Order F24-44

THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF THE PROVINCE OF BRITISH COLUMBIA

Carol Pakkala
Adjudicator

May 28, 2024

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Summary: An applicant requested that The Association of Professional Engineers and Geoscientists of the Province of British Columbia (Association) provide access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to certain records where he is mentioned or is otherwise identifiable. The Association withheld information in the responsive records under several FIPPA exceptions to access. The adjudicator confirmed, in part, the Association's application of ss. 13 (advice or recommendations). The adjudicator also confirmed the Association's application of s. 14 (solicitor client privilege) and found s. 22 (unreasonable invasion of third party personal privacy) did not apply to the remaining information. The adjudicator ordered the Association to disclose some information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c. 165, ss. 13, 14, 22(1). *Professional Governance Act,* SBC 2018 c. 47, s. 109.

Introduction

[1] An applicant requested that The Association of Professional Engineers and Geoscientists of the Province of British Columbia (Association) provide him access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to certain records where he is mentioned or is otherwise identifiable.

[2] In response, the Association located 704 pages of responsive records. It disclosed some of information in these pages to the applicant but withheld the remaining information under ss. 13 (advice or recommendations), 14 (solicitor client privilege), and 22 (unreasonable invasion of personal privacy) of FIPPA.[1]

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Association's application of FIPPA. Mediation conducted by the OIPC did not resolve the matter and the applicant

[1] For clarity, unless otherwise specified, when I refer to sections in this order, I am referring to sections of FIPPA.

requested that it proceed to inquiry. Both the applicant and the Association provided submissions in this inquiry.

PRELIMINARY MATTERS

Scope of the parties' submissions

[4] Both parties acknowledge in their submissions that my jurisdiction is limited to reviewing the Association's application of FIPPA. They do, however, make extensive submissions about a variety of issues that fall outside of my jurisdiction. These issues are primarily related to the regulatory functions of the Association, namely its governance structure and complaints process. While I have read all of the submissions, I will not make any findings or decisions on the merits of any allegations unrelated to the application of FIPPA.

Public interest, s. 25

[5] In his submissions, the applicant refers to disclosure of information being in the public interest.[2] Section 25 of FIPPA sets out when information must be disclosed in the public interest. Section 25 is not listed as an issue in the notice of this inquiry or in the fact report and there is no indication it arose as an issue in mediation.[3] I do not read the applicant's submissions as a request to add s. 25, but instead as highlighting one of the purposes of FIPPA which is to give the public a right of access to records. For the sake of clarity, however, I note that I will not consider s. 25 in this inquiry.

Records and information no longer in dispute

[6] At different points in time since the original access request, the Association released additional information to the applicant from the responsive records in a series of records packages. In their respective submissions, both parties refer to these different packages of records and to certain information no longer being in dispute. My initial review revealed some confusion over what requires adjudication in this inquiry, so I invited the parties to provide clarification.

[7] In response to my invitation, the Association provided one complete package of records[4] along with a Table of Records (Table). It is clear from the

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[2] Applicant's submission at pp. 3, 10, 22, and 23.
[3] OIPC's *Instructions for Written Inquiries* (available online at https://www.oipc.bc.ca/documents/guidance-documents/1658) explain the process for adding new issues. Past OIPC orders have consistently said that parties may only add new issues to an inquiry if permitted to do so by the OIPC. Allowing late addition of issues without prior approval undermines the effectiveness of the mediation process. This process exists, in part, to assist parties in identifying, defining, and crystallizing the issues prior to the inquiry stage.
[4] I can see the information that was severed under ss. 13 and 22. The s.14 information was not provided for my review.

Table and the updated records that the Association is no longer withholding certain information from the applicant and has disclosed that information to him. However, I can see that the same information is repeated elsewhere, but the Association has continued to sever that information. The Association did not explain this inconsistency in its severing. I expect the Association to disclose that information that appears elsewhere in the records.[5] I will not consider this information any further as I consider it to no longer be in dispute.[6]

[8] In addition, the applicant says he is only interested in information that is "personal" to him. He further clarified that he is no longer interested in the following information: [7]

- email chains about the attendance of guests, CEO expenses, and in camera meeting procedures;
- the MRM dashboard (case management software screen printout); and
- any personal information of or about individuals he describes as a "natural persons". Based on what he says about this, I understand this to mean he only wants information about individuals acting in their professional roles and carrying out their official functions. He does not want information about their personal lives, such as details about their vacation, etc.

[9] Based on what the applicant says, I find this information is no longer in dispute. In this context, not in dispute means I will not review the Association's decision to withhold it and this means the applicant will not get access. Where there was any doubt about the information the applicant wants, I only considered the application of FIPPA to information where he is mentioned or is otherwise identifiable, as per his original access request and subsequent correspondence.

ISSUES AND BURDEN OF PROOF

[10] The issues I must decide in this inquiry are:

1. Is the Association authorized to refuse to disclose the information at issue under ss. 13 and 14?

2. Is the Association required to refuse to disclose the information at issue under s. 22(1)?

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[5] The names of the committee members assigned to the investigation of the applicant are disclosed at p. 172 but withheld on pp. 205, 214, and 222.
[6] Specifically, the information marked "n/a" on the table.
[7] For example, the applicant marked some records on the table as "not required." In his submission, he also verbally described some records that he is not interested in.

[11] Section 57(1) of FIPPA places the burden on the Association to prove the applicant has no right of access to the information withheld under ss. 13 and 14.

[12] Section 57(2) of FIPPA places the burden on the applicant to establish that disclosure of any personal information at issue would not unreasonably invade a third-party's personal privacy under s. 22. However, the public body has the initial burden of proving the information at issue is personal information.[8]

DISCUSSION

Background

[13] The Association regulates and governs the professions of engineering and geoscience in British Columbia under the authority of the *Professional Governance Act* (PGA).[9] The applicant is a non-practising registrant of the Association.

Information in dispute

[14] The Association responded to the applicant's access request with 705 pages of records. The information that remains in dispute appears on approximately 205 pages of various types of records including emails, letters, agendas, minutes, notes, and tables. Broadly speaking, the responsive records relate to matters investigated by the Association.

Advice or recommendations, s. 13(1)

[15] The Association is withholding the bulk of the information in dispute under s. 13(1). Section 13(1) allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body.

[16] The purpose of s. 13(1) is to allow for full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of decision and policy making were subject to excessive scrutiny.[10]

[17] Past OIPC orders and court decisions have established the following principles for the application of s. 13(1) and I adopt these same principles in making my decision:

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[8] Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.
[9] *Professional Governance Act*, SBC 2018, c. 47 [*PGA*].
[10] *John Doe* v. *Ontario (Finance)*, 2014 SCC 36 at paras 45-51 [*John Doe*].

- To "reveal" advice or recommendations means that s. 13(1) does not apply to information that has already been disclosed.[11]
- "Advice" has a broader meaning than "recommendations"[12] and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.[13] Advice can be an opinion about an existing set of circumstances and does not have to be a communication about future action.[14]
- "Advice" also includes factual information "compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body."[15] This compilation of factual information and weighing the significance of matters of fact is an integral component of an expert's advice and informs the decision-making process.
- "Recommendations" include material relating to a suggested course of action that will ultimately be accepted or rejected by the decision maker.[16]
- Section 13(1) applies to information that *would reveal* advice or recommendations. Thus/therefore/for that reason it applies not only to advice or recommendations, but also to information that would allow someone to accurately infer advice or recommendations.[17]

[18] The first step in a s. 13 analysis is to determine whether disclosing the withheld information would reveal advice or recommendations developed by or for a public body or minister. If it would, then I must decide whether ss. 13(2) or 13(3) apply to that information.

[19] Section 13(2) sets out various kinds of records and information that the head of a public body must not refuse to disclose under s. 13(1), even if that information would reveal advice or recommendations. Section 13(3) states that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years.

[20] However, before I address these matters, I will consider the parties' submissions about the effect of s. 109 of the PGA on the s. 13(1) issue.

Effect of s. 109 of the PGA

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[11] See for examples: Order F23-41, 2023 BCIPC 59 at para. 96; Order F20-32, 2020 BCIPC 38 at para. 36; Order F13-24, 2013 BCIPC 21 at para. 19; Order F12-15, 2012 BCIPC 21 at para. 19.
[12] *John Doe supra* note 11 at para. 24.
[13] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 at para. 113 [*College*].
[14] *Ibid* at para. 103.
[15] *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [*PHSA*] at para. 94.
[16] *John Doe supra* note 11 at para. 23.
[17] Order 02-38, 2002 CanLIIn42472 (BC IPC) at para. 135.

[21] The Association says that I ought to consider the confidentiality obligations set out in s. 109 of the PGA when considering whether s. 13(1) applies. The relevant part of s. 109 of the PGA says:

> 109 (1) A person must preserve confidentiality with respect to all matters or things that come to the person's knowledge while exercising a power or performing a duty under this Act unless the disclosure is
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> (a) necessary to exercise the power or to perform the duty, or
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> (b) authorized as being in the public interest by, as applicable,
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> (i) the superintendent, or
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> (ii) the board of the regulatory body in relation to which the power or duty is exercised or performed.

[22] The Association says, like s. 13 of FIPPA, s. 109 of the *PGA* protects the deliberative process involved in its investigations.[18] The applicant says s. 109 of the *PGA* does not mandate confidentiality for closed investigation files.[19] The Association responds by saying its confidentiality obligation under s. 109 of the *PGA* has no time limitation.[20]

[23] Somewhat contrary to its initial position that I ought to consider s. 109 of the *PGA*, the Association goes on to say that while the parties have different positions on s. 109 of the *PGA*, its interpretation is outside of my jurisdiction. The Association says the issue is whether the information in dispute would reveal advice and recommendations, not whether the Association is statutorily required under the *PGA* to maintain the confidentiality of that information.[21]

[24] In my view, s. 109 has no bearing on whether s. 13(1) applies to the information in dispute in this inquiry.[22] As the Association said, the issue is whether the information in dispute would reveal advice and recommendations, not whether the Association is statutorily required under the *PGA* to maintain the confidentiality of that information. I find it unnecessary to address the issue any further.

Parties' submissions, s. 13(1)

[25] The Association says the information it withheld under s. 13(1) is related to recommendations made in its decision-making process and includes the

[18] Association's reply submission at para. 48.
[19] Applicant's submission at p. 3, lines 20-21.
[20] Association's reply submission at para. 46.
[21] Association's reply submission at para. 49.
[22] Section 110(7) of the PGA excludes audit and practice review records from the application of FIPPA but as far as I can tell, the records here are not audit and practice review records.

canvassing of opinions during that process which it says is advice.[23] Specifically, it asserts that the following documents contain advice or recommendations:

- email exchanges between the Chief Executive Officers (CEOs) of engineering regulators across Canada (CEO Group Exchanges)
- minutes of the Associations' Investigation Committee
- other emails, letters, reports, meeting minutes, and agendas

[26] The Association further says the preservation of confidentiality over the deliberative process of its Investigation Committee, including the ability to consider and action advice and recommendations without becoming subject to public scrutiny, is crucial to preserve the Investigation Committee's integrity.[24]

Analysis, s. 13(1)

[27] For the reasons that follow, I am satisfied that disclosing some, but not all, of the information withheld under s. 13(1) would reveal advice or recommendations developed by or for the Association within the meaning of s. 13(1).

[28] I am limited in what I can say about the information that I find is advice or recommendations without revealing its content, but I am satisfied that the information withheld from these records is:

- Advice in the form of canvassing of options on how to respond to a particular issue.
- Advice in the form of factual information compiled and selected by an expert investigator, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process.
- Recommendations for particular courses of action.
- Information that would allow for an inference of advice and recommendations.

[29] I turn now to the information in dispute that I find is not advice or recommendations developed by or for the Association. This information is found in the CEO Group email exchanges.[25]

CEO Group Exchanges

[30] The CEO Group is a consultative and networking group made up of the CEOs of each engineering regulator across Canada, including the Association.[26]

[23] Association's initial submission at para. 28.
[24] Association's initial submission at para. 41.
[25] Records, pp. 31, 527-528, 531-33, 535-40, 542-544, 546-48, 551, and 558.
[26] Privacy Analyst's affidavit at para. 51.

The Association says its former CEO participated in the CEO Group Exchanges to gather facts and information regarding the issues referenced in the emails to consider what, if any, course of action the Association may need to take. It further says, in forwarding CEO Group Exchanges to others within the Association, the former CEO is canvassing opinions as evident by the use of a question mark symbol in the forwarding message.

[31] My review of the CEO Group Exchanges show they involve discussion about the appropriate course of action for the CEO Group, not the Association, to pursue. The CEO Group is not a public body. In this way, I find that the CEO Group Exchanges are not advice or recommendations developed "for" a public body. However, I find that some of the information in the CEO Group Exchanges is advice or recommendations developed "by" a public body, in this case the Association.[27] This information provides the Association's position and recommendations on certain issues.

[32] I find other information in the CEO Group Exchanges is not advice or recommendations. For example, I can see the question mark in the internal forwarding of one of the CEO Group emails.[28] From the context of the records, I find this email amounts to a "heads up" to others at the Association about the discussion. Previous OIPC Orders have found that an exchange of information that informs or alerts a fellow employee as a "heads up" does not fall within s. 13(1).[29] For this reason, I find that this instance of forwarding of the CEO Group Exchanges does not reveal advice or recommendations.

Sections 13(2) and (3) - exceptions to s. 13(1)

[33] The next step in the s. 13 analysis is to consider whether any of the circumstances under ss. 13(2) and 13(3) apply to the information that I found would reveal advice or recommendations developed by or for a public body or minister.

[34] The Association says that none of the exceptions in s. 13(2) apply to the information in dispute.[30] The Association further says that none of information in dispute has been in existence for 10 or more years, such that section 13(3) is not applicable.

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[27] I can see in the records are emails where the Association provides input to the CEO Group, but these are ones about subjects the applicant identified as not being, or are no longer, in dispute. I did not consider the application of s. 13 to those emails.
[28] Records, p. 31.
[29] Order F23-18, 2023 BCIPC 21 at para. 30 relying upon Order F15-52, 2015 BCIPC 55 at para. 28; Order F19-27, 2019 BCIPC 29 at para 32; Order F12-15, 2012 BCIPC 21 at para. 18.
[30] Association's initial submission at para. 99.

[35] The applicant says factual material cannot be withheld under section 13(1) and must be separated from advice or recommendations.[31] The applicant agrees with the Association that s. 13(3) does not apply.[32]

[36] I have reviewed the information I found is advice or recommendations under s. 13(1) and I find that only s. 13(2)(a) is relevant to consider. Sections 13(2)(b) through 13(2)(n) and s. 13(3) clearly do not apply.

Analysis, s. 13(2)(a)

[37] Section 13(2)(a) says that the public body must not refuse to disclose any factual material under s. 13(1). The term "factual material" is not defined in FIPPA. Factual "material" is distinct from factual "information".[33] The difference is whether the information is background that forms the fabric of advice and recommendations.[34] If they are not, then the information is "factual material" and s. 13(2)(a) applies.

[38] Having reviewed the information which I found reveals advice or recommendations, I find none of this information is "factual material". Although some of the information is "factual" in nature, in my view, it is a necessary and integrated part of the advice. I find s. 13(2)(a) does not apply.

Summary, s. 13

[39] I find the Association has established that disclosing some of the information it withheld under s. 13(1) would reveal advice or recommendations developed by or for the Association. Sections 13(2) and (3) do not apply to that information, so the Association may withhold it under s. 13(1). There is, however, some information I find may not be withheld under s. 13(1) because disclosure would not reveal any advice or recommendations developed by or for the Association.

Solicitor-client privilege, s. 14

[40] The Association is withholding information under s. 14 from six pages of records. This information appears in a legal advice record sheet and in emails between the Association's internal legal counsel and various members of the Associations' senior staff.

[41] Section 14 allows a public body to refuse to disclose information that is subject to solicitor-client privilege. Section 14 encompasses two kinds of privilege

[31] Applicant's submission at p. 10, lines 8-11.
[32] Applicant's submission at p. 24, line 8.
[33] PHSA *supra* note 13 at para. 91.
[34] *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para. 53.

recognized at common law: legal advice privilege and litigation privilege.[35] The Association argued that both legal advice privilege and litigation privilege apply to the records it withheld under s. 14.

Evidentiary basis for solicitor-client privilege

[42] The Association did not provide me with a copy of the s. 14 records for my review. Instead, it provided an affidavit from its Privacy Analyst who affirms that he reviewed the s. 14 records and says each record reveals information about legal advice sought or obtained from the Association's legal counsel.[36] The applicant points out, and the Privacy Analyst acknowledges, that the Privacy Analyst was not directly involved in the communications.[37]

[43] Based on my review of the submissions and evidence of the parties, I decided the evidence was insufficient for me to properly assess the Association's privilege claim. Given the importance of solicitor-client privilege, I provided the Association with an opportunity to submit additional evidence and submissions in support of its s. 14 claim. In response, the Association provided an affidavit from its Director, Legislation, Ethics & Compliance (Director).

[44] I find that I now have sufficient evidence to decide if s. 14 applies. I have an affidavit from the Director who is a lawyer who reviewed the records. Lawyers are officers of the court with a professional duty to ensure that privilege is properly claimed. The Director affirms that he is senior legal counsel at the Association and is responsible for, among other things, the investigation and resolution or adjudication of complaints against individuals practising professional engineering and geoscience in British Columbia.[38] I am satisfied that he reviewed the specific records at issue.

[45] In conclusion, I am satisfied that I can now decide s. 14 based on the evidence provided.

Legal advice privilege

[46] The purpose of legal advice privilege is to protect confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion, or analysis.[39] This confidentiality allows clients to speak to their lawyers openly and honestly, which in turn allows lawyers to better assist their clients.[40]

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[35] *College* at para. 26.
[36] Privacy Analyst's affidavit at para. 85.
[37] Applicant's submission at p. 7, line 7.
[38] Affidavit of the Association's Director, Legislation, Ethics & Compliance (Director) at para. 2.
[39] *College* at para. 31.
[40] *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 at para. 34.

[47] For information to be protected by legal advice privilege it must be:

- a communication (oral or written) between a solicitor and client (or their agent);
- intended by the solicitor and client to be confidential; and
- for the purpose of seeking or providing legal advice.[41]

[48] Not every communication between a solicitor and their client is privileged. If the conditions above are satisfied, then privilege applies.[42] A communication does not, however, satisfy this test merely because it was sent to a lawyer.[43]

[49] The courts have established the following principles, among others, for deciding if legal advice privilege applies:

- Privilege extends beyond the actual requesting or giving of legal advice to the "continuum of communications" between a lawyer and client, which includes the necessary exchange of information for the purpose of providing legal advice.[44]
- A privileged exchange of information may include history and background from a client, communications to clarify or refine the issues or facts,[45] and communications of an administrative nature.[46]
- Internal client discussions about the implications of legal advice provided by a lawyer are privileged because revealing these communications would reveal the substance of the privileged legal advice.[47]
- Privilege extends to communications with in-house counsel provided they are acting in a legal capacity and not a business or management capacity.[48]

[50] I adopt the above principles in making my decision.

Parties' submissions, legal advice privilege

[51] The Association says it applied legal advice privilege to emails between its employees and its internal legal counsel[49] and to a legal advice record

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[41] *Solosky v. The Queen*, [1980] 1 SCR 821 at p. 837 [*Solosky*].
[42] *Solosky* at p. 829.
[43] *Keefer Laundry Ltd. v. Pellerin Milnor Corp.*, 2006 BCSC 1180 at paras. 61 and 81 [*Keefer Laundry*] and *McClure* at para. 36.
[44] *Huang v Silvercorp Metals Inc*., 2017 BCSC 795 at para. 83; *Camp* at para. 42.
[45] *Camp* at para. 40.
[46] *Descôteaux v Mierzwinski,* 1982 CanLII 22 (SCC) at pp. 892-893.
[47] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District,* 2013 BCSC 1893 (CanLII) at paras. 22-24.
[48] *Keefer Laundry* at para. 63 and *Pritchard v. Ontario (Human Rights Commission),* 2004 SCC 31 at para. 20.
[49] Records, pp. 29, 40, 79, 82, and 96.

maintained by its legal department.[50] The Association says the emails are between its employees and its internal legal counsel exchanging information for the purpose of legal advice.[51] It says its legal counsel was acting in a legal, not business, capacity.[52] The Association further says this information was intended to be confidential.[53] The Association says the legal advice record was created, and the information entered directly, for the purpose of tracking legal advice sought and given in respect of investigation files.[54]

[52] The applicant says solicitor-client privilege should not apply as the information has been disclosed and shared by other parties.[55] The applicant also questions the reliability of the Association's affidavit evidence offered in support of its privilege claim.[56] The applicant expresses concern about the affiants offering evidence based on information and belief rather than direct knowledge.

Analysis, legal advice privilege

[53] For the reasons that follow, I find legal advice privilege applies to all of the information withheld on this basis.

[54] My review of the records that I can see provides context and information that supports the Association's legal advice privilege claim. I accept the affidavit evidence provided by the Association. I considered the applicant's concerns about the reliability of affidavit evidence based on information and belief rather than on direct knowledge of events. It is not uncommon for affidavits to include statements based on information and belief. The issue for me is what weight to give such evidence.

[55] The affidavits of both the Director and the Privacy Analyst are based on their respective reviews of the records. For the emails, they each identify the dates and participants and describe the general subject matter. Similarly, they each sufficiently describe the legal advice record. I give greater weight to the Director's evidence because of his professional obligation to ensure privilege is properly claimed.

[56] Based on the Director's evidence, I find the emails are communications about seeking and providing legal advice. I find the emails are between the Association's senior staff and internal legal counsel who was acting in a legal, not business, capacity. I find this information was intended to be confidential.

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[50] Records, p. 95.
[51] Association's initial submissions at para. 138.
[52] Association's initial submissions at para. 140.
[53] Association's initial submissions at para.139.
[54] Association's initial submissions at para. 147.
[55] Applicant's submissions, p. 10, lines 12-15.
[56] Applicant's submissions, p. 7, lines 6-8 and email dated May 3, 2024.

[57] Based on the Director's evidence, I find the information in the tracking record is a summary of legal advice given and disclosing it would reveal communications between the Association and its lawyer about legal advice.
[58] I am satisfied that all of the information withheld under s. 14 is protected by legal advice privilege.

Waiver of Privilege

[59] Having found that solicitor-client privilege applies, a further question arises from the evidence before me relating to waiver of privilege. Solicitor-client privilege belongs to and can only be waived by the client.[57] Once privilege is established, the party seeking to displace it has the onus of showing it has been waived.[58]

[60] The disclosure of privileged information to individuals outside of the solicitor-client relationship may amount to a waiver of privilege. Waiver of privilege is ordinarily established where it is shown that the privilege holder knows of the existence of the privilege and voluntarily shows an intention to waive that privilege. Waiver may also occur in the absence of an intention to waive, where fairness and consistency so require.[59]

[61] As I mentioned above, the applicant says that privilege should not apply because the information has been disclosed and shared with other parties. The Director says there is no evidence suggesting the legal advice has been disclosed.[60]

[62] I find there is insufficient evidence to support the applicant's claim that privileged information was shared with anyone outside of the Association. I am not persuaded that the Association waived privilege over the information in dispute.

Conclusion, s. 14

[63] In summary, I find that disclosing the information the Association withheld under s. 14 would reveal information protected by legal advice privilege and that privilege was not waived. I conclude the Association is authorized to refuse to disclose this information. For this reason, it is unnecessary for me to consider litigation privilege and I decline to do so.

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[57] *Canada (National Revenue)* v. *Thompson*, 2016 SCC 21 at para 39; *Lavallee, Rackel & Heintz* v. *Canada (Attorney General)*, 2002 SCC 61 at para 39.
[58] *Le Soleil Hotel & Suites Ltd.* V. *Le Soleil Management Inc.,* 2007 BCSC 1420 at para 22; *Maximum Ventures Inc* v. *De Graaf*, 2007 BCSC 1215 at para 40.
[59] *S&K Processors Ltd.* v. *Campbell Ave Herring Producers Ltd.,* 1983 CanLII 407 (BCSC) at para 6.
[60] Director's affidavit at para. 7.

Disclosure harmful to personal privacy, s. 22

[64] The only remaining information in dispute to which the Association applied s. 22 are names, titles, email addresses, and phone numbers.

[65] Section 22(1) requires 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.

[66] A "third party" is defined in Schedule 1 of FIPPA as any person, group of persons or organization other than the person who made the access request or a public body. Section 22(1) only applies to personal information, so the first step in a s. 22 analysis is to decide if the information at issue is personal information.

[67] FIPPA defines personal information as "recorded information about an identifiable individual other than contact information." Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."[61] Whether information is "contact information" depends upon the context in which it appears.[62]

[68] The Association submits that the information it severed under s. 22 is personal information. The applicant questions whether information is properly withheld, considering that he may be an identifiable individual.[63]

[69] I find that the remaining information at issue under s. 22(1) is contact information. This information consists of a name, title, organization, and what appears to me to be business contact information. The Association does not explain how this is personal information. I find it is not personal information and s. 22(1) does not apply.

Conclusion

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

1. Subject to item 3 below, I confirm the Association's decision, in part, to refuse access to the information withheld under s. 13.

2. I confirm the Association's decision to refuse access to the information it withheld under s. 14.

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[61] FIPPA, Schedule 1.
[62] Order F20-13, 2020 BCIPC 15 (CanLII) at para. 42.
[63] Applicant's submissions, p. 9, lines 14-15.

3. I require the Association to give the applicant access to the information on pp. 31, 527-528, 531-33, 535-40, 542-544, 546-48, 551, and 558. The Association must concurrently provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order.

[71] Under s. 59 of FIPPA, the Association is required to give the applicant access to the information it is not authorized or required to withhold by July 10, 2024.

May 28, 2024

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No. F21-87971