Order P25-04

SURREY FIRE FIGHTERS' ASSOCIATION, LOCAL 1271

Alexander Corley
Adjudicator

March 25, 2025

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Summary: An individual (applicant) requested access to their own personal information from the Surrey Fire Fighters' Association, Local 1271 (Union) under the *Personal Information Protection Act* (PIPA). The Union responded by providing some information to the applicant but withheld other information under various sections of PIPA. The adjudicator found that all the information in dispute was either not the applicant's own personal information or was otherwise exempt from disclosure. The adjudicator also found that the Union was required to further sever some documents and ordered the Union provide some additional information to the applicant.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003], c. 63, ss. 23(1) 23(3)(a), 23(4)(c), and 23(5).

INTRODUCTION

[1] Section 23(1) (access to personal information) of the *Personal Information Protection Act*[1] (PIPA), gives individuals the right to request access to their own personal information under the control of an organization, subject to any exceptions under ss. 23(3) and 23(4). Under s. 23(1), an applicant requested their own personal information from the Surrey Fire Fighters' Association, Local 1271 (Union).[2]

[2] In response, the Union provided some of the requested information to the applicant. The Union withheld other information on the basis that it either was not the applicant's own personal information for the purpose of s. 23(1) or that the Union was authorized or required to withhold the information under ss. 23(3)(a) (solicitor-client privilege) and 23(4)(c) (personal information about another individual).

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[1] SBC 2003, c. 63. Through the remainder of this order references to sections of an enactment are references to PIPA unless otherwise stated.
[2] There is no dispute that the Union is an "organization" for purposes of PIPA.

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

Preliminary issues

Alleged "mediation material" in applicant's submission

[4] The Union alleges that the applicant's submission includes "mediation material" and that I should not consider that aspect of the applicant's submission.

[5] The OIPC's guidance document *Instructions for Written Inquiries*[3] (Instructions) is clear that the Commissioner will not consider mediation material in reaching a decision and issuing an order. The Instructions explain that mediation material generally means "communications that relate to offers or attempts to resolve the matter during mediation." However, the Instructions also clarify that mediation material does not include an investigator's decision about the scope of the issues and documents that will proceed to inquiry.

[6] The applicant's submissions refer to communications between the parties and the OIPC investigator assigned to mediate this matter. The applicant included copies of those communications with their inquiry submission. Some of these communications contain the OIPC investigator's opinion, as expressed during mediation, on the merits of the Union's severing decisions. I find that these communications are "mediation material" and I will not consider them or what the applicant says about them further in this order.

[7] However, I find that other communications which form part of the applicant's submission only reproduce discussions with the investigator regarding the scope of the inquiry. Specifically, those communications are about which portions of the documents at issue the applicant requested proceed to inquiry. I find that these communications are not "mediation material" and therefore that it is appropriate for me to accept and consider them as part of the applicant's inquiry submission.

Scope of the inquiry and the documents in issue

[8] The Union says that prior to the commencement of this inquiry, the applicant had focused their request for review on the Union's decision to withhold information from only four pages of the 277-page documents package the Union provided to the applicant in response to the access request (documents

[3] Available at https://www.oipc.bc.ca/documents/guidance-documents/1658. See, specifically, pp. 6-7.

package).[4] Based on this, the Union says that when the applicant told the OIPC investigator that they were requesting an inquiry into the Union's decision to sever any information from the documents package this was an unreasonable expansion of the scope of this inquiry and was vexatious.[5] The Union submits that, in the interests of fairness, I should only consider the Union's severing regarding the four pages it references.[6]

[9] In response, the applicant provides some evidence that their original request for review was a request to review all severing in the documents package. Further, the applicant says that their desire that all the severing be reviewed remained consistent throughout mediation. However, the applicant also says that they have reconsidered their position and are no longer seeking to access a large portion of the information the Union has severed from the documents package.[7]

[10] The Union has provided fulsome submissions defending its decision to withhold all the information it has redacted from the documents package. Based on this, I find that any prejudice to the Union due to the misunderstanding between the parties regarding the anticipated scope of this inquiry has already occurred. Further, it is not clear to me based on the Union's submissions and evidence that any additional prejudice will be incurred by the Union if I proceed to consider those portions of the documents package the applicant contends remain in dispute between the parties.

[11] Therefore, I find that, other than the categories of documents and information the applicant agrees are no longer in dispute, all the information the Union has severed from the documents package is properly in dispute in this inquiry.

ISSUES

[12] In this inquiry, I must decide:

1. Whether s. 23(3)(a) authorizes the Union to withhold the information in dispute; and,

[4] Documents package at pp. 146-148 and 240.
[5] The Union also says that it notified the OIPC investigator of its objection regarding the scope of the documents at issue at the time the parties were reviewing and commenting on a draft of the investigator's Fact Report after the close of mediation.
[6] In the alternative, the Union requests that I accept further submissions from the parties regarding the proper scope of this inquiry. In the further alternative, the Union provides fulsome submissions and evidence regarding all the information it has severed from the documents package.
[7] I explain which documents the applicant is no longer seeking to access at para. 15 of this order.

2. Whether s. 23(4)(c) requires the Union to withhold the information in dispute.[8]

[13] Section 51(1) places the burden on the Union to show that the applicant has no right to access the information in dispute.

DISCUSSION

Background

[14] At all relevant times, the applicant was a member of the respondent Union. At some point, the applicant took an extended leave from their employment duties. Due to disagreement between the applicant and their employer regarding the applicant's fitness to return to work, the applicant filed a grievance against the employer. The documents containing the information in dispute relate to the applicant's and the employer's interactions with the Union, particularly regarding the Union's preparation and submission of the applicant's grievance.

Documents and information at issue

[15] The applicant no longer seeks to access the following classes of information and documents originally withheld by the Union:

1. information revealing only the identity of a particular legal assistant;[9] and
2. information contained in:
    a. correspondence between the Union and the applicant;[10]
    b. injury and incident reports or Workers' Compensation claim forms;[11]
    c. commendable performance letters from the applicant's employer;[12] or,

[8] The Notice of Inquiry lists the Union's application of s. *24*(4)(c) as the issue to be decided. However, I find this is clearly a typographical error and it is the Union's application s. *23*(4)(c) to the documents which is actually at issue between the parties. I make this finding based on the parties' submissions, and the fact that PIPA does not contain a section "24(4)(c)".
[9] From my review, I find this information appears at pp. 83, 108, 127, 150, 175, 185, 187, 192-193, 195, and 198 of the documents package.
[10] From my review, I find this information appears at pp. 2, 4-6, 8-9, 11, 13, 15, 17-23, 15-26, 185, 187-188, 220, 256-260, and 274 of the documents package.
[11] From my review, I find this information appears at pp. 31-32, 36-42, 45-48, 52, 59, 204, and 206 of the documents package.
[12] From my review, I find this information appears at pp. 57 and 61-62 of the documents package.

d. the applicant's work calendar.[13]

[16] Based on the above, I find only the following pages of the documents package contain information which remains in dispute: 30, 73-75, 78, 83, 85-87, 118, 122, 129-133, 142-143, 145-148, 180-184, 192-193, 196, 228-230, 232-236, 240, 244, 270, 272-273, and 276. Therefore, I will only consider the information in dispute withheld from those 44 pages.

[17] The documents containing this information are a mix of emails (some with attachments), grievance determination letters, interview and "call log" notes, and notes from the Union's meetings.

Is the information in dispute the applicant's own personal information?

[18] Section 23(1)(a) gives an individual the right to access their own personal information that is under the control of an organization, subject to the exceptions set out in ss. 23(2) through (5). Therefore, the first question to be answered is whether the information in dispute is the applicant's "personal information."

[19] Under s. 1, "personal information" means information about an identifiable individual and includes "employee personal information." However, "personal information" does not include "contact information" or "work product information," which are also defined in s. 1, as follows

> "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[; and],
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> "work product information" means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

[20] For the reasons that follow, I find that most, but not all, of the information in dispute is the applicant's own personal information. Much of this information is in notes taken during interviews between the applicant and either their employer or the Union, material from the Union's internal consideration of the applicant's grievance, and determination letters regarding the grievance. Some of the information is in communications where the Union discussed the circumstances and merits of the applicant's grievance with third parties. I find that all this information is the applicant's personal information because it is clearly about the applicant as an identifiable individual. I also find that none of this information is

[13] From my review, I find this information appears at p. 99 of the documents package.

the applicant's "contact" or "work product" information under the definitions set out above.

[21] As is discussed in greater detail below, I do not have the information the Union withheld under s. 23(3)(a) before me for my review. However, based on the Union's affidavit evidence and "table of privileged documents" (privilege table)[14] I am satisfied that the information the Union submits is subject to s. 23(3)(a) is also the applicant's own personal information.

[22] Notwithstanding the above, I find that a small amount of the information in dispute is contained in two "notices of hearing" regarding a traffic violation which the applicant witnessed but was not otherwise involved in.[15] I can see that these notices are attached to emails forwarded within the Union concerning the applicant's request to appear as a witness at a court hearing regarding the traffic violation. While it is clear to me that the emails attaching the notices contain the applicant's personal information because Union staff discuss the applicant in those emails, I do not see that the notices of hearing themselves contain any information about the applicant. I find the information in the notices is not the applicant's personal information and I will not consider it further for that reason.

Section 23(3)(a) – solicitor-client privilege

[23] Section 23(3)(a) says that an organization is not required to disclose an applicant's personal information if the information is protected by solicitor-client privilege. The Union has withheld information in dispute from 26 pages of the documents package pursuant to s. 23(3)(a).[16]

[24] In relation to s. 23(3)(a), solicitor-client privilege includes legal advice privilege and litigation privilege.[17] Only legal advice privilege is at issue in this inquiry.

Legal advice privilege applies to communications that,

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.[18]

[25] Furthermore, it is not only the direct communication of advice between solicitor and client that may be privileged. The "continuum of communications" related to legal advice, that would reveal the substance of the advice, attracts the

[14] See Union's Book of Documents, Tab 3.
[15] Pages 85-87 of the documents package.
[16] Pages 30, 129-133, 146-148, 180-184, 228-230, 232-236, 240, 272-273 and 276 of the documents package.
[17] Order P20-01, 2020 BCIPC 6 at para. 14.
[18] *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 837.

privilege.[19] The "continuum" includes internal client communications regarding received legal advice and its implications.[20] Information may also be privileged where releasing it would allow a member of the public to draw accurate inferences regarding the substance of legal advice sought and received within a solicitor-client relationship.

[26] Privilege is a right of the client, not of counsel. There are some circumstances where clients waive privilege and therefore s. 23(3)(a) will not apply. Privilege may be waived expressly or impliedly. Express waiver occurs when the client is aware of the privilege and demonstrates a clear intention that the privilege should no longer apply. Implied waiver occurs when there is no demonstrated intention to waive privilege, but fairness and consistency nonetheless require disclosure of the privileged material.[21] The party asserting waiver must provide clear and unambiguous evidence that privilege has been waived.[22]

Evidentiary basis, solicitor-client privilege

[27] The Union did not provide the OIPC with any of the information it withheld under s. 23(3)(a) for review in this inquiry. Instead, the Union provided affidavit evidence from its long-time external counsel (Lawyer) and its President, along with the privilege table.

[28] Section 38(1)(b) gives me, as the Commissioner's delegate, the power to order production of documents to review during an inquiry. However, given the importance of privilege I would only order production of documents being withheld under s. 23(3)(a) where absolutely necessary to decide the issues in dispute between the parties.

[29] The Union submits that the information and evidence it has provided is sufficient to support its claim that s. 23(3)(a) authorizes it to withhold the information in dispute under that section. The applicant takes no position regarding the sufficiency of the Union's s. 23(3)(a) evidence.

[30] I find the Union has provided sufficient evidence to allow me to determine whether s. 23(3)(a) applies to the information in dispute under that section. For this reason, it is not necessary for me to order production of the relevant documents under s. 38(1)(b). The Lawyer's evidence is that they are familiar with

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[19] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 [*Bilfinger*] at paras. 22-24. See also *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 [*Lee*] at paras. 32-33.
[20] *Bilfinger*, *ibid* at para. 24.
[21] See Order F23-53, 2023 BCIPC 61 at para. 71, citing *S & K Processors Ltd. v. Campbell Ave. Herring Producers Ltd.*, 1983 CanLII 407 (BCSC) at para. 6.
[22] See *Maximum Ventures Inc. v. de Graaf et al.*, 2007 BCSC 1215 [*Maximum Ventures*] at para. 40.

the full context of the information in dispute and were involved in nearly all the communications which the Union asserts are privileged. I accept the Lawyer's evidence and give it considerable weight because lawyers have a professional obligation to ensure that privilege is not improperly claimed.[23] In addition to the Lawyer's evidence, the President provides evidence about the communications which the Lawyer was not directly involved in. Finally, I also have the privilege table which provides a significant amount of background information and context for the relevant documents.

[31] On the basis of the above evidence, I will decide whether the Union is authorized to withhold the information in dispute under s. 23(3)(a).

Parties' submissions, solicitor-client privilege

[32] The Union says that it was in a solicitor-client relationship with the Lawyer's firm at all relevant times, and, relying on its affidavit evidence, submits that the documents containing the information in dispute under s. 23(3)(a) are a combination of:

> **Emails**, some between the Union and the Lawyer or the Lawyer's firm which were sent and received for the express purpose of requesting legal advice and providing the requested legal advice, or summarizing legal advice which had previously been provided verbally; some internal to the Union which relayed or summarized and discussed the received legal advice.[24] Some of these documents also contain additional information and notes added at a later time by members of the Union's executive.[25]
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> **A copy of a grievance determination letter** containing notes added by a member of the Union's executive around the time of a meeting with the applicant's employer.[26] The Union has disclosed the original content of the letter but withheld the additional notes as privileged. The Union's evidence is that the notes were not shared with the applicant, the employer, or other third parties but were subsequently shared with the Lawyer as part of a request for legal advice. The Union says that disclosing the content of the notes would reveal the substance of legal advice sought and received by the Union and further that some of the information withheld from the notes was directly copied and pasted from a summary document containing legal advice received by the Union.[27]

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[23] *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para. 86.
[24] Documents package at pp. 30, 129-133, 228-230, 232-236, and 272-273. See President's affidavit at paras. 10, 12-14, 26-28, and 31; Lawyer's affidavit at paras. 4-7 and 11-13.
[25] Documents package at pp. 131-133. See also President's affidavit at paras. 13-14; Lawyer's affidavit at para. 8.
[26] Documents package at pp. 146-148 and 276.
[27] President's affidavit at paras. 16-19 and 21-24; Lawyer's affidavit at paras. 9-10.

> **A memorandum** prepared by the Lawyer's firm at the request of the Union for legal advice respecting a matter related to the applicant.[28]
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> **A bullet point** in notes prepared by a Union executive summarizing a meeting between the Union and the employer.[29] The Union's evidence is that the bullet point refers to the Lawyer by name and summarizes legal advice previously received from the Lawyer's firm which was relevant to matters canvassed in the notes. The Union says this information was not shared with the employer during the meeting.[30]

[33] The President affirms that the Union and its legal counsel would have understood all the information the Union has withheld under s. 23(3)(a) to have been confidential at all relevant times.[31]

[34] In response, the applicant says they accept that some of the information in dispute may properly be subject to legal advice privilege. Specifically, the applicant says they do not dispute that the Union may be authorized to withhold information contained in "direct communication[s] between union executives and legal counsel [if those] communications were not shared with third parties."

[35] However, the applicant takes issue with the Union's assertion that it is authorized to withhold the notes added to the grievance determination letter.[32] In particular, the applicant questions whether the Union has provided sufficient evidence to establish who added the notes to the letter and that the notes were not shared with the employer or other third parties. I take the applicant's position on this point to be, broadly, that the Union may have waived privilege over the notes and that the notes should be disclosed in their entirety on that basis.

[36] In reply to the applicant, the Union repeats and clarifies its submission regarding who it says drafted the notes and the context in which the notes were drafted. Further, the Union submits that any argument by the applicant that the Union waived privilege over the information in dispute is purely speculative.

Analysis and conclusions, solicitor-client privilege

[37] Based on the Union's evidence, which I accept, I find that the Union was in a solicitor-client relationship with the Lawyer at all relevant times.[33] While some of the communications the Union asserts are subject to solicitor-client privilege

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[28] Documents package at pp. 180-184. See Lawyer's Affidavit at para. 14; President's affidavit at para. 32.
[29] Documents package at p. 240.
[30] President's affidavit at paras. 29-30.
[31] See President's affidavit at paras. 10, 12, 14, 18-19, 24, and 26-32.
[32] Documents package at pp. 146-148.
[33] Lawyer's affidavit at paras. 1 and 3.

may have occurred between the Union and other lawyers working at the Lawyer's firm, I find this does not affect my conclusion that the communications in issue occurred within the framework of an established solicitor-client relationship.

[38] As noted, the applicant says they do not dispute the Union's authority to withhold information contained in "direct communications" between the Union and its legal counsel so long as the information was not shared with any third parties. I find that the communications contained at pp. 30, 129-133 (except the hand written notes), 180-184, 228-230 (Emails 1 and 2), 232-233 (Emails 1 and 2), 234-236 (Emails 1, 2, and 4), 272-273, and 276 are no longer in dispute because the Union's evidence clearly establishes that they fall within the class of communications which the applicant accepts the Union is authorized to withhold under s. 23(3)(a).

[39] I find that the information contained at pp. 131-133 (handwritten notes), 228-230 (Email 3), 232-233 (Email 3), and 234-236 (Email 3) and the bullet point severed from p. 240 all fall within the "continuum of communications" as that principle has been set out by the courts. As noted above, the "continuum" includes internal client communications regarding received legal advice and its implications.[34] Here, I can see based on the Union's evidence that the communications referred to in this paragraph all involved a Union executive sharing received legal advice with other representatives of the Union in one form or another.[35] I also accept the Union's evidence that none of the information contained in those communications was shared with any third parties and I find the applicant has not established a firm basis on which to doubt the Union's evidence on this point. Taking all of this together, I find the Union is also authorized by s. 23(3)(a) to withhold this information.

[40] As a result of the above findings, the only information left for me to consider under s. 23(3)(a) is in the notes added to the copy of the grievance determination letter. There does not seem to be any real dispute between the parties that the notes reproduce legal advice obtained by the Union from the Lawyer.[36] The Lawyer's evidence, based on their review of the notes, is also that the notes contain passages directly copied and pasted from prior communications where the Lawyer provided legal advice to the Union.[37]

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[34] *Bilfinger*, *supra* note 19 at para. 24.
[35] See privilege table at entries for cited pages of the documents package. See also Lawyer's affidavit at paras. 8 and 11-12; President's affidavit at paras. 14 and 26-30.
[36] The Union's evidence also clearly establishes that the notes were later forwarded to the Lawyer as part of a request for additional legal advice: Lawyer's affidavit at para. 9; President's affidavit at para. 19.
[37] Lawyer's affidavit at para. 10. See also President's affidavit at paras. 21-23.

[41] As such, I find that the dispute between the parties regarding the notes boils down to the applicant's contentions that the Union's affidavit evidence does not satisfactorily establish that the Union intended the notes to be confidential or, alternatively, that the Union subsequently waived privilege over any legal advice contained in the notes.

[42] However, in contrast to what the applicant says, I find that the Union, by way of its President, has provided sufficient evidence to establish that it intended the notes to be confidential (i.e., for review only by the Union and its legal counsel) at the time they were drafted.[38]

[43] To establish a wavier of privilege, the applicant must provide me with "clear and unambiguous evidence" that privilege has been waived.[39] Here, I find that the applicant does not provide a sufficient evidentiary foundation for their claim that the Union may have shared the information in the notes with the employer but, instead, raises speculative scenarios and attempts to place the onus on the Union of affirmatively demonstrating that it did not waive privilege. Given this, I find the applicant has not met their burden of demonstrating the Union waived privilege over the confidential legal advice contained in the notes.

[44] Taking all of the above together, I find the Union is authorized to withhold all the information in dispute under s. 23(3)(a).

Section 23(4)(c) – personal information about another individual

[45] Under s. 23(4)(c), an organization must refuse to disclose information if the disclosure would reveal the personal information of anyone other than the applicant.

Positions of the parties, third-party personal information

[46] The Union relies on s. 23(4)(c) to withhold information in dispute from 16 pages[40] of the documents package and submits that the information it has withheld under s. 23(4)(c) is the personal information of individuals other than the applicant. Specifically, the Union says this information is:

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[38] President's affidavit at paras. 18 and 24. The applicant says that because the President cannot recall which specific member of the Union's executive drafted the notes this means the President's evidence that the notes were drafted by *a member* of the Union's executive is "hearsay" and I should not accept it on that basis. However, as an administrative tribunal, the OIPC is not bound by the strict rules of evidence and it is clearly open to me to accept evidence based on information and belief where, as I do with the President's evidence on this point, I find that evidence to be consistent and reliable: see Order P07-01, 2007 CanLII 44884 (BC IPC) at paras. 59-60.

[39] *Maximum Ventures, supra* note 22 at para. 40.

[40] Pages 73-75, 78, 83, 118, 122, 142-143, 145, 192-193, 196, 240, 244, and 270 of the documents package.

- Identifying information about third parties including their names;
- Statements made by the applicant about identifiable third parties;
- Statements made by representatives of the Union about identifiable third parties; and
- An identifiable third party's personal opinion.

[47] The Union also says that, when considered in its entire context, none of the information it has withheld under s. 23(4)(c) meets PIPA's definitions of "contact" or "work product" information.

[48] The applicant questions the scope of the information the Union has withheld under s. 23(4)(c). The applicant takes issue, generally, with the Union's position that a third party's name is, in and of itself, that third party's personal information on the basis that an individual's name does "not say anything 'about' the individual."

[49] The applicant also says the Union has interpreted prior OIPC orders about personal opinions too broadly. The applicant says the opinion information withheld by the Union should be disclosed because the opinion was provided in a professional setting. The applicant does not directly address whether any of the information the Union has withheld under s. 23(4)(c) is "contact" or "work product" information.

Analysis and conclusions, third-party personal information

[50] From my review of the information the Union has severed pursuant to s. 23(4)(c) it is clear to me that all of it is "about" individuals other than the applicant. This information includes statements third parties made about the applicant and statements the applicant made about third parties, so it is also the applicant's personal information but this does not impact my finding that all of the information is "about" third parties.

[51] I disagree with the applicant's position that an individual's name is not the individual's personal information. Past OIPC orders have consistently found that names constitute "personal information" under both PIPA and the *Freedom of Information and Protection of Privacy Act*, which contains a substantially similar definition of "personal information."[41]

[52] Moreover, from reviewing the information in dispute, I find that given the content of the information the Union has already disclosed to the applicant, releasing the names the Union has withheld under s. 23(4)(c) would reveal additional information about the named third parties. In my view, the applicant

[41] RSBC 1996, c. 165 at Schedule 1.

would easily be able to link those names to information already revealed in the documents package. I am not persuaded therefore that it would be appropriate to treat the names the Union has withheld from the documents differently than the other information redacted under s. 23(4)(c).

[53] Turning to the opinion information the Union has withheld, as noted above, the applicant says the opinion information should be disclosed because the opinion was provided in a professional, rather than a personal, context.

[54] It is true that PIPA's definition of "personal information" includes a clear carve-out for "work product information" as defined in the Act (see paragraph 19, above). However, there is no general rule that information about a person acting in a professional setting or expressed or gathered in a professional context is not "personal information" under PIPA.

[55] Rather, if information withheld under PIPA is "about an identifiable individual" other than the applicant, then s. 23(4)(c) will apply unless the information meets the strict definitions of "contact" or "work product" information.

[56] While the applicant takes issue with the Union relying on s. 23(4)(c) to withhold the opinion information, the applicant does not provide any serious foundation to ground a finding that the information is either "contact" or "work product" information. Considering the opinion information in the context in which it appears in the documents, I do not think that it is "contact" or "work product" information. I also find that revealing the opinion information would reveal information "about" the opinion holder in this case, namely their state of mind at a given time regarding a specific issue. On these bases, I find that the Union is required to withhold the opinion information under s. 23(4)(c).

[57] Finally, I find that none of the other third-party personal information in dispute meets PIPA's definitions of "contact" or "work product" information. Therefore, I find that s. 23(4)(c) also requires the Union to withhold all that information.

Section 23(5) – severance

[58] Section 23(5) says that if an organization can remove the information referred to in ss. 23(3)(a), (b), or (c), or 23(4) from a document that contains an applicant's personal information, the organization must provide the applicant with access to their personal information after the information referred to in ss. 23(3)(a), (b), or (c), or 23(4) is removed.

[59] I have found above that ss. 23(3)(a) and 23(4)(c) apply to all the information in dispute. Therefore, I will consider whether the documents can be further severed, and additional information provided to the applicant, without

revealing the information that I have found the Union is authorized or required to withhold.

[60] Courts have cautioned against severing documents containing information that is subject to solicitor-client privilege, going so far as instructing that "severance should only be considered when it can be accomplished without any risk that privileged information will be revealed or capable of ascertainment."[42] In this case I find, based on the Union's evidence, that it is not possible to further sever the information subject to s. 23(3)(a) in a way that would ensure no privileged information could be ascertained. Therefore, I find s. 23(5) does not require the Union to further sever the documents it has withheld information from under s. 23(3)(a).

[61] Turning to the information I found, under s. 23(4)(c), is the personal information of individuals other than the applicant, I find that in most cases the Union has already severed only the minimum amount of information necessary and has disclosed the remainder to the applicant. However, in a few cases I find that the Union could release more information to the applicant without revealing third-party personal information. Specifically, I find that a small amount of the information withheld from pp. 118, 143, 145, 240, and 270 is no longer personal information if the names of the individuals it is about are withheld.

[62] Therefore, I find that s. 23(5) requires the Union to further sever the documents and provide additional information to the applicant.[43]

CONCLUSION

[63] For the reasons given above, I make the following order under s. 52 of PIPA:

1. Subject to item 2, below, I confirm the organization's decision that it is authorized or required to withhold the information in dispute under ss. 23(3)(a) and 23(4)(c).

2. I require the organization to provide the applicant with the information I have highlighted in pink on a copy of pages 118, 143, 145, 240, and 270 of the documents provided to the Union alongside this order.

[42] *Lee*, *supra* note 19 at para. 40.
[43] I have highlighted the information I find the Union must disclose to the applicant in a copy of the documents provided to the Union alongside this order.

3. The organization must copy the OIPC's registrar of inquiries on its cover letter to the applicant, together with a copy of the pages it provides to the applicant in compliance with item 2, above.

[64] Under s. 53(1) of PIPA, the organization must comply with this order by **May 8, 2025**.

March 25, 2025

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

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