



Order F25-29

## UNIVERSITY OF BRITISH COLUMBIA

Emily Kraft  
Adjudicator

April 7, 2025

CanLII Cite: 2025 BCIPC 35  
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 35

**Summary:** An applicant requested that the University of British Columbia (UBC) provide him with access to records containing his personal information. UBC withheld the information in dispute under ss. 13 (advice or recommendations), 14 (solicitor-client privilege), and 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that s. 14 did not apply to any information in dispute and ordered UBC to disclose the information withheld under that section to the applicant. The adjudicator found that ss. 13(1) and 22(1) applied to some, but not all, of the information in dispute and ordered UBC to disclose the information it was not authorized or required to withhold under those sections. The adjudicator also found that UBC had not properly exercised its discretion under s. 13(1) and ordered UBC to reconsider its decision to withhold the information to which s. 13(1) applied.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13(1), 13(2)(a), 13(2)(d), 13(2)(n), 13(3), 14, 22(1), 22(2), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h), 22(4)(e), 65.2.

### INTRODUCTION

[1] The applicant, who is a former faculty member of the University of British Columbia (UBC), requested that UBC provide him with access to records containing his personal information. UBC provided the applicant with 97 pages of responsive records but withheld some information from the records under ss. 13(1) (advice or recommendations) and 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review UBC's decision. The applicant also complained to

the OIPC that UBC did not conduct an adequate search for records responsive to his request (OIPC File F23-94916). As a result of his complaint, UBC located an additional 130 pages of responsive records but withheld some information in those records under ss. 13, 14 (solicitor-client privilege), 15 (harm to law enforcement), and 22(1) of FIPPA.<sup>1</sup>

[3] During mediation, the applicant confirmed that he was not disputing the application of s. 22(1) to the information on page 14 of the records.<sup>2</sup> Mediation did not resolve the remaining issues and they proceeded to inquiry.

[4] During the inquiry, UBC withdrew its reliance on s. 13(1) to withhold the information on page 68 of the records and informed the OIPC and the applicant that it was instead applying s. 14 to that information. UBC also withdrew its reliance on s. 15. I conclude s. 15 is no longer in dispute.

## **PRELIMINARY MATTERS**

### **Information no longer in dispute**

[5] In his submission for this inquiry, the applicant says he is not interested in obtaining access to some of the s. 22(1) information that is only about other individuals and does not relate to him.<sup>3</sup> Accordingly, I find the following information is not in dispute because it does not relate in any way to the applicant:

- The names and other identifying information of UBC faculty members who failed to pay certain professional dues;<sup>4</sup> and
- The name and other identifying information of a UBC faculty member who submitted an expense report.<sup>5</sup>

[6] The remaining information withheld under s. 22(1) is still in dispute.

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<sup>1</sup> I recognize that the amended investigator's fact report and UBC's initial submission both say that the second release totaled 111 pages, but the entire records package before me totals 227 pages, so the second release must have totaled 130 pages.

<sup>2</sup> When I refer to page numbers in this order, I am referring to the numbers marked in the bottom right-hand corner of the pages.

<sup>3</sup> See applicant's response submission at pp 5, 7, 12, and 18. I note at p 12 of his submissions the applicant makes clear that he still disputes UBC's blanket redactions under s. 22(1) on pp 145-151 of the records.

<sup>4</sup> Records at pp 142-143 and 145.

<sup>5</sup> Records at pp 146-150.

**Affidavit evidence**

[7] In support of its submissions for this inquiry, UBC provided an affidavit sworn by its associate director of faculty relations as well as an affidavit sworn by a lawyer at the law firm that is representing UBC in this inquiry.

[8] The applicant challenges the affidavit evidence provided by UBC, saying that it is unreliable and that I should give it little weight.<sup>6</sup>

[9] I will consider UBC's affidavit evidence and determine what weight to give it in my analysis below.

**New issues*****Section 6(1) – adequate search***

[10] The applicant says repeatedly in his submission for this inquiry that UBC has not conducted an adequate search for records under s. 6(1) of FIPPA.

[11] Section 6(1) was not listed as an issue in the investigator's fact report or notice of inquiry. Previous OIPC orders have said that parties may only introduce new issues at the inquiry stage if they request and receive permission from the OIPC to do so.<sup>7</sup> The notice of inquiry, which was provided to both parties at the start of this inquiry, also states that parties may not add new issues into the inquiry without the OIPC's prior consent.<sup>8</sup> The applicant did not request permission from the OIPC to add s. 6(1) to this inquiry. I decline to add it.

[12] Further, the applicant's complaint about the adequacy of UBC's search for records under s. 6(1) is already being investigated in OIPC File F23-94916.<sup>9</sup> If the applicant has concerns about the outcome of that investigation, it is open to him to request a reconsideration of the investigator's decision.

***Sections 27 and 28 – collection and accuracy of personal information***

[13] In his submission for this inquiry, the applicant says that I should consider ss. 27 and 28 of FIPPA, which are about the collection and accuracy of personal information.<sup>10</sup> He says there has been "considerable misuse and misinformation regarding the applicability of [his] individual data" and that the information held by UBC likely has inaccuracies or falsifications.<sup>11</sup>

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<sup>6</sup> Applicant's response submission at p 8 and applicant's additional response submission dated February 6, 2025 at p 1.

<sup>7</sup> Order F16-34, 2016 BCIPC 38 at para 9.

<sup>8</sup> Revised notice of inquiry, November 8, 2024.

<sup>9</sup> Investigator's fact report (amended) at para 5.

<sup>10</sup> Applicant's response submission at p 28.

<sup>11</sup> Applicant's response submission at p 21.

[14] Again, ss. 27 and 28 were not listed in the investigator's fact report or notice of inquiry, and the applicant did not request permission from the OIPC to add these issues to this inquiry. I decline to add them.

[15] If the applicant has concerns about UBC's collection of his personal information or the accuracy of his personal information in the custody of UBC, the appropriate course of action is to first attempt to resolve his complaint directly with UBC. If the complaint does not get resolved, then the applicant can make a complaint to the OIPC.<sup>12</sup>

### **Charter issues**

[16] The applicant says in his inquiry submission that "it should be plainly obvious that open access to one's personal information adheres to the *Canadian Charter of Rights and Freedoms*." He also says that the Commissioner must exercise "statutory discretion in accordance with *Charter* protections."<sup>13</sup>

[17] It is not clear to me what the applicant means by this and how it is relevant to the issues to be decided in this inquiry. In any event, there were no *Charter* issues listed in the investigator's fact report or notice of inquiry and the applicant did not request permission from the OIPC to add them to this inquiry. I decline to add any *Charter* issues.

### **Issues and allegations outside the Commissioner's jurisdiction**

[18] The applicant raises a number of issues and allegations in his inquiry submission that are outside of my jurisdiction. For instance, he makes lengthy submissions about how the Provincial Health Services Authority (PHSA) mishandled a harassment investigation against him and describes how individuals at the PHSA and UBC have mistreated or wronged him over the years. He also says that the law firm representing UBC in this inquiry is in a conflict of interest.<sup>14</sup>

[19] Although I have read and considered the parties' entire submissions, I will not make any findings about the merits of the allegations described above, as they are outside of my jurisdiction as the Commissioner's delegate. I will only comment on the portions of the parties' submissions that are relevant to the issues I must decide, as listed below.

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<sup>12</sup> See the OIPC's guidance document titled, *Guide to OIPC Processes (FIPPA)* at pp 6-8: <https://www.oipc.bc.ca/documents/guidance-documents/1519>.

<sup>13</sup> Applicant's response submission at p 22.

<sup>14</sup> Applicant's response submission at p 25.

## ISSUES

[20] The issues I must decide in this inquiry are as follows:

1. Is UBC authorized to refuse to disclose the information in dispute under ss. 13(1) and 14?
2. Is UBC required to refuse to disclose the information in dispute under s. 22(1)?

[21] Under s. 57(1), UBC has the burden of proving that it is authorized to refuse to disclose the information in dispute under ss. 13(1) and 14. Under s. 57(2), the applicant has the burden of proving that disclosing any personal information in dispute would not be an unreasonable invasion of a third party's personal privacy under s. 22(1).<sup>15</sup> However, UBC has the initial burden of proving the information it is withholding under s. 22(1) is personal information.<sup>16</sup>

## DISCUSSION

### Background

[22] The applicant is a former faculty member of UBC. The applicant's appointment at UBC was conditioned upon him maintaining part of the funding for his salary and benefits from an external (i.e., non-UBC) source. For many years, the external portion of the applicant's salary and benefits had been funded by PHSA.<sup>17</sup>

[23] In late 2022, PHSA informed UBC that it was no longer funding the applicant's salary or benefits.<sup>18</sup>

[24] As a result, UBC determined that the criterion to maintain the applicant's appointment with UBC was no longer met, and in early 2023, UBC provided the applicant with a one-year notice of termination of his appointment.<sup>19</sup>

### Records in dispute

[25] The responsive records consist of emails and attachments exchanged among UBC employees and between UBC employees and PHSA employees. UBC disclosed most of the information in the records to the applicant.

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<sup>15</sup> Schedule 1 of FIPPA says that a "third party" in relation to a request for access to a record or for correction of personal information means any person, group of persons or organization other than the person who made the request, or a public body.

<sup>16</sup> Order 03-41, 2003 CanLII 49220 (BCIPC) at para 10.

<sup>17</sup> UBC's initial submission at paras 10-11. Also see p 161 of the records (this page was fully disclosed to the applicant).

<sup>18</sup> Records at p 226 (this page was fully disclosed to the applicant).

<sup>19</sup> UBC's initial submission at paras 12-13.

## Section 14 – solicitor-client privilege

[26] UBC is relying on s. 14 to withhold a portion of page 68, as well as the entirety of pages 100-107 and 152-158 of the records.

[27] Section 14 permits a public body to refuse to disclose information that is subject to solicitor-client privilege. This section encompasses both legal advice privilege and litigation privilege.<sup>20</sup> UBC submits that legal advice privilege applies to the records in dispute under s. 14.<sup>21</sup>

[28] In order for legal advice privilege to apply, there must be:

1. a communication between solicitor and client (or their agent);
2. that entails the seeking or giving of legal advice; and
3. that is intended by the solicitor and client to be confidential.<sup>22</sup>

[29] Courts have found that legal advice 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.<sup>23</sup> The continuum also covers communications relating to the implications of legal advice once it is received by the client. For instance, legal advice privilege applies to internal memoranda of the client which relate to the legal advice received and discuss its implications.<sup>24</sup>

[30] Further, legal advice privilege applies to communications involving a lawyer’s support staff and communications dealing with administrative matters if the communications were made with a view to obtaining legal advice.<sup>25</sup>

### ***Evidentiary basis for deciding UBC’s privilege claims***

#### *Affidavit evidence*

[31] With the exception of page 68 of the records, UBC did not provide the information withheld under s. 14 for my review. Instead, it relies on affidavit evidence to support its privilege claims.

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<sup>20</sup> *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 26 [College].

<sup>21</sup> UBC’s initial submission at paras 31-32 and 38-39.

<sup>22</sup> *Solosky v The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at p 837.

<sup>23</sup> *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83; *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 42.

<sup>24</sup> *Bilfinger Berger (Canada) Inc. v Greater Vancouver Water District*, 2013 BCSC 1893 at para 24.

<sup>25</sup> *Descôteaux et al v Mierzwinski*, 1982 CanLII 22 (SCC) at p 893.

[32] Past court cases and OIPC orders have discussed the evidence required to establish solicitor-client privilege in the absence of the records. Although there are no steadfast rules and each case depends on its own facts, some general rules have been established, including that:

- a party claiming privilege must list each disputed record separately and provide, without revealing privileged information, a description of the record in sufficient detail to allow one to assess the claim of privilege;
- the description of the record should include the date it was created or sent, the type of communication (e.g., “email”) and the names of the author and the recipient(s);
- in addition to a proper description of the disputed records, the party claiming privilege must provide evidence to substantiate the privilege claim;
- ideally, affidavit evidence in support of a privilege claim should avoid hearsay and come from an affiant with direct knowledge of the disputed records; and
- it is helpful, and in some cases even necessary, to have affidavit evidence from a lawyer, who is an officer of the court and has a professional duty to ensure that privilege is properly claimed.<sup>26</sup>

[33] In UBC’s initial submission, it provided one affidavit, which was sworn by its associate director of faculty relations (Associate Director).

[34] Based on my review of the Associate Director’s evidence and UBC’s initial submission, I determined UBC had not provided a sufficient evidentiary foundation for me to decide if the information in dispute is subject to solicitor-client privilege. Specifically, the Associate Director did not list or describe the records in dispute under s. 14 or explain how privilege applied on a document-by-document basis. She also did not explain whether she was a lawyer or whether she had any direct knowledge of the information withheld under s. 14.

[35] Given the importance of solicitor-client privilege to the functioning of the legal system, I wrote to UBC and offered it an opportunity to provide further s. 14 evidence and submissions. UBC responded by providing an affidavit from an associate lawyer at the law firm that is representing UBC in this inquiry (UBC Lawyer). The UBC Lawyer’s affidavit includes a table of records that describes the records in dispute under s. 14, including the type of communication, the date, and the names of the people involved in the communication.

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<sup>26</sup> *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at paras 76-93 and Order F20-16, 2020 BCIPC 18 at paras 8-10.

[36] I have reviewed the additional affidavit evidence, and I am satisfied that I now have sufficient information to decide whether s. 14 applies.

[37] I recognize that s. 44(1)(b) gives me, as the Commissioner's delegate, the power to order production of records over which solicitor-client privilege is claimed. The court has a similar discretion. However, the preference and practice in civil litigation, which OIPC inquiries follow, is to proceed on the basis of affidavit evidence unless it is absolutely necessary to review the records in order to fairly decide the issue.<sup>27</sup>

[38] The parties' submissions and evidence do not establish that it is necessary for me to review the records in order to fairly decide the issue. As stated above, I am satisfied that I have sufficient information to decide UBC's privilege claims without reviewing the records. Therefore, I conclude it is not appropriate in this case to order production of the records under s. 44(1)(b).<sup>28</sup>

*Duplicate copies of s. 14 records inadvertently disclosed*

[39] Based on my review of the records in dispute and UBC's affidavit evidence describing the records being withheld under s. 14, it appeared to me that duplicate copies of pages 100-105 of the records had been disclosed on other pages of the records in dispute. I wrote to UBC about this matter on an *in camera* basis, and it confirmed that duplicate copies of pages 100-105 were in fact disclosed on other pages of the records in dispute.<sup>29</sup> UBC says this disclosure was inadvertent and it is maintaining its claim of privilege over pages 100-105.

[40] I cannot say which pages are the already-disclosed duplicates of pages 100-105 without revealing the information in dispute. However, I have reviewed the duplicates, and I will assess UBC's claim of privilege over pages 100-105 based on my review.

***Parties' submissions***

*UBC's initial submission*

[41] As mentioned above, UBC provided two affidavits in support of its s. 14 claims: one sworn by its associate director of faculty relations (Associate Director), and one sworn by a lawyer at the law firm that is representing UBC in this inquiry (UBC Lawyer). According to the affidavits, neither the Associate

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<sup>27</sup> *Keefer Laundry Ltd. v Pellerin Milnor Corp. et al.*, 2006 BCSC 1180 [*Keefer Laundry*] at para 74; *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 at para 68.

<sup>28</sup> For a similar approach, see Order F22-04, 2022 BCIPC 4 at paras 16-25.

<sup>29</sup> See UBC's emails dated February 25, 2025, and March 6, 2025, in response to my *in camera* letters of February 10, 2025 and March 3, 2025.



Director nor the UBC Lawyer had any direct involvement in the records at issue. However, they both depose that they have reviewed the records in dispute.<sup>30</sup>

[42] The table of records that is attached to the UBC Lawyer's affidavit describes the records in dispute under s. 14 as follows:

- Page 103: An email dated March 30, 2022, from UBC's director of administration, department of pathology and laboratory medicine (UBC Director of Administration) to a PHSA human resources employee (PHSA HR Employee) seeking legal advice regarding the applicant's appointment.
- Page 68: An email dated April 7, 2022, from the PHSA HR Employee to the UBC Director of Administration for the purposes of communicating legal advice from "PHSA legal counsel"<sup>31</sup> on their interpretation of obligations surrounding the applicant's appointment.
- Pages 100-102 and 104-105: Emails dated April 19, 2022, between the UBC Director of Administration and UBC's director of human resources (UBC HR Director) for the purpose of discussing legal advice received from PHSA regarding the applicant's appointment. The table of records says that these pages also contain a copy of the legal advice provided on page 68.
- Pages 106-107: Emails dated July 15, 2022, to July 19, 2022, between the UBC HR Director and senior legal counsel for the PHSA (PHSA Lawyer) clarifying advice on the legal status of the applicant's appointment and respective obligations.
- Pages 153, 156, and 157: Emails dated November 1, 2022, between the UBC HR Director and the PHSA Lawyer regarding legal considerations for the applicant's appointment and intended course of action.
- Pages 152, 154, 155, and 158: Emails dated November 3, 2022, between the UBC Director of Administration and the UBC HR Director regarding PHSA's legal advice, legal obligations and intended course of action related to the applicant's appointment.

[43] UBC explains that the PHSA Lawyer who is involved in some of the disputed emails provides internal legal advice to PHSA. It says that UBC and PHSA had a joint interest in the applicant's appointment at UBC, since they both contributed funding to the applicant and the applicant's appointment was conditioned on the applicant maintaining funding from PHSA. It says that, in

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<sup>30</sup> Associate Director's affidavit at para 10; UBC Lawyer's affidavit at para 3.

<sup>31</sup> The UBC Lawyer does not name this individual in her affidavit or table of records.

order to “properly make a decision about the applicant’s academic appointment and funding, UBC sought advice from PHSA under a common interest.”<sup>32</sup>

[44] The UBC Lawyer deposes that UBC employees requested “information and advice from PHSA and their legal counsel regarding the applicant’s appointment.”<sup>33</sup> She deposes that the withheld records “either contain legal advice from PHSA regarding their common interest in the applicant’s appointment or are part of the continuum of communications regarding UBC employees seeking or receiving legal advice under a common interest.”<sup>34</sup>

[45] The Associate Director deposes that, in order to confirm that the applicant was still eligible to hold his appointment at UBC, “UBC requested information and advice from PHSA and their legal department.”<sup>35</sup> She says that, “to properly manage the applicant’s appointment, UBC and PHSA had to share their own opinions and legal advice.”<sup>36</sup> She says that the records in dispute contain legal advice from the PHSA.<sup>37</sup>

[46] UBC submits that the withheld records are “subject to solicitor-client privilege under a common interest privilege between UBC and PHSA.”<sup>38</sup>

#### *Applicant’s response submission*

[47] The applicant says that the communications in dispute are between persons who have no solicitor-client relationship.<sup>39</sup> He says that an in-house lawyer from the PHSA may correspond with individuals from external public bodies, but the fact that she is a lawyer alone does not mean that solicitor-client privilege applies.<sup>40</sup>

#### *UBC’s reply submission*

[48] In reply, UBC reasserts that the withheld information is covered by common interest privilege.<sup>41</sup>

### ***Analysis and findings***

[49] Before I consider whether legal advice privilege applies to the records in dispute, I will first address UBC’s arguments about common interest privilege.

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<sup>32</sup> UBC’s initial submission at paras 37-38.

<sup>33</sup> UBC Lawyer’s affidavit at para 5.

<sup>34</sup> UBC Lawyer’s affidavit at para 8.

<sup>35</sup> Associate Director’s affidavit at para 12.

<sup>36</sup> Associate Director’s affidavit at para 13.

<sup>37</sup> Associate Director’s affidavit at para 14.

<sup>38</sup> UBC’s initial submission at para 38.

<sup>39</sup> Applicant’s response submission at p 3.

<sup>40</sup> Applicant’s response submission at p 8.

<sup>41</sup> UBC’s reply submission at para 7.

[50] Contrary to what UBC's submissions seem to suggest, common interest privilege is not a separate type of privilege. The term common interest privilege refers to an exception to the general rules of waiver. Usually, disclosure of privileged information to persons outside the solicitor-client relationship constitutes a waiver of privilege.<sup>42</sup> However, if the persons outside the solicitor-client relationship had a sufficient common interest with the client, then privilege is not waived.<sup>43</sup> Therefore, privilege must exist in the first place before common interest privilege can arise.<sup>44</sup>

[51] I will first consider whether legal advice privilege applies to each record in dispute. If it does, I will then consider whether that privilege was waived and whether the common interest exception to waiver applies.

*Page 103*

[52] As explained above, a duplicate copy of this page was disclosed elsewhere the records. Based on my review of the duplicate copy, I find the UBC Lawyer's description of this page in her affidavit is inaccurate. Contrary to what the UBC Lawyer says, I find that page 103 is an email from the UBC Director of Administration to the PHSA HR Employee where the Director of Administration is expressing confusion about some invoices that UBC received from PHSA and asking the PHSA HR Employee to send her a copy of a certain document. It is clearly not a confidential communication between solicitor and client for the purposes of seeking or giving legal advice, nor does it reveal any such communication. I find that s. 14 does not apply.

*Page 68*

[53] UBC provided the information in dispute on this page for my review. Based on my review, I can see that this is an email from the PHSA HR Employee to the UBC Director of Administration in response to her email expressing confusion about some PHSA invoices and asking for a copy of a certain document, described above. In this email, the PHSA HR Employee quotes a message from someone or something she refers to as "PHSA legal."<sup>45</sup> The quoted message, which was withheld under s. 14, is an explanation about the invoices followed by a request for direction from UBC.

[54] In its written submissions, UBC says that this information is "a written communication, it is of a confidential character, it is between the clients, PHSA and UBC, and the PHSA legal advisor, and the communication is made for the

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<sup>42</sup> *Hainan Dehong Real Estate Development Corporation v WestBay Partners*, 2022 BCSC 24 at para 56.

<sup>43</sup> *Maximum Ventures Inc. v De Graaf*, 2007 BCCA 510 (CanLII) at para 14

<sup>44</sup> *Ross v Bragg*, 2020 BCSC 337 at para 22.

<sup>45</sup> UBC does not explain who or what "PHSA legal" is.

purpose of seeking, formulating or giving legal advice.”<sup>46</sup> Based on this explanation, my understanding is that UBC is claiming that it is a client of PHSA’s legal counsel, and the withheld information on this page is a confidential communication between UBC and PHSA’s legal counsel for the purposes of seeking or giving legal advice.

[55] Based on my review of this communication, I am not persuaded that it entails the seeking or giving of legal advice. Rather, based on the surrounding context, I find it is information that the entity called “PHSA legal” conveyed to the PHSA HR Employee who in turn relayed it to the UBC Director of Administration to address her confusion about the invoices UBC had been billed. Further, as I will explain in more detail in paragraphs 61-70 below, I find that UBC’s evidence does not establish that UBC was a client of PHSA’s legal counsel, so the basis for its privilege claim over this communication is not made out.

[56] Although UBC did not argue that the withheld information on this page is legal advice that PHSA received from its legal counsel and then later shared with UBC, I have also considered that possibility. However, in my view, the evidence is too vague to support such a finding. For instance, UBC’s evidence does not establish that the withheld information on this page is a communication from a lawyer. UBC does not name the individual whose message is quoted on this page, and the records themselves only indicate vaguely that the message came from “PHSA legal” which I conclude refers to PHSA’s legal department as a whole, which presumably includes both lawyers and non-lawyer support staff. I recognize that the UBC Lawyer’s affidavit says that the information on this page communicates “legal advice from PHSA legal counsel,” but it is not clear to me how the UBC Lawyer would know that this communication came from PHSA’s legal counsel given that she was not involved in the communication and it is not apparent on the face of the records that the communication came from a lawyer. The UBC Lawyer does not explain. I find UBC’s evidence does not establish that the information on this page reveals legal advice that PHSA received from its legal counsel.

[57] I conclude that s. 14 does not apply.

*Pages 100-102 and 104-105*

[58] Duplicate copies of these pages were disclosed elsewhere in the records. Based on my review of the duplicates, and contrary to the UBC Lawyer’s description of these pages, I find that pages 100-102 and 104-105 mostly<sup>47</sup> consist of emails between UBC employees about arranging meetings with each

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<sup>46</sup> UBC’s initial submission at para 38.

<sup>47</sup> These emails include a duplicate copy of the email withheld on page 68, which is not about arranging meetings or locating documents, but nonetheless is not subject to legal advice privilege for the reasons above.

other and locating certain documents. They do not discuss or reveal any legal advice. I find that s. 14 does not apply.

*Pages 106-107, 153, 156, and 157*

[59] UBC did not provide me with an unredacted copy of these pages, and it does not appear that any duplicate copies of these pages were disclosed in the records. Therefore, I will assess UBC's claim of privilege over these pages using the affidavit evidence it provided.

[60] According to the UBC Lawyer's affidavit, pages 106-107, 153, 156, and 157 are emails between the UBC HR Director and the PHSA Lawyer. I understand that UBC is claiming privilege over these emails on the basis that they are communications for the purpose of seeking or giving legal advice between UBC as the client and the PHSA Lawyer as UBC's lawyer.

[61] For the reasons that follow, I am not satisfied that there was a solicitor-client relationship between UBC and the PHSA Lawyer at the time of these communications, so legal advice privilege does not apply.

[62] Whether a solicitor-client relationship exists is a question of fact, where the overarching issue is whether a reasonable person in the position of a party with knowledge of all the facts would reasonably form the belief that the lawyer was acting for a particular party.<sup>48</sup>

[63] The PHSA Lawyer is in-house counsel for PHSA. Therefore, it seems to me that, in general, the PHSA Lawyer's only client is PHSA. However, as I explain below, I recognize it is still possible for a solicitor-client relationship to exist between the PHSA Lawyer and someone outside of PHSA if the evidence establishes that is the case.

[64] In *R v Campbell*<sup>49</sup> (*Campbell*), the Supreme Court of Canada found that legal advice provided by a Department of Justice lawyer to an RCMP officer was protected by privilege. In arriving at this conclusion, the court recited with approval the following "functional definition" of the conditions precedent to establishing privilege:

Where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived.<sup>50</sup>

<sup>48</sup> *Yen v Ghahramani*, 2024 BCSC 1405 at para 21.

<sup>49</sup> 1999 CanLII 676 (SCC), [1999] 1 SCR 565.

<sup>50</sup> *Ibid* at para 49.

[65] The court said that, just because the RCMP officer was not an agent of the Department of Justice, that did not mean that a solicitor-client relationship could not exist between the Department of Justice lawyer and the RCMP officer.<sup>51</sup> The court said that, in seeking legal advice from a lawyer, the RCMP officer satisfied the conditions precedent to establishing privilege.<sup>52</sup>

[66] Based on the court's findings in *Campbell*, I accept that, even though UBC is not an agent of PHSA, it is still possible for a solicitor-client relationship to exist between the PHSA Lawyer and UBC. However, there is certainly no evidence here of an ongoing solicitor-client relationship between UBC and the PHSA Lawyer at all times and for all purposes. Rather, in order for UBC to prove its claim of privilege over these specific communications with the PHSA Lawyer, UBC must satisfy the conditions precedent to establishing privilege, that is, that UBC sought legal advice from the PHSA Lawyer in her capacity as such.

[67] The UBC Lawyer deposes that UBC requested "information and advice from PHSA and their legal counsel regarding the applicant's appointment."<sup>53</sup> Similarly, the Associate Director deposes that UBC requested "information and advice from PHSA and their legal department."<sup>54</sup> The fact that UBC sought "information and advice" is not sufficient to establish a solicitor-client relationship. UBC must provide evidence that it sought *legal advice from a lawyer in their capacity as such*.

[68] The UBC Lawyer describes pages 106-107 as emails between UBC's HR Director and the PHSA Lawyer "clarifying advice on legal status of applicant's appointment and respective obligations." The UBC Lawyer does not specify whose advice is being discussed, whether UBC sought legal advice from the PHSA Lawyer, or whether the PHSA Lawyer was providing legal advice to UBC about the applicant's appointment.

[69] The UBC Lawyer describes pages 153, 156, and 157 as emails between UBC's HR Director and the PHSA Lawyer "regarding legal considerations for applicant's appointment and intended course of action." Again, the UBC Lawyer does not say whether UBC sought legal advice from the PHSA Lawyer or whether the PHSA Lawyer was providing legal advice to UBC about the

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<sup>51</sup> *Ibid* at para 54. The court in *Campbell* considered *Girouard v Canada (Attorney General)*, 1982 CanLII 770 (BCSC), where the BC Supreme Court rejected counsel's argument that a police officer was an agent of the Attorney General and therefore solicitor-client privilege applied to a communication between the police officer and Crown counsel (whose client is the Attorney General). The BC Supreme Court found that a police officer is not an agent of the Attorney General, so solicitor-client privilege did not apply. The court in *Campbell* disagreed with the BC Supreme Court's analysis and found that an agency relationship is not essential to the creation of solicitor-client privilege.

<sup>52</sup> *Ibid* at para 54.

<sup>53</sup> UBC Lawyer's affidavit at para 5.

<sup>54</sup> Associate Director's affidavit at para 12.

applicant's appointment and respective obligations. Rather, I think the description of these emails could reasonably be interpreted as meaning that the UBC HR Director was informing the PHSA Lawyer about UBC's own legal considerations and intended course of action regarding the applicant's appointment.

[70] In my view, in order to establish a solicitor-client relationship, UBC would need to provide clear evidence that UBC sought legal advice from the PHSA Lawyer in her capacity as a professional legal advisor. I find that UBC's evidence falls short.

[71] I have also considered whether UBC is claiming that pages 106-107, 153, 156, and 157 reveal legal advice that the PHSA Lawyer provided to her client, PHSA, which was later shared with UBC. However, I find that UBC's evidence does not support such a claim. As discussed above, the UBC Lawyer's affidavit only says that "advice" and "legal considerations" were discussed in these emails – in my view, this description is too vague to establish that the emails reveal legal advice that was provided by the PHSA Lawyer to PHSA and then shared with UBC.

[72] I conclude that s. 14 does not apply to pages 106-107, 153, 156, and 157.

*Pages 152, 154, 155, and 158*

[73] UBC did not provide me with an unredacted copy of these pages, and I do not see any duplicate copies of these pages disclosed in the records. Therefore, I will assess UBC's claim of privilege over these pages using the affidavit evidence it provided.

[74] According to the UBC Lawyer's affidavit, pages 152, 154, 155, and 158 are emails between the UBC Director of Administration and the UBC HR Director "regarding PHSA legal advice, legal obligations and intended course of action related to applicant's appointment."

[75] The basis of UBC's claim of privilege over these emails appears to be that they are internal client communications that reveal privileged communications between UBC and the PHSA Lawyer; however, as I found above, UBC has failed to establish that the communications between UBC and the PHSA Lawyer were privileged in the first place because it has not proven that a solicitor-client relationship existed. UBC's evidence is also too vague to establish that any of the withheld information reveals legal advice that PHSA received from its legal counsel and then later disclosed to UBC. I find s. 14 does not apply to pages 152, 154, 155, and 158.

[76] Since UBC has not established that legal advice privilege applies to the records in dispute, it is not necessary to consider waiver or the common interest exception to waiver.

***Inaccurate affidavit evidence and s. 65.2 of FIPPA***

[77] The applicant raises s. 65.2 FIPPA, which makes it an offence to, for example, wilfully make a false statement to, or mislead or attempt to mislead the Commissioner.<sup>55</sup>

[78] The Attorney General, not the OIPC, is responsible for prosecuting offences under s. 65.2 of FIPPA, and the courts are responsible for deciding those matters. I have no authority to issue any orders for breaches of s. 65.2.<sup>56</sup> However, previous OIPC orders have stated that the role of the OIPC is to inform the Attorney General of any cases that may warrant commencing a prosecution under these offence provisions and to provide any relevant evidence.<sup>57</sup>

[79] I found above that the UBC Lawyer's affidavit contains inaccurate statements about the records over which UBC has claimed privilege. However, I find that does not meet the very high bar required to ground liability under s. 65.2.

[80] Section 65.2 requires a person to *wilfully* make a false statement to, or mislead or attempt to mislead the Commissioner. The term "wilfully" in FIPPA's offence provisions was recently considered in Order F25-01.<sup>58</sup> In that order, the adjudicator noted that the word "wilfully" is not defined in FIPPA and there is no jurisprudence yet on what the word "wilfully" means in this context. The adjudicator considered *Duncan v Lessing*,<sup>59</sup> where the BC Court of Appeal said that the word "wilfully" is usually defined as meaning "deliberately, intentionally or purposefully." In my view, there is insufficient evidence here to conclude that the UBC Lawyer deliberately, intentionally or purposefully made a false statement to, or misled or attempted to mislead, the Commissioner under s. 65.2. I conclude that this matter does not warrant a referral to the Attorney General to commence a prosecution for an offence under s. 65.2.

[81] As an aside, I will note that, although it was not necessary here, this case highlights the importance of the Commissioner's power under s. 44(1)(b) to order

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<sup>55</sup> The applicant also briefly mentions s. 65.3 of FIPPA which makes it an offence to wilfully conceal, destroy, or alter any record to avoid complying with a request for access to the record; however, there is no persuasive evidence before me to suggest that UBC concealed, destroyed, or altered any record, so I will not address s. 65.3 any further.

<sup>56</sup> Order F21-04, 2021 BCIPC 4 at para 7.

<sup>57</sup> For instance, see Order F25-01, 2025 BCIPC 1 at para 126.

<sup>58</sup> 2025 BCIPC 1 at para 127.

<sup>59</sup> 2018 BCCA 9 at para 86.



production of records that a public body claims are subject to solicitor-client privilege in order to determine the validity of the privilege claims.

### **Section 13(1) – advice or recommendations**

[82] Section 13(1) states that a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or minister. The purpose of s. 13(1) is to prevent the harm that would occur if a public body’s deliberative process was exposed to excessive scrutiny.<sup>60</sup>

[83] “Recommendations” include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.<sup>61</sup> “Advice” has a broader meaning than the term “recommendations.” It includes opinions that involve exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision for future action.<sup>62</sup> It also includes policy options prepared in the course of the decision-making process.<sup>63</sup>

[84] Previous OIPC orders have stated that s. 13(1) applies to information that would directly reveal advice or recommendations, as well as information that would enable an individual to draw accurate inferences about advice or recommendations.<sup>64</sup>

[85] Previous OIPC orders have found that s. 13(1) does not apply to the following types of information:

- General descriptions of the subject matter to which the advice or recommendations relates unless that description reveals the actual advice or recommendations that the advisor offered.<sup>65</sup>
- Directions and instructions to staff.<sup>66</sup>
- Questions and requests for advice unless the question or request for advice would allow for accurate inferences as to advice actually received.<sup>67</sup>

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<sup>60</sup> *Insurance Corporation of British Columbia v Automotive Retailers Association* 2013 BCSC 2025 at para 52. See also *John Doe v Ontario (Finance)*, 2014 SCC 36 [*John Doe*] at paras 43-45.

<sup>61</sup> *John Doe*, *supra* note 60 at paras 23-24.

<sup>62</sup> *College*, *supra* note 20 at para 113.

<sup>63</sup> *John Doe*, *supra* note 60 at para 35.

<sup>64</sup> Order F16-11, 2016 BCIPC 13 (CanLII) at para 21.

<sup>65</sup> Order F23-03, 2023 BCIPC 4 at para 12.

<sup>66</sup> Order F19-27, 2019 BCIPC 29 at para 32.

<sup>67</sup> Order F19-27, 2019 BCIPC 29 at para 32.

- Factual information in the form of a “heads up” (i.e., information that informs or alerts someone about an action or step that has been or will be taken).<sup>68</sup>
- Information that communicates a decision that has already been made.<sup>69</sup>
- Opinions that are not related to any pending action or decision.<sup>70</sup>
- Information that has already been disclosed to an applicant, since disclosing this information would not “reveal” anything for the purposes of s. 13(1).<sup>71</sup>

[86] 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 minister. If it would, then I must decide whether the information falls into any of the categories listed in s. 13(2) or whether it has been in existence for more than 10 years under s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, that information cannot be withheld under s. 13(1).

### ***Parties’ submissions***

[87] UBC says that the information withheld under s. 13(1) would reveal advice or recommendations related to the termination of the applicant’s academic appointment with UBC. It says the s. 13(1) information includes “draft responses and questions seeking advice or comments in relation to the draft responses.”<sup>72</sup> It says those drafts are part of the “deliberative process,” so s. 13(1) applies.<sup>73</sup>

[88] The applicant says that UBC has not provided enough rationale to support its s. 13(1) redactions.<sup>74</sup> He also says that UBC’s application of s. 13(1) is overly broad.

[89] The applicant also says that s. 13(1) is not meant to capture the kind of information at issue in this case. He says that s. 13(1) should not apply to the information at issue because it is about the actions and comments of individuals in the context of his employment issues as opposed to the “creation or remanufacture of UBC employment policies.”<sup>75</sup>

[90] The applicant also says that “waiver” applies to some of the withheld information. Specifically, he says it applies with respect to information that has been withheld on some pages of records but disclosed on others.<sup>76</sup>

<sup>68</sup> Order F15-52, 2015 BCIPC 55 at para 25.

<sup>69</sup> Order F19-27, 2019 BCIPC 29 at para 32.

<sup>70</sup> Order F23-49, 2023 BCIPC 57 at para 16.

<sup>71</sup> Order F20-32, 2020 BCIPC 38 at para 36.

<sup>72</sup> UBC’s initial submission at para 27.

<sup>73</sup> UBC’s initial submission at para 27.

<sup>74</sup> Applicant’s response submission at p 5.

<sup>75</sup> Applicant’s response submission at p 12.

<sup>76</sup> Applicant’s response submission at pp 17-18.

### ***Analysis and findings***

[91] I find that the following information would not reveal advice or recommendations under s. 13(1):

- Information that reveals a decision already made and a request for someone to carry out that decision.<sup>77</sup>
- A draft letter from UBC to PHSA and information that reveals some general content of that letter.<sup>78</sup>
- Various copies of a draft letter from UBC to the applicant and information that reveals the subject of that letter.<sup>79</sup>
- A draft email from one UBC employee to two other UBC employees (with the exception of two sentences that would allow a reader to infer a recommendation related to the applicant's termination).<sup>80</sup>
- Information that reveals the reasons why a UBC employee made a certain decision.<sup>81</sup>
- Information that, in my view, constitutes instructions to UBC staff as opposed to advice or recommendations, since it appears the staff are being told what must be done and they did not have the discretion to accept or reject the instructions.<sup>82</sup>
- A question one UBC employee asked another UBC employee about whether they should take a certain action.<sup>83</sup>
- Information that has been disclosed on some pages of records but withheld on others.<sup>84</sup>

[92] Regarding the draft letters and draft email, previous OIPC orders have established that s. 13(1) does not apply to drafts simply because they are drafts.<sup>85</sup> Section 13(1) only applies to information in drafts that would reveal advice or recommendations. The drafts in this case do not contain any editorial comments or suggestions.<sup>86</sup> The records do not indicate that UBC received any advice or recommendations about these drafts. Additionally, this does not appear to be a situation where the drafts themselves constitute advice or

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<sup>77</sup> Records at pp 126 and 139.

<sup>78</sup> Records at pp 138 and 141. The draft letter at p 141 appears to be misdated.

<sup>79</sup> Records at pp 163-164, 187, 198, and 212.

<sup>80</sup> Records at p 182.

<sup>81</sup> Records at pp 186, 196-197, and 210.

<sup>82</sup> Records at pp 188, 193, 199, 205, 213, and 223. I note that the instruction on page 223 was provided in response to a UBC employee's request for instructions.

<sup>83</sup> Records at p 220.

<sup>84</sup> Some of the information withheld on p 182 of the records has been disclosed elsewhere in the records.

<sup>85</sup> Order F17-13, 2017 BCIPC 14 at para 24 and the cases cited therein.

<sup>86</sup> I note that some of the drafts contain one or two comments in the margins, but I find these comments are either to-do notes or instructions, not advice or recommendations (for instance, p 164 of the records).

recommendations about how to deal with an issue.<sup>87</sup> Rather, in my view, UBC already decided to draft and send the letters and the email, so the drafts reflect decisions already made.

[93] However, I am satisfied that the remaining information would reveal advice or recommendations. This information is:

- A recommendation from a UBC employee about a meeting with the applicant;<sup>88</sup> and
- Recommendations from a UBC employee related to the applicant's termination of employment.<sup>89</sup>

[94] Contrary to what the applicant says, "waiver" is a term that has distinct legal meaning and does not apply to s. 13(1). However, whether or not information was already disclosed in the records at issue is relevant to the s. 13(1) analysis – as I found above, s. 13(1) does not apply to the information I found has already been disclosed in the records, since disclosing it would not "reveal" anything for the purposes of s. 13(1). As far as I can see from the records, the remaining information that I found would reveal advice or recommendations has not been disclosed to the applicant.

[95] The applicant also seems to be arguing that s. 13(1) only applies to advice or recommendations about broader policy matters, not individual employment-related matters. However, previous OIPC orders have made it clear that s. 13(1) is not limited to a specific type of advice or recommendation (such as policy advice or recommendations) but applies to information that would reveal any advice or recommendations developed by or for a public body or a minister.<sup>90</sup> I am not persuaded by the applicant's argument that s. 13(1) should not apply to advice or recommendations about individual employment matters.

### *Sections 13(2) and (3)*

[96] The next step in the s. 13(1) analysis is to consider whether any of the circumstances under ss. 13(2) and (3) apply to the information I found would reveal advice or recommendations. Subsections 13(2) and (3) identify certain types of records and information that a public body may not withhold under s. 13(1).

[97] The applicant says that ss. 13(2)(a), (d), (n) and 13(3) apply.<sup>91</sup>

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<sup>87</sup> For instance, like in Order F19-28, 2019 BCIPC 30 at paras 27-30.

<sup>88</sup> Records at p 176.

<sup>89</sup> Records at pp 184, 195, 204, and 207.

<sup>90</sup> For instance, Order F24-03, 2024 BCIPC 4 at para 59 and Order F23-65, 2023 BCIPC 75 at para 100.

<sup>91</sup> Applicant's response submission at p 17.

### Section 13(2)(a) – factual material

[98] Section 13(2)(a) says that the head of a public body must not refuse to disclose any factual material under s. 13(2)(a). “Factual material” includes source materials accessed by experts or background facts that are not a necessary part of the advice or deliberative process. “Factual material” does not include factual information that is assembled from other sources and that is an integral part of the advice or recommendations.<sup>92</sup>

[99] The applicant says that there is “factual material so stated and some history repeated” in the records.<sup>93</sup>

[100] The information that I found would reveal advice or recommendations is clearly not factual material under s. 13(2)(a). I find s. 13(2)(a) does not apply.

### Section 13(2)(d) – an appraisal

[101] Section 13(2)(d) says that the head of a public body must not refuse to disclose an appraisal under s. 13(1). Previous OIPC orders have found that “an appraisal” under this section means the determination of what constitutes a fair price, valuation, or an estimation of worth.<sup>94</sup>

[102] The applicant says that the records contain “an assessment or appraisal of sorts.”<sup>95</sup>

[103] The information in dispute under s. 13(1) is clearly not an appraisal within the meaning described above. I find s. 13(2)(d) does not apply.

### Section 13(2)(n) – decision that affects the rights of the applicant

[104] Section 13(2)(n) provides 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.

[105] Previous OIPC orders have established that to be captured by s. 13(2)(n), information must contain a decision or reasons for a decision.<sup>96</sup>

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<sup>92</sup> *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at paras 52-53.; *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII) at paras 93-94.

<sup>93</sup> Applicant’s response submission at p 17.

<sup>94</sup> Order F23-91, 2023 BCIPC 107 and the cases cited therein.

<sup>95</sup> Applicant’s response submission at p 17.

<sup>96</sup> Order F24-77, 2024 BCIPC 87 at para 64.

[106] The applicant says that the withheld information relates to “decisions, reasons, and discretionary functions” that “affect [his] rights of employment and other.”<sup>97</sup>

[107] None of the information that I found would reveal advice or recommendations is a decision or reasons for a decision within the meaning of s. 13(2)(n). I find this section does not apply.

### Section 13(3)

[108] Under s. 13(3), a public body cannot withhold under s. 13(1) any information in a record that has been in existence for 10 or more years.

[109] The applicant says that s. 13(3) applies because many of the matters at issue in the records relate to actions between UBC and PHSA that date back to 2001.

[110] The actual records in dispute under s. 13(1) are only two to three years old, so s. 13(3) does not apply.

### **Conclusion on s. 13(1)**

[111] In conclusion, I find that s. 13(1) authorizes UBC to refuse to disclose some, but not all of the information withheld under that section.

### **Exercise of discretion**

[112] Section 13 is a discretionary exemption to access under FIPPA and a public body must exercise that discretion in deciding whether to refuse access to information that it is authorized to withhold. A public body must only consider proper and relevant factors when making this determination.<sup>98</sup> Previous OIPC orders have stated that when exercising discretion to refuse access under s. 13(1), a public body should typically consider factors such as the age of the records, the public body’s past practice in releasing similar records, and the nature and sensitivity of the records.<sup>99</sup>

[113] If a public body has failed to exercise its discretion, the Commissioner can require it to do so. The Commissioner can also order the public body to reconsider the exercise of discretion where “the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or the decision failed to take into account relevant

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<sup>97</sup> Applicant’s response submission at p 17.

<sup>98</sup> Order 02-50, 2002 CanLII 42486 (BC IPC) at para 144.

<sup>99</sup> Order F19-48, 2019 BCIPC 54 at para 29.

considerations.”<sup>100</sup> The onus is on the public body to establish that it exercised its discretion under s. 13(1) and that it did so under proper considerations.<sup>101</sup>

[114] The applicant suggests that UBC’s decision to withhold the information in dispute under s. 13(1) was made in bad faith. For instance, he says that, since UBC is now relying on s. 14 instead of s. 13(1) to withhold the information in dispute on page 68 of the records, that shows that s. 13(1) had never been properly applied and that UBC’s “purposeful tactic [is] to suppress liberation of the information...”<sup>102</sup>

[115] The applicant also submits that some of the withheld information is “identical in nature” to information that has already been made available.<sup>103</sup> The applicant seems to be saying that UBC has previously released similar types of information and that it failed to consider this past practice in deciding whether to withhold the information in dispute.

[116] UBC says in its initial submission that it “properly considered whether the redacted section 13 information constituted advice developed by or for a public body and properly withheld that advice” and that “the discretion granted by section 13 was exercised appropriately in this case.”<sup>104</sup>

[117] In my view, the applicant has not provided any persuasive evidence that UBC’s decision to withhold the information in dispute was made in bad faith or for an improper purpose.

[118] However, I am not convinced that UBC actually exercised its discretion and considered all relevant factors in deciding to refuse access to the information withheld under s. 13(1). UBC provided no evidence to support its submission that it properly exercised its discretion, nor did it identify what factors it considered in deciding to refuse access to the information withheld under s. 13(1).

[119] For the reasons above, I find it is appropriate to order UBC to reconsider its decision to refuse to disclose the information I found it is authorized to refuse to disclose under s. 13(1).

### **Section 22(1) – unreasonable invasion of third-party personal privacy**

[120] Section 22(1) requires public bodies to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

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<sup>100</sup> *John Doe, supra* note 60 at para 52.

<sup>101</sup> Order F25-02, 2025 BCIPC 2 at para 66.

<sup>102</sup> Applicant’s response submission at p 4.

<sup>103</sup> Applicant’s response submission at p 20.

<sup>104</sup> UBC’s initial submission at paras 28-29.

[121] There is a very small amount of overlap between UBC's application of ss. 13(1) and 22(1) to the information in dispute. I will only consider the application of s. 22(1) to the information I found UBC is not authorized to withhold under s. 13(1).

### **Personal information**

[122] Section 22(1) only applies to personal information, so the first step in the s. 22(1) analysis is to determine whether the information in dispute is personal information.

[123] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.<sup>105</sup> Information is about an identifiable individual when it is reasonably capable of identifying the individual, either alone or when combined with other available sources of information.<sup>106</sup>

[124] Contact information is defined in FIPPA 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.<sup>107</sup>

[125] I find that some of the information in dispute is not personal information because it is contact information. Specifically, I find that the email addresses and email signature blocks of UBC employees are contact information. This information appears in an email chain where the employees were discussing normal work matters and the information was clearly included to enable them to be contacted at work.<sup>108</sup> UBC is not authorized or required under s. 22(1) to withhold this information.

[126] Additionally, I find that some of the information is not personal information because it is not reasonably capable of identifying an individual.<sup>109</sup> I also find that some of the information is not personal information because it is not "about" any individuals (i.e., subject and date lines in email headers and UBC logos in email footers).<sup>110</sup> UBC is not authorized or required under s. 22(1) to withhold this information.

[127] However, I am satisfied that the remaining information in dispute under s. 22(1) is the personal information of several UBC employees. The information is clearly about these individuals, who are identified by name in the records.

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<sup>105</sup> Schedule 1 of FIPPA.

<sup>106</sup> Order F19-42, 2019 BCIPC 47 at para 15.

<sup>107</sup> Schedule 1 of FIPPA.

<sup>108</sup> Records at pp 145-150.

<sup>109</sup> Records at p 144.

<sup>110</sup> Records at pp 145-151.



***Not an unreasonable invasion of privacy – s. 22(4)***

[128] Having found that some of the information in dispute qualifies as personal information, the next step is to consider s. 22(4), which sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of personal privacy.

[129] Neither UBC nor the applicant address s. 22(4) in their submissions.

[130] In my view, s. 22(4)(e) applies to most of the information in dispute under s. 22(1).

[131] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of an individual's personal privacy if the information is about the individual's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff. Past orders have found that the names and personal information of public body employees fall under s. 22(4)(e) when they relate to the employees' job duties in the normal course of work-related activities.<sup>111</sup> However, whether s. 22(4)(e) applies depends on the context in which the information appears.

[132] I find that s. 22(4)(e) applies to most of the information in dispute. This information reveals what UBC employees said or did in the normal course of carrying out their job duties.<sup>112</sup> UBC is not required or authorized to withhold this information under s. 22(1) and I will not consider it any further.

[133] The remaining information in dispute under s. 22(1) is a UBC employee's concern about the applicant that she expressed to UBC's senior manager of faculty relations and manager of faculty human resources (Employee Concern).<sup>113</sup> I do not think it can be said that the employee was carrying out her normal job duties when expressing this concern. Therefore, s. 22(4)(e) does not apply.

[134] I have considered the other factors listed in s. 22(4) and am satisfied that none apply.

***Presumed unreasonable invasion of privacy – s. 22(3)***

[135] The third step in the s. 22(1) analysis is to consider whether any of the presumptions in s. 22(3) apply to the remaining personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

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<sup>111</sup> Order F19-27, 2019 BCIPC 29 at para 51.

<sup>112</sup> Records at pp 142, 145-150, 167, and 171.

<sup>113</sup> Records at pp 186, 196-197 and 210.

[136] UBC does not say that any s. 22(3) presumptions apply to the remaining information in dispute.<sup>114</sup>

[137] I have considered the presumptions in s. 22(3) and I find that none apply.

***Relevant circumstances – s. 22(2)***

[138] The last step in the s. 22(1) analysis is to determine whether disclosure of the remaining personal information in dispute would be an unreasonable invasion of an individual's personal privacy, considering all relevant circumstances including those listed in s. 22(2).

[139] The only remaining personal information in dispute is the Employee Concern.

[140] The parties raise ss. 22(2)(a), (c), (e), (f), (g), and (h). The applicant also raises factors not listed in s. 22(2).

*Public scrutiny of a public body – s. 22(2)(a)*

[141] Section 22(2)(a) says that a relevant circumstance to consider is whether the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. The purpose of s. 22(2)(a) is to foster accountability of a public body, not individuals.<sup>115</sup> If it applies, s. 22(2)(a) weighs in favour of disclosure.

[142] The applicant says that disclosure of the information in dispute is desirable for the purpose of subjecting the activities of the public body to scrutiny.

[143] I do not see how disclosure of the Employee Concern is desirable for the purpose of subjecting the activities of UBC to public scrutiny. I find s. 22(2)(a) does not apply.

*Fair determination of the applicant's rights – s. 22(2)(c)*

[144] Section 22(2)(c) says that a relevant circumstance to consider is whether the personal information is relevant to a fair determination of the applicant's rights. Previous OIPC orders have said that all four parts of the following test must be met in order for s. 22(2)(c) to apply:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;

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<sup>114</sup> UBC says that ss. 22(3)(d) and 22(3)(f) apply to some of the other information about faculty members that I found above is not in dispute in this inquiry.

<sup>115</sup> Order F24-45, 2024 BCIPC 53 at para 56.

2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.<sup>116</sup>

[145] The applicant says that the personal information in dispute is relevant to a fair determination of his rights. He says, “such an application is parallel to the mandates for information release as per the *Charter* rights discussed below.”<sup>117</sup> He provides no further explanation.

[146] I do not see, and the applicant has not adequately explained, how any part of the above test has been met. I find s. 22(2)(c) is not a factor that weighs in favour of disclosure.

*Unfair exposure to harm and unfair damage to reputation – ss. 22(2)(e) and 22(2)(h)*

[147] Section 22(2)(e) says that a relevant circumstance to consider is whether disclosure of an individual’s personal information would unfairly expose the individual to financial or other harm. Previous OIPC orders have said that harm under s. 22(2)(e) can include mental harm in the form of serious mental distress or anguish, but that embarrassment, upset, or having a negative reaction do not rise to the level of mental harm.<sup>118</sup>

[148] Section 22(2)(h) says that a relevant circumstance to consider is whether disclosure of the information may unfairly damage the reputation of any person referred to in the record requested by the applicant.

[149] UBC says that if the Employee Concern was disclosed, it would unfairly expose the employee to harm and unfairly damage her reputation.<sup>119</sup> UBC provides no further explanation or evidence.

[150] In the absence of persuasive explanation or evidence, I am not convinced that disclosure of the Employee Concern would unfairly expose the employee to harm or unfairly damage her reputation. I find these factors do not weigh against disclosure.

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<sup>116</sup> Order F23-13, 2023 BCIPC 15 at para 120.

<sup>117</sup> Applicant’s response submission at para 19.

<sup>118</sup> For instance, see Order F24-31, 2024 BCIPC 38 at para 118 and the cases cited therein.

<sup>119</sup> UBC’s initial submission at para 53.

*Supplied in confidence – s. 22(2)(f)*

[151] Section 22(2)(f) says that a relevant circumstance to consider is whether the personal information has been supplied in confidence. If it applies, s. 22(2)(f) weighs in favour of withholding the information. In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.<sup>120</sup>

[152] UBC says that the Employee Concern was supplied in confidence. It says that the Employee Concern is sensitive in nature, which indicates that the employee intended for the information to be treated as confidential.<sup>121</sup> It says that this information was not intended to be shared with anyone but human resources and faculty relations.<sup>122</sup>

[153] Based on the nature of the Employee Concern, I am satisfied that the employee had an objectively reasonable expectation of confidentiality at the time she provided the information. I cannot describe the nature of the information without revealing the information in dispute. This factor weighs against disclosure.

*Information likely inaccurate or unreliable – s. 22(2)(g)*

[154] Section 22(2)(g) says that a relevant circumstance to consider is whether the personal information is likely to be inaccurate or unreliable. Where the information is found to be inaccurate or unreliable, it is usually found to weigh against disclosure.<sup>123</sup>

[155] The applicant says that this is a circumstance that should weigh *in favour* of disclosure. He says that it would not be surprising if the information in dispute is inaccurate or unreliable, given what he alleges is “the mischief of the public body to date.”<sup>124</sup>

[156] Section 22(2)(g) is intended to prevent the harm to individuals that can flow from the disclosure under FIPPA of inaccurate or unreliable information about them.<sup>125</sup> The applicant seems to be saying that the Employee Concern likely consists of inaccurate or unreliable information about him, so it should be released to him. This is not the purpose of s. 22(2)(g). I find that s. 22(2)(g) is not relevant here.<sup>126</sup>

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<sup>120</sup> Order F22-62, 2022 BCIPC 70 at para 47.

<sup>121</sup> UBC’s initial submission at para 50.

<sup>122</sup> UBC’s initial submission at para 51.

<sup>123</sup> For instance, Order F24-67, 2024 BCIPC 77 at para 114.

<sup>124</sup> Applicant’s response submission at p 19.

<sup>125</sup> Order 01-19, 2001 CanLII 21573 (BC IPC) at para 42.

<sup>126</sup> For a similar finding, see Order F15-30, 2015 BCIPC 33 at paras 93-94.

*Information already disclosed*

[157] The applicant says that some of the information that is withheld under s. 22(1) has been released on some pages of the records.<sup>127</sup> He says this factor weighs in favour of disclosure of that information. The applicant does not point me to this information.

[158] Based on my review of the records, I find that the Employee Concern has not been released anywhere in the records. This factor does not weigh in favour of disclosure.

*Applicant's personal information*

[159] Previous OIPC decisions have recognized that if another individual's personal information is also the applicant's personal information, this is a factor that weighs in favour of disclosure.<sup>128</sup>

[160] Since the Employee Concern is about the applicant, it is simultaneously the applicant's personal information. Therefore, I find that this factor weighs in favour of disclosure.

**Summary and conclusion on s. 22(1)**

[161] I found above that some of the information in dispute is not personal information because it is contact information or because it is not about any identifiable individuals. Section 22(1) does not apply to that information and UBC is not authorized or required to withhold it.

[162] I found that s. 22(4)(e) applies to most of the remaining personal information in dispute because it is about UBC employees' normal job duties. UBC is not authorized or required under s. 22(1) to withhold that information.

[163] The remaining personal information in dispute is the Employee Concern. I found above that the employee provided this information in confidence under s. 22(2)(f). Although it is about the applicant, I find that does not outweigh the fact that it was supplied under an objectively reasonable expectation of confidentiality. I find that UBC is required to withhold this information under s. 22(1).

**Section 22(5)**

[164] Section 22(5)(a) of FIPPA states that if a public body refuses to disclose personal information supplied in confidence about an applicant, the public body must give the applicant a summary of the information unless the summary cannot

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<sup>127</sup> Applicant's response submission at p 19.

<sup>128</sup> Order F24-48, 2024 BCIPC 56 at para 146.

be prepared without disclosing the identity of a third party who supplied the personal information.

[165] The applicant says that UBC has not provided him with a summary of the information withheld under s. 22(1).<sup>129</sup>

[166] In this case, the identity of the individual who supplied the Employee Concern in confidence has already been disclosed in the records. Therefore, it is not possible for UBC to provide the applicant with a summary of the information in accordance with s. 22(5)(a).<sup>130</sup>

## **CONCLUSION**

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

1. Subject to item 2 below, I confirm UBC's decision to withhold the information in dispute under s. 13(1).
2. UBC is not authorized under s. 13(1) to withhold the information I have highlighted in green on pages 126, 138, 139, 141, 163, 164, 182, 187, 188, 193, 198, 199, 205, 212, 213, 220, and 223 in the copy of the records provided to UBC with this order. I require UBC to give the applicant access to this information.
3. UBC is required to reconsider its decision to refuse access to the information I find it is authorized to withhold under s. 13(1). UBC is required to exercise and consider, on proper grounds and considering all relevant factors, whether it should release this information even though it is covered by the discretionary exception. It must deliver its reconsideration decision, along with the reasons and factors it considered for that decision, and any additional information UBC decides to disclose, to the applicant.
4. Subject to item 5 below, UBC is required to withhold the information in dispute under s. 22(1).
5. UBC is not required under s. 22(1) to withhold the information I have highlighted in green on pages 142, 144-151, 167, and 171 in the copy of the records provided to UBC with this order. I require UBC to give the applicant access to this information.

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<sup>129</sup> Applicant's response submission at p 19.

<sup>130</sup> For a similar finding, see Order F24-80, 2024 BCIPC 91 at para 81.

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6. UBC is not authorized under s. 14 to withhold the information I have highlighted in green on page 68 in the copy of the records provided to UBC with this order. UBC is also not authorized under s. 14 to withhold the information on pages 100-107 and 152-158 of the records. I require UBC to give the applicant access to this information.
  7. UBC must provide the OIPC registrar of inquiries a copy of its cover letter and the accompanying information sent to the applicant in compliance with items 2, 3, 5, and 6 above.

[168] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by May 22, 2025.

April 7, 2025

**ORIGINAL SIGNED BY**

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Emily Kraft, Adjudicator

OIPC File No.: F23-93407