests, withholding all records under ss. 14 (solicitor client privilege) and 22 (harm to third party privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[1] The organization also went by other names, including Rutherford College, Stratford University and Senior University.
[2] Now known respectively as the Ministry of Advanced Education, Skills and Training; and the Ministry of Attorney General.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decisions in respect of both access requests. Mediation did not resolve either matter, so the applicant requested an inquiry. I will deal with both matters in this inquiry.

[3] The applicant and the Ministry provided submissions for the inquiry.

[4] After the OIPC sent the parties notice of a written inquiry, the Ministry released some information related to Request 2 to the applicant.[3] The Ministry continues to withhold the balance of the information related to Request 2 under ss. 14 and/or 22.

[5] On two separate occasions during the inquiry process, the Ministry identified additional records responsive to Request 1.[4] The Ministry provided supplementary affidavit evidence and submissions about these additional records and released some of them to the applicant. The Ministry withheld the balance of the additional records in their entirety under ss. 14 and 22.

[6] During the inquiry, I wrote to the applicant to clarify whether he wanted access to personal information about other people because his submissions appeared to indicate that he did not.[5] He confirmed that he does not want access to any of the personal information about other people in the records.[6]

ISSUES

[7] In this inquiry, I will first decide whether s. 14 authorizes the Ministry to refuse access to the information in dispute. The Ministry bears the burden of proving that the applicant has no right to access the information withheld under s. 14.[7]

[8] I will then decide whether the information withheld under s. 22 qualifies as personal information. If it does, then it is not in dispute because the applicant does not want it. The Ministry bears the burden of proving that the information withheld under s. 22 is personal information.[8]

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[3] Ministry's amended initial submission at para. 10.
[4] The first set of additional records are described in Lawyer DS Affidavit #1 at paras. 10-21. The second set of additional records are described in Lawyer DS Affidavit #2 at para. 7 and Paralegal KF Affidavit #2 at para. 3.
[5] Applicant's response submission, p. 4.
[6] Applicant's December 1, 2019 letter to the OIPC.
[7] Section 57(1) of FIPPA. Whenever I refer to section numbers throughout the remainder of this order, I am referring to a section of FIPPA.
[8] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 10-11. See also Order F19-38, 2019 BCIPC 43 at para.143.

DISCUSSION

Background

[9] Order F19-21 also addresses the two access requests I deal with here. In that order, the adjudicator sets out a detailed description of the facts that led to the applicant's access requests and some of the procedural history of the case.[9] I will not repeat those details here.

[10] The relevant information for present purposes is that the records at issue relate generally to an investigation of Rutherford. In or around 2006, AVED and the Private Career Training Institution Agency (PCTIA) suspected that Rutherford had contravened the *Degree Authorization Act* and the *Private Career Training Institutions Act*. Accordingly, AVED appointed an external investigator to determine whether Rutherford had contravened the *Degree Authorization Act*. PCTIA participated in the investigation in order to determine whether Rutherford had contravened the *Private Career Training Institutions Act*. Additionally, in 2007, AVED requested that the Ministry's Legal Services Branch (LSB) provide advice related to Rutherford.[10]

Records at issue

[11] The records at issue comprise several thousand pages. I have broadly categorized them as follows.

1. ***The paper file*** – The Ministry's physical, paper file respecting Rutherford. The paper file relates to Request 1 and consists of approximately 2,500 pages.[11] The Ministry claims that s. 14 applies to the paper file in its entirety and that s. 22 applies to some parts of it as well. I have reviewed all of the paper file.

2. ***The e-file*** – The Ministry's electronic file respecting Rutherford. The e-file relates to Request 1 and consists of approximately 1,150 pages. It contains all the additional records identified by the Ministry during the inquiry process and comprises a variety of documents, including emails and attachments sent between AVED and the Ministry. The Ministry claims that s. 14 and/or 22 applies to much, but not all, of the e-file. I have reviewed some parts of the e-file.

3. ***The correspondence*** – Letters and emails (some with attachments), responsive to Request 2. The correspondence comprises approximately 270 pages. The Ministry claims that s. 14 and/or 22 applies to much, but

[9] Order F19-21, 2019 BCIPC 23 at paras. 63-73.
[10] Lawyer DS Affidavit #1 at para. 7.
[11] Lawyer GH Affidavit #1 at para. 9.

> not all, of the correspondence. I have reviewed some parts of the correspondence.

[12] Initially, the Ministry did not provide the OIPC with any of the records it withheld under s. 14. Instead, the Ministry proffered affidavit evidence and tables of records describing this information.

[13] As previously mentioned, Order F19-21 relates to the same two access requests as this order. In Order F19-21, the adjudicator ordered the Ministry to produce all of the paper file and some parts of the e-file for the Commissioner under s. 44(1)(b). The Ministry fully complied with that order. This explains why I have reviewed the paper file in its entirety but not all of the e-file or the correspondence.

[14] After carefully reviewing the evidence before me, I have decided that I have sufficient evidence to make my findings respecting the Ministry's claims. I do not find it necessary to review the remainder of the e-file or the correspondence.

Approach to the evidence

[15] Before delving into the issues, I will briefly describe my approach to the evidence in this case. Both parties submitted extensive material for consideration in this inquiry. In total, the parties provided over 800 pages of submissions and evidence during the inquiry process, including ten affidavits and 12 tables of records, all of which I have carefully read. In addition, the records I reviewed total thousands of pages.

[16] In these reasons, I will not attempt to go through every document, affidavit, table, submission, case law reference or other piece of evidence filed by the parties. Nor will I reiterate what the parties have stated in their submissions. Instead, in coming to my conclusions, I will focus only on what I find important to the two issues at hand. As aptly stated in *Grillo Barristers v. Kagan Law*:

> To do otherwise would lead to this decision rivalling *War and Peace* in length. If the standard is that the jurist must discuss all evidence and all submissions, indeed, even simple cases (which this one is not) would take pages upon pages to write. Complex cases would consume a forest. Happily, that is not what counsel likely expect in this matter; nor is it the requisite standard for judicial writing.[12]

[12] 2019 ONSC 5380 at para. 5. For similar reasoning, see *TransAlta Corporation v. Market Surveillance Administrator*, 2014 ABCA 196 at para. 56, where the Alberta Court of Appeal states: "The chambers judge examined approximately 1,000 records and it is neither reasonable nor necessary to require that a judge in such circumstances give specific reasons with respect to each individual document. The principle of judicial economy dictates otherwise. Furthermore, the

With this in mind, I turn to a discussion of s. 14.

Solicitor client privilege – section 14

[17] Section 14 allows public bodies to refuse to disclose information protected by solicitor client privilege. Section 14 encompasses two kinds of privilege recognized at common law: legal advice privilege and litigation privilege.[13] The Ministry claims legal advice privilege over the information in dispute.[14]

[18] Legal advice privilege arises out of the unique relationship between client and lawyer.[15] The Supreme Court of Canada describes its purpose in the following terms:

> Clients seeking advice must be able to speak freely to their lawyers secure in the knowledge that what they say will not be divulged without their consent… The privilege is essential if sound legal advice is to be given in every field. It has a deep significance in almost every situation where legal advice is sought… Without this privilege clients could never be candid and furnish all the relevant information that must be provided to lawyers if they are to properly advise their clients.[16]

[19] To this end, legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking, formulating and giving legal advice. In order for legal advice privilege to apply to a communication (and records related to it),[17] the communication must:

1) be between a solicitor and client;

2) entail the seeking or giving of legal advice; and

3) the parties must have intended it to be confidential.[18]

[20] The scope of legal advice privilege extends beyond the explicit seeking and giving of legal advice to include communications that make up "part of the continuum of information exchanged [between solicitor and client], provided the object is the seeking or giving of legal advice."[19] Legal advice privilege also

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chambers judge was required to be discrete to ensure she did not sacrifice the privilege through an exhaustive description and discussion of the record in question."

[13] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 26.

[14] Ministry's reply submission at para. 2.

[15] *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 839 [*Solosky*].

[16] *Smith v. Jones*, 1999 CanLII 674 (SCC) at para. 46.

[17] *R. v. B.*, 1995 CanLII 2007 (BC SC) at para. 22.

[18] *Solosky*, *supra* note 15 at p. 837.

[19] *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83 [*Huang*].

extends to internal client communications that discuss legal advice and its implications.[20]

[21] Additionally, legal advice privilege applies to communications involving a lawyer's support staff, and communications dealing with administrative matters if the communications were made with a view to obtaining legal advice.[21] As stated by the Supreme Court of Canada:

> … a lawyer's client is entitled to have all communications made with a view to obtaining legal advice kept confidential. Whether communications are made to the lawyer himself or to employees, and whether they deal with matters of an administrative nature such as financial means or with the actual nature of the legal problem, all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attached to confidentiality.[22]

[22] For the reasons that follow, I find that legal advice privilege applies to some, but not all, of the information in dispute.

Parties' positions – legal advice privilege

[23] The Ministry submits that legal advice privilege applies to all the records withheld under s. 14 because they all qualify as confidential, written communications between the client, AVED, and its lawyers at LSB.[23] The Ministry also says all these communications are directly related to the seeking, formulating and giving of legal advice.[24]

[24] However, the Ministry's submissions and evidence also indicate that the records in the paper file and some of the records in the e-file are not communications between AVED and its lawyers.[25] When it comes to these records, the Ministry asserts that legal advice privilege applies because the records were either:

(a) provided to LSB lawyers by AVED for the purpose of seeking legal advice; or

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[20] *Bank of Montreal v. Tortora*, 2010 BCSC 1430 at para. 12; *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District,* 2013 BCSC 1893 at paras. 22-24.
[21] *Descôteaux v. Mierzwinski*, 1982 CanLII 22 (SCC) at p. 892-893 [*Descôteaux*]; *Oleynik v. Canada (Privacy Commissioner)*, 2016 FC 1167 at para. 60 [*Oleynik*].
[22] *Descôteaux*, *ibid*.
[23] Ministry's amended initial submission at paras. 40 and 48.
[24] *Ibid*.
[25] Lawyer DS Affidavit #1 at paras. 22-27; Ministry's amended initial submissions at para. 43; Ministry's additional submission regarding solicitor client privilege at paras. 60-61; Lawyer NB Affidavit #1 at paras. 70-72.

(b) obtained by LSB lawyers, or others at the Ministry on behalf of LSB lawyers, for the purpose of providing legal advice to AVED.[26]

[25] Turning to the applicant's position, the applicant notes that legal advice privilege:

- Does not cover everything that occurs in a lawyer's office;
- Does not attach to every communication between lawyer and client;
- Does not extend to a lawyer's actions when the lawyer is not acting in her capacity as a lawyer; and
- Does not extend to communications: *(a)* where legal advice is not sought or offered; *(b)* that were not intended to be confidential; or *(c)* that have the purpose of furthering unlawful conduct.[27]

[26] Additionally, the applicant submits that an intrusion into solicitor client privilege can occur "if doing so is absolutely necessary to achieve the ends of the enabling legislation."[28] The applicant also contends that if the information he requested about Rutherford is withheld because of privilege, then the public will never know how the government made decisions about Rutherford that affect the public. As I understand it, the applicant hopes that I will balance his access rights against solicitor client privilege with a view to promoting the public interest, openness and transparency.[29]

Analysis and findings

[27] Applying the legal principles set out above to the records at issue, I find that legal advice privilege applies to all the correspondence withheld under s. 14, some of the emails in the e-file and some information in an email chain in the paper file. However, I am not satisfied that legal advice privilege applies to the entirety of the paper file or the e-file which contain numerous documents that are not solicitor client communications. My reasons follow.

[28] I will begin by discussing the records that I find legal advice privilege applies to. All these records are emails (some with attachments), letters, or memoranda. I have categorized and will discuss them as follows.

- Emails, faxes and letters that exclusively involve AVED employees and Ministry lawyers and support staff;
- Emails and letters involving LSB lawyers, their support staff, and, in one instance, another Ministry employee;

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[26] Ministry's additional submission regarding solicitor client privilege at para. 61; Lawyer NB Affidavit #1 at paras. 70-72.
[27] Applicant's response submission at p. 7 and 9. The remainder of my summary of the applicant's position comes from this submission at p. 1, 2 and 4.
[28] *Ibid* at p. 4.
[29] *Ibid* at p. 1.

- Attachments to some of the emails between AVED and the Ministry, and between Ministry employees;
- An internal Ministry memorandum (memo) and draft letters written by LSB lawyers; and
- An internal AVED email.

Communications exclusively between AVED and the Ministry

[29] Many of the records at issue are emails, faxes and letters that exclusively involve AVED and the Ministry.[30] These records appear in the correspondence and in the e-file. For the reasons that follow, I find that legal advice privilege applies to all the exclusive AVED-to-Ministry communications.

[30] Based on the Ministry's affidavit evidence, I find that the exclusive communications consist of the following:

- AVED employees asking LSB lawyers for legal advice, sometimes about draft documents included as attachments to emails.
- LSB lawyers providing legal advice to AVED.
- LSB lawyers or their support staff requesting instructions from AVED.
- AVED providing instructions to LSB lawyers or their support staff.
- LSB lawyers or their support staff requesting or giving information to AVED in order to provide legal advice, including information about administrative matters related to legal advice.
- AVED providing information that relates to legal advice to LSB lawyers and/or their support staff.
- LSB lawyers providing, describing and/or commenting on written materials they edited, authored or reviewed to AVED.
- AVED requesting updates on the legal strategy related to Rutherford.
- LSB lawyers or their support staff providing AVED with updates or information about the legal strategy related to Rutherford.[31]
- LSB lawyers discussing the legal strategy related to Rutherford with AVED and other Ministry employees.[32]

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[30] All but one of the emails that fall into the correspondence category (i.e. all but one of the emails described in Exhibit A of Lawyer KF Affidavit #3) and many of the emails in the e-file are exclusive solicitor client emails.

[31] The courts have found that information concerning legal strategy falls within the ambit of legal advice privilege. For example, see *Oleynik*, supra note 21 at para. 64. See also Order F14-12, 2014 BCIPC 15 at paras. 26 and 28 where Adjudicator Flanagan found that legal advice privilege applied to an email outlining legal strategies.

[32] The affidavit evidence indicates that a lawyer working for AVED on the Rutherford file sent two emails to her fellow Ministry employees regarding issues relevant to her ongoing legal advice to AVED. She copied AVED on these emails. Lawyer NB Affidavit #1 at paras. 63-64.

[31] In my view, these types of communications clearly meet the three criteria required for legal advice privilege to apply. The evidence satisfies me that these records are written communications between AVED and its lawyers and/or their support staff that entail the seeking and giving of legal advice. As noted, these emails exclusively involve AVED and the LSB lawyers and other Ministry staff assisting them. This fact, paired with the sensitive and contentious nature of the Rutherford investigation and the affidavit evidence from one of the lawyers involved in the majority of these communications,[33] leads me to find that these emails were intended to be confidential.

[32] Additionally, as described above, the courts have clarified that seeking advice from a lawyer includes consulting with those who assist that lawyer professionally.[34] This means that the presence of legal support staff or other Ministry employees in email chains does not vitiate confidentiality. Taking all this into account, I find that s. 14 authorizes the Ministry to withhold all the exclusive AVED-to-Ministry communications.

[33] I will discuss the email attachments that appear in some of these communications at paragraphs 39-45 below.

Internal Ministry communications

[34] The Ministry also claims legal advice privilege over several internal Ministry emails (some with attachments) and letters involving LSB lawyers, their support staff, and, in one instance, another Ministry employee.[35] These internal communications appear in the e-file. My review of the Ministry's evidence leads me to conclude that the internal Ministry communications comprise the following:

- LSB lawyers discussing and formulating legal advice for AVED with one another.
- LSB lawyers discussing and sharing draft documents prepared for or by AVED with one another, or with their support staff.
- LSB lawyers discussing the legal strategy for the AVED file with one another, or with their support staff.
- LSB lawyers and their support staff discussing the AVED legal file, legal advice, and instructions related to the AVED file.
- LSB lawyers and their support staff discussing or obtaining information needed in order to provide legal advice to AVED.

[33] Lawyer NB Affidavit #1 at paras. 8 and 71.
[34] *Descôteaux*, *supra* note 21 at p. 873.
[35] In some of the Ministry's early submissions and evidence, one affiant (Lawyer DS) repeatedly says that certain emails involve a third party. In evidence submitted by the Ministry later, affiant Lawyer NB clarifies that these so-called "third parties" were actually other Ministry employees. Lawyer NB Affidavit #1 at paras. 62-66; and Ministry's additional submissions regarding solicitor client privilege at paras. 53-57. Employees working for the same Ministry as LSB lawyers are not third parties, they are members of the same organization.

- A Ministry employee providing requested information to a LSB lawyer to assist the lawyer with her provision of legal advice to AVED.

[35] In my view, legal advice privilege protects all these internal Ministry communications. I find that the matters discussed in these internal communications would reveal privileged communications that AVED had with its lawyers. Additionally, the Ministry's evidence persuades me that each internal communication entails legal advice. Lastly, I am satisfied that each communication meets the confidentiality requirement for the reasons that follow.

[36] Courts have long recognized that lawyers, their staff and other firm members working together on a file may share privileged information amongst themselves without vitiating confidentiality.[36] One judge put it this way: "a lawyer is allowed to disclose privileged communications to members of his or her staff, other associates in the office, expert witnesses, and lawyers with specialized knowledge that might be retained to assist in serving the client."[37] Another judge phrased it more broadly, stating: "The cornerstone of privilege, including solicitor-client privilege, is that expectation of confidentiality, but it is *vis-à-vis* third parties, not *inter se* between the parties to the privileged relationship itself."[38] In other words, the relevant case law establishes that Ministry lawyers working on the AVED file could discuss privileged information with one another, with their support staff, and with other Ministry employees without waiving privilege so long as those discussions remained confidential relative to the rest of the world.

[37] Taking all this into account, I find that all the internal Ministry communications at issue fall under the protection of legal advice privilege.

[38] I will now discuss the email attachments that appear in some of the exclusive AVED-to-Ministry communications and the internal Ministry communications.

Email attachments

[39] As noted above, the Ministry withheld all email attachments in the two categories of communications just discussed.

[40] The Ministry argues that previous orders have determined that attachments to a privileged email are part of a privileged communication and therefore privileged.[39] The previous order the Ministry refers to as support for this statement is Order 00-38. However, that order does not deal with attachments to

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[36] *Shuttleworth v. Eberts et. al.*, 2011 ONSC 6106 at paras. 67 and 70-71 [*Shuttleworth*].
[37] *Weary v. Ramos*, 2005 ABQB 750 at para. 9.
[38] *Shuttleworth*, *supra* note 36 at para. 67.
[39] Ministry's amended initial submission at para. 49; Ministry's additional submission regarding solicitor client privilege at para. 23.

emails. Rather, the record at issue in that order was an electronic version of an annotated collective agreement. In making a general statement about legal advice privilege, former Commissioner Loukidelis said that this form of privilege protects documents attached to a legal opinion prepared by a lawyer for the lawyer's client.[40] He did not say that attachments to a privileged email are always privileged.

[41] The Ministry also refers to a statement about "attachments" in *McLean v. Law Society of British Columbia* for support for its position.[41] Once again, the part of that case the Ministry refers to does not deal with attachments to emails per se, but rather whether privilege applies to documents attached to a legal opinion by a lawyer.[42]

[42] The Ministry also points to an order in which Senior Adjudicator Barker found email attachments privileged. Unlike the present case, the public body had provided the OIPC with all the records in dispute in that inquiry.[43] Therefore, Senior Adjudicator Barker had the benefit of reviewing all the emails and their attachments before concluding that privilege applied to both.

[43] In short, I do not agree that the authorities relied on by the Ministry support the Ministry's proposition that attachments to a privileged email are always privileged. Indeed, the Alberta Court of Appeal recently rejected this proposition, stating:

> … an attachment to a privileged e-mail may be extraneous to the content of that e-mail which means it is still necessary to review the attachment to determine its connection to the e-mail before deciding whether it is also privileged.[44]

[44] From this clear statement of law, I glean two things. First, attachments to privileged emails are *not* automatically privileged. Second, I must assess each attachment individually in order to determine whether legal advice privilege applies. This assessment of attachments must take place *even when I find that an email itself is privileged*.

[45] I cannot review the attachments in this case because the Ministry has not provided them. Despite that, I find that legal advice privilege applies to all the email attachments at issue in this inquiry. I make this finding because of the helpful and thorough affidavit evidence provided by one of the lawyers involved in the majority of the communications at issue. In her affidavit, this lawyer provides

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[40] Order 00-38, [2000] B.C.I.P.C.D. No. 41 at p. 14.
[41] Ministry's additional submission regarding solicitor client privilege at para. 24.
[42] *McLean v. Law Society of British Columbia*, 2017 BCSC 987 at para. 101, 104 and 108.
[43] Order F16-09, 2016 BCIPC 11 at para. 5.
[44] *TransAlta Corporation v. Market Surveillance Administrator*, 2014 ABCA 196 at para. 59.

41 paragraphs that relate solely to the email attachments at issue.[45] Without revealing privileged information, she clearly describes each individual email attachment at issue and includes details as to who sent each specific attachment and why they sent it. With this evidence, the Ministry has satisfied me that legal advice privilege applies to all email attachments at issue.

Internal memo and draft letters

[46] The Ministry also withheld an internal memo and draft letters authored by LSB lawyers under s. 14.[46] The e-file contains the memo and drafts.

[47] Beginning with the memo, the evidence indicates that an LSB lawyer working for AVED on the Rutherford file wrote this memo for internal Ministry use regarding issues relevant to her provision of legal advice to AVED.[47] She says she gave a copy of the memo to AVED to keep it informed about the work she was doing to provide it with legal advice related to Rutherford.[48] In my view, this internal memo is a form of internal communication much like the emails and letters described at paragraph 34 above. By definition, a memorandum is a written communication, especially between people working for the same organization.[49] Therefore, my reasoning respecting the internal communications also applies to the memo.

[48] Additionally, former Commissioner Loukidelis has said that disclosure of a file memo that "reflected a lawyer's legal analysis or advice to a client – and was therefore in relation to confidential solicitor-client communications – would reveal privileged information."[50] In my opinion, for the purposes of legal advice privilege, a file memo and an internal memo are no different – if either would reveal privileged information because they reflect a lawyer's legal analysis or advice to a client, then legal advice privilege applies. Furthermore, the lawyer provided a copy of the memo to her client; therefore, its disclosure would reveal privileged communications. For all these reasons, I find that legal advice privilege protects the memo.

[49] Turning to the draft letters, the evidence indicates that LSB lawyers working for AVED drafted letters to send to third parties for AVED once

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[45] Lawyer NB Affidavit #1 at paras. 19-60.
[46] These documents are discussed in Lawyer NB Affidavit #1 at paras. 65 and 67-68.
[47] Lawyer NB Affidavit #1 at para. 66.
[48] In response to this memo, a fellow Ministry employee wrote the lawyer a letter with information to assist the lawyer in her provision of legal advice to AVED. I included this internal Ministry letter in the bulleted list of internal Ministry communications at paragraph 34 above.
[49] *Canadian Oxford Dictionary*, 2nd ed, (Ontario: Oxford University Press Canada, 2004) sub verbo "memorandum".
[50] Order 01-10, 2001 CanLII 21564 (BC IPC) at para. 68.

finalized.[51] The Ministry has quite rightly acknowledged that if these drafts were final letters that the Ministry had actually sent to third parties, then s. 14 would not apply.[52] I agree.[53] However, the evidence in this case shows that the Ministry has not withheld finalized letters sent by its lawyers to third parties. Rather, it has only withheld the drafts of such letters.

[50] Legal advice privilege applies to draft documents authored by lawyers as part of their provision of legal advice to clients.[54] In the words of former Commissioner Loukidelis: "a draft submission created by a lawyer for a client is – even if it remains in the lawyer's file – privileged on the basis that its contents are related to confidential solicitor-client communications."[55] Taking this into account, I find that legal advice privilege applies to the draft letters written by LSB lawyers as part of their legal work for AVED.

[51] For all the reasons outlined above, I find that legal advice privilege protects the memo and draft letters; therefore, the Ministry can withhold these records under s. 14.

Internal AVED email

[52] The paper file contains an internal AVED email that relates to legal advice AVED received from its lawyers at the Ministry.[56] In this email, an AVED employee shares some legal advice and questions received from one of AVED's lawyers with other AVED employees. The AVED employee who wrote the email also comments on the legal advice received and discusses its potential ramifications. I find that legal advice privilege extends to this communication because it would reveal privileged communications that AVED had with its lawyers. Section 14 authorizes the Ministry to withhold the information in this internal email.

[53] I note that one AVED employee included in the email then forwarded it to the Chief Executive Officer (CEO) of PCTIA. The CEO then responded with information in answer to some of the lawyer's questions. In my opinion, legal advice privilege also protects this exchange because it would reveal privileged communications that AVED had with its lawyer.

[54] I have considered whether the email exchange with the CEO of PCTIA constitutes a waiver of privilege in the circumstances and, in my view, it does not.

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[51] Lawyer NB Affidavit #1 at para. 65; Lawyer DS Affidavit #1, Exhibit D table of records at p. 131-134 and 135-138.
[52] Ministry's additional submission regarding solicitor client privilege at para. 55.
[53] *Saturley v. CIBC World Markets Inc.*, 2010 NSSC 361 at para. 32.
[54] *Wang v. British Columbia Medical Association*, 2011 BCSC 1658 at para. 81; *Oleynik*, *supra* note 21 at para. 64; *Snehotta v. Zenker*, 2010 ABQB 556 at paras. 21 and 30.
[55] Order 01-10, 2001 CanLII 21564 (BC IPC) at para. 68.
[56] Part 5 of paper file at p. 100-102 and 155-157 of PDF 5.

For waiver to occur, the evidence must establish that someone with the authority to waive privilege had a clear intention to do so.[57] Waiver may also occur in the absence of an intention to waive, where fairness and consistency so require.[58] Additionally, in certain cases, intention may be implied.[59]

[55] Nothing in the evidence before me indicates that the AVED employee who forwarded the message to the CEO of PCTIA had the authority to waive privilege on behalf of AVED. Nor does the evidence establish an intention to waive privilege. Additionally, two lawyers from the Ministry provide affidavit evidence affirming that, to the best of their knowledge, there has been no intentional or unintentional waiver of privilege with respect to the information the Ministry has withheld under s. 14.[60] Furthermore, nothing in the evidence or arguments before me indicate that fairness and consistency require waiver in the circumstances. Therefore, considering the totality of the evidence, I do not think that AVED waived privilege as it pertains to the information in this email.

[56] In the copy of the records the Ministry will receive with this order, I have highlighted the information in the paper file that s. 14 applies to.[61]

[57] I will now discuss the information that I have found legal advice privilege does not apply to. I have carefully reviewed all the documents that I make this finding for. This means that I have made my findings based on the contents of these documents paired with the Ministry's submissions and evidence.

Information not protected by privilege – the file documents

[58] The Ministry claims legal advice privilege over the entirety of the paper file and much of the e-file (collectively, the files).[62] However, other than the internal AVED email discussed in the preceding paragraphs, I am not satisfied that privilege applies to the paper file. Nor am I satisfied that privilege applies to the parts of the e-file that do not fall into the categories of communications discussed above (i.e. the exclusive AVED-to-Ministry communications and the internal Ministry communications and materials). For clarity and simplicity, I will refer to the parts of the files that I do not find privileged as the file documents.[63]

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[57] *R. v. Campbell*, 1999 CanLII 676 (SCC) at paras. 67-68 and *S. & K. Processors Ltd*. *v Campbell Ave. Herring Producers Ltd.*, 1983 CanLII 407 (BC SC) at paras. 6 and 10 [*S. & K.*].
[58] *S. & K., ibid* at para. 6.
[59] *Ibid*.
[60] Lawyer DS Affidavit #1 at para. 29; Lawyer NB Affidavit #1 at para. 73.
[61] PDF 5 of the paper file (i.e. the records referred to in Exhibit A to Lawyer DS Affidavit #1) contains these records at p. 100-102 and 155-157.
[62] The Ministry does not claim privilege over the record at p. 136-137 of Exhibit E to Lawyer DS Affidavit #1 nor does it claim privilege over the material described in para. 19 of that affidavit (and listed in the table titled "Table of Records, Part 5").
[63] Lawyer DS has described the file documents in Exhibits A and E to her first affidavit and at pages 166-175 of Exhibit D to her second affidavit. For clarity, the file documents do not include the information in the internal AVED email discussed above.

[59] First I will discuss the law regarding whether documents in a lawyer's file are thereby privileged. Then I will turn to the facts of this particular case.

[60] Simply put, this aspect of the inquiry raises the following question: does legal advice privilege protect everything in a lawyer's file? The Ministry would have me answer this question affirmatively because, it says, the records are "part of LSB legal counsel's files" and "these files exist for the purpose of LSB lawyers providing ongoing legal advice to their clients at AVED."[64] In other words, the Ministry raises a blanket claim of privilege over almost everything in the files because the documents in the files "are there for the purposes of legal counsel's provision of legal advice to its ministry clients."[65] The Ministry concedes that "[i]n the hands of AVED, some of these records (in particular those [in the paper file and some parts of the e-file])[66] may well not be subject to solicitor client privilege."[67] However, according to the Ministry's submission, the documents that are not privileged in the hands of AVED become privileged in the hands of Ministry lawyers.[68]

[61] With respect, the Ministry's submissions are inconsistent with well-established case law. According to the courts, "it is simply not the case that all documents and communications in a solicitor's file are thereby privileged."[69] As set out above, legal advice privilege attaches only to confidential communications between a solicitor and client that entail the seeking and giving of legal advice.[70] Additionally, a non-privileged document does not become privileged simply by being sent to a lawyer.[71] As stated by Madam Justice Gray:

> A lawyer is not a safety-deposit box. Merely sending documents that were created outside the solicitor-client relationship and not for the purpose of obtaining legal advice to a lawyer will not make those documents privileged.[72]

[62] In other words, even if the evidence established that all the documents in the files were sent to the Ministry by AVED – and it does not – legal advice privilege would not necessarily apply.

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[64] Ministry's additional submission regarding solicitor client privilege at para. 63.
[65] Ministry's additional submission regarding solicitor client privilege at para. 62.
[66] The exact reference in the Ministry's submission is to Exhibits A and E of Lawyer DS Affidavit #1, as well as the records at p. 157-165 and 166-175 of Exhibit D to Affidavit #2 of Lawyer DS.
[67] Ministry's additional submission regarding solicitor client privilege at para. 63.
[68] Ministry's additional submission regarding solicitor client privilege at para. 62.
[69] *British Columbia (Securities Commission) v. BDS*, 2002 BCSC 664 at para. 7 [*BDS*]; aff'd on appeal: *British Columbia (Securities Commission) v. C.W.M.*, 2003 BCCA 244 [*CWM*]. Leave to appeal to SCC dismissed: [2003] SCCA No 341.
[70] *Solosky*, *supra* note 15 at p. 837.
[71] *Keefer Laundry Ltd. v. Pellerin Milnor Corp.*, 2006 BCSC 1180 at paras. 61 and 81; *Imperial Tobacco Canada Limited v. The Queen*, 2013 TCC 144 at para. 57; *Jacobson v. Atlas Copco Canada Inc*., 2015 ONSC 4 at para. 25; Order 00-06, 2000 CanLII 6550 at p. 8-9.
[72] *Keefer Laundry Ltd. v. Pellerin Milnor Corp.*, *ibid* at para. 61.

[63] Furthermore, in *General Accident Assurance Co. v. Chrusz*, Doherty J.A. of the Ontario Court of Appeal flatly rejected the notion that legal advice privilege protects "all communications or other material deemed useful by the lawyer to properly advise his client."[73] Similarly, in *British Columbia (Securities Commission) v. BDS*, Macaulay J. refused to accept that legal advice privilege extends beyond communications between solicitors and clients to all documents created in the course of providing legal services.[74] The British Columbia Court of Appeal upheld this finding, stating: "the Chambers judge correctly recognized that privilege extends only to documents created for the purpose of giving or receiving legal advice and that the onus lies on the party asserting privilege."[75]

[64] As described above, the Ministry submits that non-privileged documents in the hands of AVED become privileged in the hands of AVED's lawyers. It seems to me that this submission conflates the concepts of legal advice privilege and confidentiality. AVED's lawyers undoubtedly have an obligation to keep all documents and other communications from AVED *confidential*; however, that does not mean that legal advice privilege protects all such documents and communications. The British Columbia Court of Appeal put it this way:

> There is no doubt that lawyers are under an obligation to keep confidential all documents and other communications made to them by their clients, but not all such communications are subject to solicitor-client privilege and a claim of privilege does not convert non-privileged documents into privileged documents.[76]

[65] In short, the courts have consistently made clear that legal advice privilege does not necessarily apply to all the communications and documents sent between clients and lawyers. Rather, as previously mentioned, the three part test for legal advice privilege established by the Supreme Court of Canada requires: *(i)* a communication between a client and lawyer; *(ii)* intended by the parties to be confidential; that *(iii)* entails the seeking or giving of legal advice. The courts have also clarified that the scope of legal advice privilege extends beyond the explicit seeking and giving of legal advice to include communications that make up part of the continuum of information exchanged between solicitor and client, provided the object is seeking or giving legal advice.[77]

[66] I have carefully reviewed all the file documents and the Ministry's evidence and arguments with these long-standing legal principles in mind, including the test for legal advice privilege. As I understand it, the Ministry

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[73] *General Accident Assurance Company v. Chrusz*, 1999 CanLII 7320 (ON CA) at 358. Doherty J.A. was dissenting, but on another point. The majority explicitly adopted his reasoning on legal advice privilege.
[74] *BDS*, *supra* note 69 at para. 10.
[75] *CWM*, *supra* note 69 at para. 47. Emphasis in original.
[76] *Ibid* at para. 45.
[77] *Huang*, *supra* note 19 at para. 83.

effectively makes two over-arching arguments about why legal advice privilege applies to the file documents:

1. The file documents are in a lawyer's files which exist for the purpose of providing legal advice. Therefore, privilege applies.

2. The file documents were provided by AVED to its lawyers for the purpose of receiving legal advice. Therefore, privilege applies.

[67] I will begin by addressing the first of these lines of argument. As described above, legal advice privilege does not protect all the documents in a lawyer's file. Nor does it protect all documents a lawyer deems useful in her provision of legal advice. Rather, as the Supreme Court of Canada has said, legal advice privilege – which must be established document by document – protects communications between solicitor and client that entail the seeking or giving of legal advice and that were intended to be confidential by the parties.[78]

[68] Applying this long-standing test to the facts before me, I note that none of the file documents are confidential communications between AVED and its lawyers. Rather, the file documents include:[79]

- Rutherford course outlines, program information and student letters;
- Rutherford website excerpts;
- Student degree certificates, transcripts and tuition details;
- File folder labels;
- Letters between Rutherford and a variety of individuals and organizations (such as government departments of foreign jurisdictions);
- Website information regarding passports, visas and other immigration services;
- News articles;
- Advertisements;
- Rutherford meeting minutes and agendas;
- Senior University Inc. (one of the other names Rutherford used) annual reports;
- Corporate information from the Corporate Online website;
- BC Company Summary for Senior University Inc.; and
- Emails and letters between a variety of individuals, including Rutherford employees and students; Rutherford employees and other organizations; internal Rutherford emails; Rutherford students and

[78] *Solosky*, *supra* note 15 at p. 837.
[79] Out of an abundance of caution, in case I am wrong in my decision respecting privilege, I have described the file documents with the same types of phrases the Ministry uses in the table of records at Exhibit A to Lawyer DS Affidavit #1. The Ministry did not submit this table on an *in camera* basis.

> PCTIA; internal PCTIA emails; and PCTIA employees and the appointed AVED investigator or AVED employees.

[69] On their face, these documents are clearly not confidential communications between solicitor and client that entail the seeking or giving of legal advice. The Ministry effectively acknowledges this, noting that the file documents are not emails or letters between legal counsel and client.[80] However, the Ministry submits that these documents "satisfy the requirements for solicitor client privilege" because they "were in the possession of LSB counsel for the express purpose of providing legal advice to AVED."[81] I am not aware of any legal authority that supports such an expansive view of privilege. I reject this line of argument.

[70] Turning to the Ministry's second line of argument, the Ministry refers me to the following statement of former Commissioner Loukidelis: "the law is clear that all information provided by the client to the lawyer for purposes of obtaining legal advice is also privileged."[82] I agree with this statement of law. Indeed, I have applied it to find many emails (including attachments) privileged in my reasons above.[83] However, the evidence in this case does not establish that the file documents were all sent by AVED to the Ministry. Rather, according to the Ministry, these documents were either:

- obtained by the Ministry for the purpose of its provision of legal advice to AVED on the Rutherford matter; or
- provided by AVED to the LSB lawyers working on the Rutherford matter for the purpose of the Ministry's ongoing legal advice to AVED.[84]

[71] The vast majority of the time, the Ministry has not indicated which documents were obtained by the Ministry itself and which were provided by AVED. Therefore, I cannot determine which documents made their way into the files as a result of actual solicitor client communications.

[72] Additionally, according to the Ministry's evidence about some of the documents it says were provided by AVED, it "is not possible to determine who at

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[80] Ministry's amended initial submission at para. 47; Ministry's additional submission regarding solicitor client privilege at paras. 60-61.
[81] Ministry's additional submission regarding solicitor client privilege at para. 68.
[82] Order 00-38, *supra* note 40.
[83] For example, for the reasons canvassed above, I have found the documents described in paras. 20-21, 28-29, 31-32, 36, 38, 42-43 of Lawyer NB Affidavit #1 are privileged because her evidence satisfies me that the information in the email attachments she describes was, in fact, provided by AVED to its lawyers for the purpose of obtaining legal advice.
[84] Lawyer NB Affidavit #1 at paras. 69-70 and 72. Lawyer DS Affidavit #1 at paras. 21 and 27. Ministry's additional submission regarding solicitor client privilege at para. 61.

AVED provided these documents." [85] If it is impossible to determine who at AVED provided the documents, I do not understand how it is possible to determine that AVED provided the documents at all. The Ministry has not explained this and, without an explanation, it does not make sense to me.

[73] As for the documents obtained by the Ministry, the Ministry's evidence indicates that these documents may have been:

- obtained by lawyers;
- obtained "potentially through searches conducted by paralegals";[86] or
- obtained when a paralegal went to AVED's offices and "photocopied the files relating to Rutherford."[87]

[74] To summarize, I cannot tell from the evidence before me – including a careful review of all the file documents – whether these documents got into the files as a result of actual solicitor client communications. Nor can I determine who provided, obtained or created each specific document or whether each document was "created for the purpose of giving or receiving legal advice."[88] Furthermore, in my assessment, none of the documents appear to have any hand-written notes made by LSB lawyers that could allow for accurate inferences as to the legal advice those lawyers gave to AVED. As noted previously, privilege must be established on a document by document basis.[89] With all this in mind, I reject the Ministry's second line of argument.

[75] Based on the totality of the evidence before me, I find that the Ministry has not established that legal advice privilege protects the file documents. To paraphrase the British Columbia Supreme Court, while any conflict over the existence of legal advice privilege should be resolved in favour of protecting confidentiality,

> This does not extend to recasting the privilege so that it extends to documents that are clearly, on their face, not confidential communications between solicitor and client directly related to the seeking, formulating, or giving of legal advice or created solely for such purpose.[90]

[76] Taking all this into account, I find that legal advice privilege does not protect the file documents. Therefore, the Ministry cannot withhold these documents under s. 14.

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[85] Lawyer DS Affidavit #1 at para. 21, item i. In this paragraph, the affiant specifically discusses the records described in Exhibit E to Lawyer DS Affidavit #1.
[86] Lawyer DS Affidavit #1 at para. 21, item ii.
[87] Lawyer DS Affidavit #1 at para. 23.
[88] *CWM*, *supra* note 69 at para. 47
[89] *Solosky*, *supra* note 15 at p. 837.
[90] *BDS*, *supra* note 69 at para. 13.

[77] The Ministry also claims that s. 22 applies to some of the information in the file documents, so I will consider that information in my s. 22 analysis below. Before moving on to that analysis, I pause to address some aspects of the applicant's submissions.

Intruding on or balancing solicitor client privilege under FIPPA

[78] As set out above, the applicant submits that an intrusion into solicitor client privilege can occur "if doing so is absolutely necessary to achieve the ends of the enabling legislation."[91] With respect, I cannot accept this submission. The Supreme Court of Canada has declared:

> … legislative language that may (if broadly construed) allow incursions on solicitor-client privilege must be interpreted restrictively. The privilege cannot be abrogated by inference. Open-textured language governing production of documents will be read not to include solicitor-client documents.[92]

[79] If the Legislature seeks to abrogate solicitor client privilege in order to achieve its legislative goals, it must use clear, precise and unequivocal language.[93] Courts will resolve any ambiguity in legislative language in favour of protecting the privilege.[94] This means that an intrusion into solicitor client privilege to achieve any of FIPPA's purposes – such as giving the public a right of access to information[95] – will not be permitted without clear, precise and unequivocal language. There is no language in FIPPA that unequivocally gives an applicant access to information protected by solicitor client privilege. Indeed, s. 14 explicitly provides for the protection of privileged information, not its disclosure.

[80] In his submissions, the applicant also expresses a hope that I will balance his access rights against solicitor client privilege with a view to promoting the public interest, openness and transparency. I cannot and will not engage in a balancing act when considering questions of solicitor client privilege. The following statement adopted by the British Columbia Court of Appeal provides an eloquent answer to this aspect of the applicant's submission:

> Section 14 is paramount to the provisions of the statute that prescribe the access to records that government agencies and other public bodies must afford. It was enacted to ensure that what would at common law be the subject of solicitor-client privilege remain privileged. There is absolutely no room for compromise. Privilege has not been watered-down any more than

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[91] *Ibid* at p. 4.
[92] *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 para. 11. Emphasis added.
[93] *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para. 26.
[94] *Ibid*.
[95] Section 2(1)(a).

> the accountability of the legal profession has been broadened to serve some greater openness in terms of public access.
>
> Certainly the purpose of the Act as a whole is to afford greater public access to information and the Commissioner is required to interpret the provisions of the statute in a manner that is consistent with its objectives. However, the question of whether information is the subject of solicitor-client privilege, and whether access to a record in the hands of a government agency will serve to disclose it, requires the same answer now as it did before the legislation was enacted. The objective of s. 14 is one of preserving a fundamental right that has always been essential to the administration of justice and it must be applied accordingly.[96]

[81] For these reasons, the applicant's submissions have not persuaded me that an incursion into, or balancing of, solicitor client privilege is required or permitted in this case.

Summary – section 14

[82] To summarize, the Ministry can withhold some of the information in dispute under s. 14 because legal advice privilege applies to it. Specifically, I find that legal advice privilege applies to all the exclusive AVED-to-Ministry communications; all the internal Ministry communications and materials; and an internal AVED email in which AVED employees discuss legal advice received from one of AVED's lawyers. I make these findings because all of these records meet the three requirements for legal advice privilege to apply.

[83] However, the Ministry has not established that legal advice privilege applies to the file documents, all of which I have reviewed. The file documents do not meet the test for legal advice privilege; therefore, s. 14 does not apply.

[84] The Ministry also applied s. 22 to some information in the records which I will now consider.

Harm to third party privacy – section 22

[85] Section 22 requires public bodies to refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. This section only applies to personal information. As previously mentioned, the applicant has helpfully clarified that he does not want any personal information about third parties.[97] In other words, personal information is not in dispute in this inquiry.

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[96] *Legal Services Society v. British Columbia (Information and Privacy Commissioner)*, 2003 BCCA 278 at para. 35, quoting with approval from *Legal Services Society v. British Columbia (Information and Privacy Commissioner)* (1996) 1996 CanLII 1780 (BC SC) at paras. 25-26.
[97] Applicant's December 1, 2019 letter to the OIPC.

[86] Given this, I will confine my s. 22 analysis to a determination of whether the information the Ministry withheld under s. 22 qualifies as personal information. If it does, then it is not in dispute because the applicant does not want it. Therefore, the Ministry can withhold it for that reason and I will make no determination as to whether s. 22(1) applies. However, if the information does not qualify as personal information, then s. 22 does not apply and the Ministry must release the information to the applicant.

[87] I have reviewed all the information that I will consider in my s. 22 analysis. This information appears in:

- The file documents (as described above, the Ministry also claimed s. 14 over the file documents but I have rejected that claim);
- The additional records related to Request 1 that the Ministry identified during the inquiry process but did not claim s. 14 over;[98] and
- Two records that relate to Request 2 that the Ministry did not claim s. 14 over.[99]

[88] The Ministry engaged in line by line severing of the two records related to Request 2 but did not engage in line by line severing of the file documents or additional records. Instead, the Ministry applied s. 22 to entire pages of those records. Regardless, I have carefully reviewed each page and made a determination as to what information qualifies as personal information and what does not. I have highlighted all the information that qualifies as personal information in the copy of the records the Ministry will receive with this order.[100]

[89] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.[101] Previous orders have held that information is about an identifiable individual when it is reasonably capable of identifying an individual alone or when combined with information from other available sources.[102]

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[98] Lawyer DS describes these records at para. 19 of Affidavit #1. The Ministry also lists these records in a table titled "Table of Records, Part 5."
[99] Exhibit A to Lawyer KF Affidavit #3 describes these records at p. 11-12 and p. 187-272.
[100] Put simply, any information I have not highlighted must be released to the applicant. To clarify with more specificity, I used pink highlighting to show what information s. 14 applies to and used yellow or green highlighting to show what information qualifies as personal information and therefore is not in dispute. For most of the file documents and additional records (i.e. the records described in Lawyer DS Affidavit #1, para. 19, Exhibit A PDFs 1-7 and Exhibit E), I used yellow highlighting but had to use green for PDF 8 (of Lawyer DS Affidavit #1 Exhibit A) because this PDF already contained yellow highlighting. In short, the Ministry can withhold everything I have highlighted in the records either because s. 14 applies (pink) or because it is not personal information (yellow or, in PDF 8, green).
[101] Schedule 1 of FIPPA contains its definitions.
[102] For examples, see Order F16-38, 2016 BCIPC 42 at para. 112; and Order F13-04, 2013 BCIPC 4 at para. 23.

[90] As noted, FIPPA excludes contact information from the definition of personal information. FIPPA defines contact information as information to enable an individual at a place of business to be contacted. Contact information includes an individual's name, position or title, business telephone number, address, email or fax number.

[91] Some of the information withheld under s. 22 qualifies as personal information. Broadly speaking, this information relates to the educational, financial, medical and employment history of identifiable individuals. The applicant does not want this information, so it is not in dispute and the Ministry can withhold it for that reason.

[92] However, some of the information withheld under s. 22 does not qualify as personal information because it is contact information,[103] or because it is general information about Rutherford or other organizations,[104] or because it does not specifically relate to identifiable individuals on its own or when combined with information from other available sources.[105] For example, one of the Ministry's affiants asserts that information about nationality could reasonably allow for the identification of individuals.[106] This presumably explains why the Ministry has withheld the names of certain countries or cities where Rutherford students lived in some of the records. However, because Rutherford ran an online school with numerous correspondence students located all over the world, I am not satisfied that the names of countries and cities where unnamed students lived is information that could reasonably allow for the identification of individuals in the circumstances.

[93] As mentioned, I have highlighted all the information that qualifies as personal information in the copy of the records the Ministry will receive with this order. The Ministry must release the balance of the information on those pages because it does not qualify as personal information, therefore s. 22(1) does not apply to it.

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[103] For example, in emails sent between individuals using their work email addresses, the "to" and "from" information and the signature block is not personal information; it is contact information. Examples of this appear in 4-41 of the records described at para. 19 of Lawyer DS Affidavit #1 and the table of records titled "Table of Records, Part 5."

[104] For example, p. 42-43 of the records responsive to Request 2 (i.e. the records described in Exhibit A to the Lawyer KF Affidavits #1 and #3); p. 22, 60, 65-66 and p. 131 of PDF 8 of the paper file; p. 5-12 of PDF 7 of the paper file; and p. 159 of the records described in Exhibit D to Lawyer DS Affidavit #2.

[105] For example, p. 4-41, p. 52-56, p. 67-95, 97, 101, 103, 107-116 of the records described at para. 19 of Lawyer DS Affidavit #1 and the table of records titled "Table of Records, Part 5;" p. 185-188 of PDF 1 of the paper file; and p. 235-238, 264, 266-267 of the Request 2 Records.

[106] Paralegal SR Affidavit #1 at para. 6.

CONCLUSION

[94] For the reasons above, I make the following order under s. 58 of FIPPA:

1. Subject to item 2 below, I confirm in part the Ministry's decision to refuse to disclose information to the applicant under s. 14.

2. The Ministry is not authorized under s. 14 to refuse to disclose the information in the file documents.

3. The Ministry is required to give the applicant access to the information that is not personal information under s. 22(1).

4. The Ministry must concurrently provide the OIPC registrar of inquiries with a copy of its cover letter and the information identified at items 2 and 3 above when it sends that information to the applicant.

Pursuant to s. 59(1), the Ministry must give the applicant access to the information described in paragraph 94, items 2 and 3 by February 19, 2020.

January 7, 2020

ORIGINAL SIGNED BY

Laylí Antinuk, Adjudicator

OIPC File Nos.: F16-66709 and F16-66361