OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F24-72

NORTHERN HEALTH AUTHORITY

Alexander Corley
Adjudicator

July 25, 2024

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Summary: An applicant requested records from the Northern Health Authority (Authority) containing information about COVID-19 outbreaks at work camps. In response, the Authority released some information but withheld other information under ss. 13 (advice or recommendations), 14 (solicitor-client privilege), 21(1) (harm to business interests of a third party), and 22(1) (harm to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator determined that s. 14 applied to all the information in dispute under that section and that s. 13 applied to some of the information in dispute under that section. The adjudicator also found the Authority was required to withhold some of the information in dispute under s. 21(1). However, the adjudicator found that none of the sections of FIPPA relied on by the Authority applied to the remaining information in dispute and ordered the Authority to release that information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act* [RSBC 1996, c. 165] at ss. 13(1), 13(2)(a), 13(2)(n), 13(3), 14, 21(1)(a)(ii), 21(1)(b), 21(1)(c)(ii), and 22(1); *Public Health Act* [SBC 2008, c. 28] at s. 91(1).

INTRODUCTION

[1] A journalist (applicant) requested records containing information about COVID-19 outbreaks at work camps from the Northern Health Authority (Authority). The time frame for the request was December 1, 2020, to March 1, 2021.

[2] In response, the Authority provided some responsive records to the applicant but withheld other records, either in part or in their entirety, pursuant to ss. 13 (advice or recommendations), 14 (solicitor-client privilege), 16 (harm to intergovernmental relations or negotiations), 17 (harm to the financial or economic interests of a public body), 21(1) (harm to business interests of a third

party) and 22(1) (harm to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).[1]

[3] The applicant disagreed with the Authority's decision to sever the records and requested that the Office of the Information and Privacy Commissioner (OIPC) review the severing. Mediation by the OIPC did not resolve the issues between the parties and the applicant requested that the matter proceed to this inquiry.

[4] The Authority requested, and received, permission from the OIPC to submit a small amount of its affidavit evidence *in camera* (that is, for only the commissioner and not the applicant to see).[2]

Preliminary Issues

What sections of FIPPA are in dispute in the inquiry?

[5] The Notice of Inquiry issued to the parties indicates that ss. 13(1), 14, 16, 17, and 21(1) of FIPPA are at issue in this inquiry. Having reviewed the Authority's submissions and evidence in this inquiry, as well as the most recent package of records distributed to the OIPC and the applicant, I find that the Authority is no longer relying on ss. 16 or 17 to withhold any of the information in issue and therefore that those sections of FIPPA are not in dispute in this inquiry.

[6] Further, I find that the Authority is withholding some information from the records at issue under s. 22(1). Usually, parties are bound by the Notice of Inquiry and may not make arguments about any sections of FIPPA not listed in that notice without the prior consent of the OIPC.[3] In this case, however, I find that it is appropriate to consider the Authority's application of s. 22(1) to the information in dispute because both of the parties made submissions regarding how the Authority applied s. 22(1), and s. 22(1) is a mandatory (as opposed to a discretionary) disclosure exemption under FIPPA.[4]

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[1] Unless otherwise specified, references in this order to sections of an enactment are references to FIPPA.

[2] Authority *in camera* letter dated April 18, 2024, and OIPC response letter dated April 30, 2024. The *in camera* evidence is parts of three paragraphs in one of the affidavits relied on by the Authority.

[3] See, for example, Order F12-07, 2012 BCIPC 10 at para. 6 and Order F10-37, [2010] B.C.I.P.C.D. No. 55.

[4] The Authority's reply submission says that the s. 22(1) severing in the records "was reviewed and approved during the OIPC mediation process" and this sentiment is echoed in the Fact Report. However, it is not clear to me what exactly this means and, in any event, the scope of this inquiry is not limited by any conclusions that may have been reached during OIPC mediation.

[7] Therefore, I will consider how the Authority applied ss. 13(1), 14, 21(1), and 22(1) to the information in dispute in this inquiry.

Section 91 of the Public Health Act[5]

[8] The Authority says that some of the information in dispute is personal information that was collected pursuant to the *Public Health Act* and therefore that the information is exempt from disclosure under s. 91(1) of that Act, which says,

> 91(1) A person who has custody of, access to or control over personal information under this Act must not disclose the personal information to any other person except as authorized under this or any other enactment.

[9] I do not accept the Authority's argument on this point because I find that FIPPA is captured by the phrase "any other enactment."[6] Therefore, I find that if FIPPA requires the Authority to disclose the information in dispute to the applicant, that disclosure will not contravene s. 91(1) because it will be authorized under another enactment. As such, I find that s. 91(1) of the *Public Health Act* is not relevant in this inquiry and I will not consider it further.[7]

ISSUES

[10] The issues to be decided in this inquiry are:

1. Is the Authority authorized to withhold the information in dispute under ss. 13(1) or 14; and
2. Is the Authority required to withhold the information in dispute under ss. 21(1) or 22(1).

[11] Section 57(1) says the Authority has the burden of proving that it is authorized to withhold the information it severed under ss. 13(1), 14, and 21(1). Meanwhile, s. 57(2) says the applicant has the burden of proving that release of the information the Authority withheld under s. 22(1) would not be an unreasonable invasion of third party personal privacy.[8]

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[5] SBC 2008, c. 28.
[6] See *Interpretation Act*, RSBC 1996, c. 238 at s. 1, definitions of "Act" and "enactment."
[7] All of the information the Authority withheld under s. 91(1) of the *Public Health Act* is also withheld under ss. 21(1) and 22(1) of FIPPA.
[8] However, the Authority bears the burden of demonstrating that the information withheld under s. 22(1) meets the definition of "personal information" under FIPPA: Order F23-49, 2023 BCIPC 57 at para. 5 and note 1, citing Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

DISCUSSION

Background

[12] The Authority is responsible for delivering healthcare services across northern British Columbia. As part of this responsibility, the Authority monitors public and environmental health concerns for work camps established to serve resource development projects.

[13] The applicant is a journalist who requested records containing information about COVID-19 outbreaks which occurred work camps within the Authority's region in December 2020. The applicant says they requested this information because it will lead to increased public oversight of the Authority and its response to the COVID-19 pandemic.

Records at issue

[14] The Authority provided an unredacted copy of the records at issue to the OIPC for purposes of this inquiry. There are 37 pages of records and from my review I can see that many of them are internal emails between the Authority's staff, sometimes including staff from the Ministry of Health (Ministry) or other provincial health authorities.[9] Some of the records are also different versions of a single e-mail chain between the Authority's staff and lawyers (lawyer email chain).[10] I can also see that one of the records is an epidemiological report prepared for the Authority.[11]

Solicitor-Client Privilege, s. 14

[15] Section 14 authorizes a public body to refuse to disclose information that is subject to solicitor-client privilege. The term "solicitor-client privilege" in s. 14 encompasses both legal advice privilege and litigation privilege.[12] The Authority relies on legal advice privilege to withhold all the information in dispute under s. 14 and does not claim litigation privilege. I use the terms "solicitor-client privilege" and "legal advice privilege" interchangeably in the rest of this order.

Legal advice privilege

[16] Legal advice privilege applies to communications that:

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[9] Records at pp. 11 and 29-37.
[10] Records at pp. 12-18 (duplicated at pp. 19-25 and 27-28) and 26. The Authority did not withhold any information from pp. 18 or 25.
[11] Records at pp. 1-10.
[12] *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 at para. 26.

1. Are between solicitor and client;

2. Entail the seeking or giving of legal advice; and

3. Are intended by the parties to be confidential.[13]

[17] Not every communication between a solicitor and their client is privileged; however, if the conditions above are satisfied, legal advice privilege applies.[14]

[18] Furthermore, it is not only the direct communication of advice between solicitor and client that may be privileged. The "continuum of communications" related to the advice, that would reveal the substance of the advice, also attracts the privilege.[15] The "continuum of communications" includes the necessary exchange of information between solicitor and client for the purpose of obtaining legal advice, such as when a client furnishes information to assist their solicitor in providing legal advice.[16]

Positions of the parties – legal advice privilege

[19] The Authority says it was in a solicitor-client relationship with the lawyers identified in the records at all relevant times and that the lawyer email chain is comprised of communications between the Authority and those lawyers which were exchanged in relation to legal advice the Authority requested and received regarding a specific public health matter.[17] The Authority says that the communications in question were all intended to be confidential.[18]

[20] The applicant questions whether the Authority properly applied s. 14 to the entire lawyer email chain.

Analysis and conclusions – legal advice privilege

[21] Based on the Authority's evidence, I accept that the Authority was in a solicitor-client relationship with the lawyers identified in the records at all relevant times. Moreover, for the following reasons, it is clear to me that the lawyer email chain is comprised of confidential communications which were sent

[13] *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 [*Solosky*] at 837.
[14] *Solosky*, *ibid* at 829 and 837.
[15] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras. 22-24. See also *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at paras. 32-33.
[16] See *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para. 40 where the court found that "[i]t is [the] chain of exchanges or communications [between lawyer and client] and not just the culmination of the lawyer's product or opinion that is privileged."
[17] Affidavit of the Authority's Medical Health Officer (Officer) at paras. 32 and 38.
[18] Officer's affidavit at para. 35.

and received between the Authority and the lawyers for the purpose of obtaining legal advice.

[22] I find that the communications in the lawyer email chain involve the Authority sharing information with the lawyers or providing instructions to the lawyers and the lawyers responding with requests for further information or to confirm that they did the work requested by the Authority. It is clear to me that these are communications between solicitor and client that were sent and received in furtherance of the Authority's requests for legal advice. I also find, based on the Authority's evidence, that all parties to these communications intended that they would be confidential.[19]

[23] While the revealed portions of the records show that some earlier emails in the lawyer email chain were sent between Authority staff, Ministry staff, or other third parties, I find that these emails were forwarded by the Authority to the lawyers as part of the Authority's requests for legal advice. Therefore, I find that the fact that the lawyers are not included on each email in the lawyer email chain is not relevant to the privileged status of the entire lawyer email chain as a record of confidential communications between solicitor and client.

[24] Based on all of this, I find that legal advice privilege applies to the information the Authority withheld from the lawyer email chain.

Conclusion, s. 14

[25] I found above that all of the information the Authority withheld under s. 14 is subject to legal advice privilege. Therefore, I find that the Authority is authorized to withhold the information in dispute under s. 14.

Advice or Recommendations, s. 13

[26] Section 13(1) authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister.

[27] The Authority withheld some information from nine pages of the records pursuant to s. 13(1).[20]

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[19] Officer's affidavit at paras. 35-37. While staff from the Ministry are included on some communications between the Authority and the lawyers, the Officer's evidence indicates that those specific Ministry staff were included on the communications due to their direct relation to the legal advice sought by the Authority and understood the communications in question to be confidential.

[20] Records at pp. 29-37

[28] Numerous OIPC orders and court cases have considered the scope and application of s. 13(1). These authorities make clear that the purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative and decision-making processes were exposed to excessive public scrutiny.[21] In Order F22-39, the adjudicator canvassed the law and distilled the following interpretive principles for applying s. 13(1) [emphasis in original]:[22]

- Section 13(1) applies to information that *would reveal* advice or recommendations and not only to information that *is* advice or recommendations.[23]

- The terms "advice" and "recommendations" are distinct, so they must have distinct meanings.[24]

- "Recommendations" relate to a suggested course of action that will ultimately be accepted or rejected by the person being advised.[25]

- "Advice" has a broader meaning than "recommendations."[26] It includes setting out relevant considerations and options, and providing analysis and opinions, including expert opinions on matters of fact.[27] "Advice" can be an opinion about an existing set of circumstances and does not have to be a communication about future action.[28]

- "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."[29] This is because the compilation of factual information and weighing of significance of matters of fact is an integral component of an expert's advice and informs the decision-making process.

[29] I adopt these principles and apply them below.

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[21] Order F18-19, 2018 BCIPC 22 at para. 12, citing *John Doe v. Ontario (Finance*), 2014 SCC 36 [*John Doe*] at para. 45.
[22] 2022 BCIPC 44 at para. 67. See also Order F23-29, 2023 BCIPC 33 at para. 27.
[23] Citing Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 135.
[24] Citing *John Doe*, *supra* note 21 at para. 24.
[25] Citing *John Doe*, *ibid* at paras. 23-24.
[26] Citing *John Doe*, *ibid* at para. 24.
[27] Citing *John Doe*, *ibid* at paras. 26-27 and 46-47; *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2001 BCSC 726 [*College*] at paras. 103 and 113.
[28] Citing *College*, *ibid* at para. 103.
[29] Citing *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [*PHSA*] at para. 94; *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 [*ICBC*] at paras. 52-53.

[30] The first step in the s. 13 analysis is to determine whether the information in dispute would reveal advice or recommendations developed by or for a public body or a minister. If it would, the next step is to determine whether ss. 13(2) or 13(3) applies. Section 13(2) lists certain classes of records and information that cannot be withheld under s. 13(1). Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years.

[31] I can see that all the records in dispute under s. 13(1) were clearly created less than 10 years ago. Therefore, I find that s. 13(3) does not apply in this inquiry and will not consider it below.

Positions of the parties, advice or recommendations

[32] The Authority says the information it withheld under s. 13(1) is "clearly, on its face, information that is seeking and obtaining advice which [the Authority] could rely on in making decisions regarding the issuance of public health orders, and clearly reflect [sic] the deliberations of public health officers involved in the communications." The Authority does not make any other specific arguments regarding the information it withheld under s. 13(1).

[33] The applicant broadly questions the Authority's characterization of the information in dispute as advice or recommendations but otherwise focuses their submissions on s. 13(2) and the Authority's exercise of discretion in deciding to withhold information under s. 13(1).

Analysis and conclusions, advice or recommendations

[34] The information the Authority withheld under s. 13(1) is contained in a single email thread between the Authority and specific staff from the Ministry.[30] From my review of this information and the Authority's submissions, including the affidavit of the Authority's Medical Health Officer (Officer), it is clear to me that the information in dispute under s. 13(1) relates to discussions between the Authority and the Ministry regarding the scope and content of a specific public health order.[31] For the following reasons, I find that some, but not all, of this information would reveal advice or recommendations developed for the Authority if disclosed.

[35] A large amount of the information the Authority severed from earlier emails on the thread is background information which the Authority provided to the Ministry when it requested the Ministry's assistance with crafting the order. The Authority does not explain how releasing this background information would allow a reader to accurately infer any advice or recommendations which the

[30] Some of the emails in this thread are copied to individuals from other provincial health authorities, but I find this is not relevant to the s. 13(1) analysis in the circumstances of this case.
[31] Officer's affidavit at paras. 39-40.

Authority later received, and I do not see that it would. Therefore, I find that releasing this background information would not reveal advice or recommendations.[32]

[36] I also find that some of the information in dispute under s. 13(1) is draft language for the order which was exchanged between the Authority and the Ministry and was commented on and edited by the responsible parties within those public bodies.[33] Section 13(1) does not apply to records simply because they are drafts. The usual principles apply, and a public body can only withhold those parts of a draft which would reveal advice or recommendations. However, in some cases, revealing the changes that were made between draft versions of a document and the final version can reveal advice or recommendations.[34]

[37] In this case, I find that most of the information withheld from the drafts of the order would not reveal advice or recommendations if disclosed to the applicant. Moreover, the Authority does not assert that a reader could accurately infer advice or recommendations by comparing the draft wording to information that is already revealed in the records or is otherwise publicly available and I do not see that a reader could do so. Therefore, I find that most of the information withheld from the drafts of the order would not reveal advice or recommendations if disclosed.[35]

[38] On the other hand, some of the information severed from one draft of the order is contained in "red line" comments made by the Ministry's Deputy Provincial Health Officer (Deputy). I find that the Deputy's comments and the associated edits to that draft of the order contain recommendations regarding the wording of the order and additional information the Deputy advises that the Authority consider in finalizing the order.[36]

[39] The remaining information in dispute under s. 13(1) is in an email where the Deputy raises what they saw as important considerations regarding the scope, content, and potential effects of the order and provides specific background information which they indicate as directly motivating these considerations.[37] I find that the considerations raised by the Deputy are phrased as a series of leading questions and are in the nature of a recommendation from the Deputy that the Authority consider how they would answer those questions when crafting the order. Further, I find that the Deputy was directly relying on the background information they shared with the Authority in making that recommendation to the Authority and incorporated that information into the

[32] Records at pp. 36-37.
[33] Records at pp. 29-32 and 35-36.
[34] Order F18-38, 2018 BCIPC 41 at para. 17.
[35] Records at pp. 31-32 and 35-36.
[36] Records at pp. 30-31.
[37] Records at pp. 33-35.

considerations they raised. Therefore, I find that disclosing the considerations and the related background information would reveal recommendations developed for the Authority.

[40] Taking all of the above together, I find that some of the information in dispute under s. 13(1) would reveal advice and recommendations developed for the Authority if disclosed.[38] The Authority is not, however, authorized to withhold the information that would not reveal advice or recommendations under s. 13 and I will not consider it further.[39]

Does s. 13(2) apply?

[41] Section 13(2) sets out certain classes of records and information which a public body may not withhold under s. 13(1). The applicant asserts that ss. 13(2)(a) and (n) each apply to some of the information in dispute under s. 13(1). The Authority does not comment on whether s. 13(2) is relevant in this inquiry. Other than the subsections of s. 13(2) raised by the applicant, I do not see that any other subsection of s. 13(2) may be relevant to the information in dispute. Therefore, I will only consider ss. 13(2)(a) and (n) below.

Section 13(2)(a) – Factual material

[42] Section 13(2)(a) says that a public body must not refuse to disclose "any factual material" under s. 13(1). "Factual material" is not defined in FIPPA. However, the courts have interpreted it as meaning, in the context of s. 13(2)(a), source materials or background facts in isolation which exist separately from, and are not intermingled with, advice or recommendations.[40]

[43] Some of the information I found above would reveal advice or recommendations if disclosed is background information contained in the email where the Deputy provided their recommendations regarding the order to the Authority.[41]

[44] As noted above, factual background information may be withheld under s. 13(1) where it was compiled by an expert as part of that expert providing advice or recommendations to a public body and revealing the background information would reveal the substance of the advice or recommendations.[42] In this case, I find that given their position within the Ministry the Deputy is an expert on public health matters such as the drafting and issuing of the order in question. Moreover, I find that the Authority was specifically requesting and

[38] Records at pp. 30-31 and 33-35.
[39] Records at pp. 29, 31-32, and 35-37.
[40] *PHSA*, *supra* note 29 at paras. 93-94.
[41] Records at pp. 33-35.
[42] *PHSA*, *supra* note 29 at para. 94; *ICBC*, *supra* note 29 at paras. 52-53.

relying on the Deputy's expertise in asking for the Ministry's assistance with the order. Finally, it is clear to me that the factual background information provided by the Deputy was a necessary part of the recommendations the Deputy provided regarding the wording and scope of the order and that releasing that information to the applicant would reveal the recommendations the Deputy made to the Authority.

[45] In these circumstances, I find that s. 13(2)(a) does not apply to the background information the Deputy provided to the Authority. Further, I find that s. 13(2)(a) does not apply to any of the other information I found above would reveal advice or recommendations if disclosed.

Section 13(2)(n) – Decision affecting the applicant's rights

[46] Section 13(2)(n) says that a public body must not refuse to disclose "a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant" under s. 13(1). Section 13(2)(n) only applies to a record of a decision and the underlying reasons for that decision, not to all records related in any way to a decision.[43]

[47] The applicant raises s. 13(2)(n) and generally asserts that the order was a "decision" and therefore information related to the order cannot be withheld under s. 13(1). With respect to the applicant, s. 13(2)(n) does not have the broad scope of application which they ascribe to it. In this case, the applicant does not explain how the records relate to the exercise of a discretionary power or adjudicative function which affected the applicant's rights and I do not see that this is the case. Therefore, I find that s. 13(2)(n) does not apply in this case.

Conclusion, s. 13(1)

[48] I found above that some of the information the Authority withheld under s. 13(1) would reveal advice and recommendations developed for the Authority if it is disclosed. Further, I found that neither ss. 13(2) nor 13(3) apply to any of the information that reveals advice or recommendations.

[49] Therefore, for the reasons given above, I find that the Authority is authorized by s. 13(1) to withhold all of the information which I found above

[43] Order No. 218-1998, B.C.I.P.C.D. No. 11 at para. 32.

would reveal advice or recommendations if disclosed but must release the remaining information it withheld under s. 13(1)[44] to the applicant.[45]

Harm to Third-Party Business Interests, s. 21(1)

[50] The Authority withheld some information from an email sent by the Authority's Regional Manager to staff from the Authority and the Ministry (Regional Manager's email) and the entire content of the report under s. 21(1).

[51] Section 21(1) requires a public body to withhold information if its disclosure could reasonably be expected to harm the business interests of a third party. The following parts of s. 21(1) are relevant to consider in this case:

> 21(1) The head of a public body must refuse to disclose to an applicant information
>
> (a) that would reveal
>
> (i) trade secrets of a third party, or
> (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
>
> (b) that is supplied, implicitly or explicitly, in confidence, and
>
> (c) the disclosure of which could reasonably be expected to
>
> …
> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied[.]

[52] The principles for applying s. 21(1) are well established.[46] All three of the following criteria must be met in order for s. 21(1) to apply:

- Disclosure would reveal one or more of the types of information listed in s. 21(1)(a);
- The information was supplied, implicitly or explicitly, in confidence under s. 21(1)(b); and

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[44] I have highlighted the information the Authority is not authorized to withhold under s. 13(1) in the copy of the records delivered to the Authority alongside this order. The Authority's affidavit evidence briefly suggests that a small amount of the information in question may also be subject to s. 22(1) but the Authority does not address this in its submissions or indicate in its table of records or the records themselves that this information is being withheld under s. 22(1). In any event, based on all of the information and evidence before me I find that the Authority is not required to withhold this information under s. 22(1) because it has not established that the information is "personal information" as that term in defined in FIPPA, schedule 1.

[45] I have considered what the parties say about the Authority's exercise of discretion in withholding information under s. 13(1) but I do not find that the applicant has provided sufficient evidence or persuasive argument to establish that the Authority acted improperly or in bad faith in this case.

[46] Order F22-33, 2022 BCIPC 37 at para. 25.

- Disclosure of the information could reasonably be expected to cause one or more of the harms in s. 21(1)(c).

[53] The Authority makes submissions regarding each of these criteria, and I will discuss those submissions in more detail below. The applicant does not address how the Authority applied s. 21(1) to the information in dispute.

Type of Information - s. 21(1)(a)

[54] The Authority says that the information it withheld under s. 21(1) is "confidential business information" about third parties but it does not elaborate on this statement.

[55] Section 21(1), however, does not broadly apply to all information related to a third party's business interests. It only applies to the types of information listed in s. 21(1)(a).

[56] The Authority does not say that the information in dispute is "trade secrets of a third party" or that it relates to "labour relations" or is "scientific or technical information" of or about any third party. Based on my review, there is nothing to indicate that the information in dispute could be categorized as those types of information.[47]

[57] Therefore, I find that I only need to consider whether the information in dispute under s. 21(1) is "commercial" or "financial" information. While FIPPA does not define these terms, prior orders have considered them and discussed their meanings and scope of application.

[58] "Commercial" information is information that relates to a commercial enterprise, in the sense that the information is associated with the buying, selling or exchange of goods or services. "Commercial" information may also include information about a third party's methods of providing the services it has contracted to perform or marketed to current or prospective clients.[48] However, the information does not itself need to be proprietary in nature or have an independent market or monetary value.[49] "Financial" information is information that relates to prices charged for goods and services, assets, liabilities, expenses, cash flow, profit and loss data, operating costs, and financial resources or arrangements.[50] I apply these principles below in assessing the information in dispute under s. 21(1).

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[47] For a recent explanation of the meanings of "scientific" and "technical" in the context of s. 21(1)(a)(ii) see Order F24-55, 2024 BCIPC 65 at paras. 21 and 23.
[48] See, for example, Order F05-09, 2005 CanLII 11960 (BC IPC) at para. 18.
[49] Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 17; Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 63.
[50] Order F22-35, 2022 BCIPC 39 at para. 82; Order F22-63, 2022 BCIPC 71 at para. 33; Order F17-41, 2017 BCIPC 45 at para. 59.

[59] In the first place, I find that some of the information the Authority withheld under s. 21(1) is not "of or about" third parties but is contained in an appendix to the report that explains the definitions of epidemiological terms used in the report. I find that s. 21(1) clearly does not apply to this information.[51]

[60] In addition, the majority of the information withheld from the report concerns efforts to manage specific matters outside the usual scope of the third parties' business or is about the actions, decisions, and wellbeing of individuals and is not clearly related to a third party's business operations. I find that this information is not about the exchange, marketing, or provision of goods or services, the negotiation of service terms, funding or payment issues, or any other matters that could be considered "commercial" or "financial."

[61] Further, the Authority does not explain how the withheld information comes within the scope of s. 21(1)(a) but, as noted above, simply asserts the information is "confidential business information" and leaves the matter there. Taking all of the above together, I find that most of the information the Authority withheld from the report is not of a kind that is captured by s. 21(1)(a). Therefore, s. 21(1) does not apply to that information.[52]

[62] Notwithstanding the above, I find that a small amount of the information withheld from the report relates to the identities of contractors and the specific areas of responsibility delegated to those contractors. Some of the information is also factual details about how third parties staged and managed work camps and the locations and point-in-time populations of those work camps, or information about the movement of groups of employees between different work camps and work sites. I accept that all of this is information about the methods third party businesses employed in fulfilling their contractual obligations and constitutes commercial information about those third parties for purposes of s. 21(1)(a)(ii).[53]

[63] Turning to the Regional Manager's email, I also find that revealing the information the Authority withheld from it would reveal the methods employed by third parties in fulfilling their contractual obligations and the considerations which motivated decisions to choose specific methods at specific times. I find as well that this information would reveal the identities, scope of delegated responsibility, and reasoning of individuals tasked by the third parties with overseeing specific business-related matters. Given all of this, it is clear to me that the information the Authority withheld from the Regional Manager's email is commercial information about third parties for purposes of s. 21(1)(a)(ii).[54]

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[51] Records at p. 10.
[52] Records at pp. 2-9.
[53] Records at pp. 1-9.
[54] Records at p. 11.

[64] Based on the above, I am satisfied that some of the information in dispute under s. 21(1) is "commercial information" of or about a third party. Regarding the remaining information in dispute under that section, I find that it is not of a kind listed in s. 21(1)(a)(i) or (ii) and the Authority is not required by s. 21(1) to withhold it.

Was the information "supplied in confidence" - s. 21(1)(b)?

[65] The second step in the s. 21(1) analysis is to determine whether the third party commercial information in dispute was supplied to the Authority in confidence as required by s. 21(1)(b). This analysis has two parts. First, I must determine whether the information was "supplied" to the Authority. If I find that any of it was, then I must determine whether that information was supplied with an explicit or implicit expectation that the Authority would hold it in confidence.[55]

Was the information supplied?

[66] Examining the commercial information contained in the report, I find that the Authority has not provided sufficient evidence or persuasive argument establishing that it was supplied to the Authority. In this regard, the Officer's evidence is that the information severed from the report under s. 21(1) is "a combination of confidential business information … supplied to [the Authority] by [third parties] and the data [the Authority was] getting from public sources."[56]

[67] However, while the Officer says the "confidential business information" appears on nearly every page of the report, the Officer does not clearly explain which specific information severed from the report was supplied to the Authority and which information was gathered by the Authority from "public sources."[57] I also am not able to make this determination myself based on the content of the report or the other information and evidence provided by the Authority. Moreover, I find that the report itself indicates that at least some of the commercial information it contains was publicly available on a web page hosted and maintained by one of the third party businesses.[58]

[68] Given this, I find that the Authority has not established that the specific commercial information in the report was supplied to it as opposed to being gathered from publicly available sources. This is sufficient to find that s. 21(1)(b) does not apply to that information and I will not further consider whether s. 21(1) requires the Authority to withhold any information from the report.[59]

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[55] See Order F19-39, 2019 BCIPC 33 at para. 57.
[56] Officer's affidavit at para. 44.
[57] Officer's affidavit at para. 45, citing pages 1-4 and 6-8 of the report.
[58] Records at p. 1.
[59] For completeness, if I am wrong and the information in question was supplied to the Authority, the public availability of much of that information would lead me to find that it was not supplied with a reasonable expectation that the Authority would hold it in confidence.

[69] Turning to the commercial information in the Regional Manager's email, the Regional Manager provides affidavit evidence that this information was shared with them by a third party during the Regional Manager's regular employment duties with the Authority. While some of the Regional Manager's evidence on this point was provided *in camera*, and I am therefore restricted in what I can say about it here, I find the Regional Manager's evidence on this point to be reliable and consistent and accept that it establishes the commercial information in the Regional Manager's email was supplied to the Authority.

Was the information supplied "in confidence"?

[70] I find that the content of the Regional Manager's email clearly establishes that the commercial information it contains was supplied to the Authority with an express expectation that it would be held in confidence and there is nothing in the materials before me which casts any doubt on this conclusion. Therefore, I find that the information in the Regional Manager's email was supplied to the Authority in confidence and s. 21(1)(b) applies to it.

Reasonable expectation of harm - s. 21(1)(c)

[71] The final step in the s. 21(1) analysis is to determine whether disclosure of the disputed information could reasonably be expected to result in one or more of the harms described in s. 21(1)(c). The standard that the Authority must satisfy is a "reasonable expectation of harm"; this is a "middle ground between that which is probable and that which is merely possible."[60] The release of the information itself must give rise to a reasonable expectation of the relevant harm occurring.[61]

[72] The Authority raises s. 21(1)(c)(ii) and says that releasing the commercial information in the Regional Manager's email could reasonably be expected to result in similar information no longer being supplied to the Authority when it is in the public interest that similar information continue to be supplied.

[73] In support of this submission, the Regional Manager provides evidence about the work they routinely undertake to maintain relationships with stakeholders from various projects.[62] I accept that it is in the public interest for the Regional Manager, and the Authority more broadly, to cultivate and maintain the relationships and lines of communication the Regional Manager points to in

[60] *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 1080 at para. 52, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, and *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31.
[61] *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para. 43.
[62] Regional Manager's affidavit at paras. 11-12 and 20-21.

their evidence and receive information relevant to the Authority's public health mandate as a result of those relationships.

[74] Moreover, based on the Regional Manager's *in camera* evidence, I have no difficulty in concluding that releasing the commercial information severed from the Regional Manager's email could harm the ability of the Authority to maintain such relationships and, therefore, could reasonably be expected to result in similar information not being shared with the Authority in the future. On this basis, I find that releasing the commercial information severed from the Regional Manager's email could reasonably be expected to lead to the harm set out in s. 21(1)(c)(ii).

Conclusion, s. 21(1)

[75] For the reasons given above, I find that s. 21(1) requires the Authority to withhold the information the Authority severed from the Regional Manager's email but does not require the Authority to withhold any information contained in the report.

Unreasonable Invasion of Privacy, s. 22(1)

[76] Section 22(1) requires a public body to refuse to disclose information if disclosure would be an unreasonable invasion of a third party's personal privacy. In addition to withholding information from the report and the Regional Manager's email under s. 21(1), the Authority also applied s. 22(1) to withhold all the information severed from those records. As I found above that the Authority is required to withhold the information severed from the Regional Manager's email under s. 21(1), I will not consider whether the Authority is also required to withhold that same information under s. 22(1). Therefore, I will only consider below how the Authority applied s. 22(1) to withhold the report.

Personal information

[77] Since s. 22(1) only applies to personal information, the first step in the analysis is to determine whether the information in the report is personal information.

[78] Under schedule 1 of FIPPA,

> "personal information" means recorded information about an identifiable individual other than contact information; [and]
>
> "contact information" means 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[.]

[79] Therefore, "contact information" is not "personal information" under FIPPA. Whether information is contact information is context dependent.[63] Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.[64]

[80] The Authority says that all of the information in the report is the personal information of third parties. Essentially, the Authority submits that although the information in the report does not include names or other directly identifying details, the aggregate statistical information the report contains comes from cohorts with small enough sample sizes that a motivated third party could link the information in the report to individual members of those cohorts.

[81] The applicant submits that the Authority "has not provided detailed and convincing evidence that releasing the information [in the report] is likely to identify individuals" and therefore that the information in the report is not "personal information."

[82] In the first place, I find that much of the information in the report relates to businesses as opposed to individuals. It is well-established that information about a corporate entity or business is not "personal information" for purposes of FIPPA.[65] Therefore, I find that s. 22(1) does not apply to the information in the report which relates strictly to businesses and their operations, and I will not consider that information further.[66]

[83] I also find that some information in the report is section headings, footers, and information in an appendix to the report which defines terms used in the report. I find that none of this is information about identifiable individuals and therefore that it is also not "personal information."[67]

[84] Turning to the remaining information in the report, it is not clear to me how it could be used to identify individuals. In my view, it is aggregate information about population sizes and epidemiological matters that is not readily linkable to particular individuals. Moreover, while the Authority asserts that information in the report could be used to identify individuals, I find that it does not adequately explain how someone could do this.

[85] Rather, the sum total of the Authority's evidence on this point is contained in a statement by the Officer that the aggregate information "could identify individuals because of the combination of other information in the report, including the dates, locations of individuals and locations they travelled to."[68]

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[63] Order F20-13, 2020 BCIPC 15 at para. 42.
[64] Order F19-13, 2019 BCIPC 15 at para. 16.
[65] See, for example, Order 01-26, 2001 CanLII 21580 (BC IPC) at para. 15.
[66] See Records at pp. 1-9.
[67] Records at pp. 1-10.
[68] Officer's affidavit at para. 46.

[86] It is not apparent to me how this could occur based on the aggregate information in the report and I am not prepared to find that this aggregate information could be used to identify specific individuals based only on the brief statement to this effect in the Officer's affidavit. The Authority bears the burden of establishing that the information it withheld under s. 22(1) is "personal information", and I find that it has not provided sufficient evidence or persuasive argument showing that this is the case concerning the aggregate information in the report.[69]

[87] Taking all of this together, I find that none of the information in the report is "personal information" as that term is defined in FIPPA. Therefore, I find that s. 22(1) does not apply to that information and the Authority is not required to withhold it.

CONCLUSION

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

1. Subject to item 4, below, I confirm the Authority is authorized to withhold the information in dispute under ss. 13(1) and 14.

2. Subject to item 4, below, I confirm the Authority is required to withhold the information in dispute under s. 21(1).

3. The Authority is not required to withhold any of the information in dispute under s. 22(1).

4. The Authority is not authorized under ss. 13(1) or 14 or required under ss. 21(1) or 22(1) to withhold the information I have highlighted in green in the copy of the records delivered to the Authority alongside this order.[70] The Authority must disclose the highlighted information to the applicant.

[69] This conclusion is consistent with prior orders which have found that when asserting that information which does not contain names or other identifying details could be used to re-identify individuals, a public body must actually "explain the logic that leads to th[is] conclusion" and cannot merely speculate that re-identification is possible or even likely: See Order F23-72, 2023 BCIPC 85 at para. 61, citing Order F21-47, 2021 BCIPC 55 at para. 17.

[70] Records at pp. 1-10, 29, 31-32, and 35-37. Where I have drawn a highlighted "**X**" over a page or section of a page, the Authority must provide the applicant with all the information on that page or in that section.

5. The Authority must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the information described at item 4, above.

[89] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by September 9, 2024.

July 25, 2024

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

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