Order F25-48

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

Allison J. Shamas
Adjudicator

June 19, 2025

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Summary: An individual (the applicant) asked the College of Physicians and Surgeons of British Columbia (the College) for access to records related to a complaint about a physician. The College provided responsive records to the applicant but withheld some information from them under ss. 13(1) (advice and recommendations), 14 (solicitor-client privilege), 22(1) (disclosure harmful to personal privacy) and other provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator held that the College was not authorized to withhold the information at issue under s. 13(1) and confirmed the College's decision under ss. 14 and 22(1) in part. The adjudicator ordered the College to disclose the information it was not required or authorized to refuse to disclose under ss. 13(1), 14 or 22(1).

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

INTRODUCTION

[1] An individual (the applicant) asked the College of Physicians and Surgeons of British Columbia (the College) for access to records related to his complaint against a physician.

[2] The College provided some responsive records to the applicant but withheld information from them under ss. 13 (advice and recommendations), 14 (solicitor-client privilege), and 22(1) (third party-personal privacy) of the *Freedom of Information and Protection of Privacy Act*[1] (FIPPA).

[3] The College also identified a second batch of records that were responsive to the applicant's request that it said it would defer processing because they related to a judicial review to which the applicant was a party. The

[1] RSBC 1996 c. 165.

College implied that those records were going to be severed under s. 15(1)(a) (harm to a law enforcement matter) (the "s. 15(1)(a) records").

[4] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the College's decision. Mediation by the OIPC did not resolve the issues in dispute and the matter proceeded to inquiry.

[5] After reviewing the parties' inquiry submissions, I wrote to identify several issues with the College's submission, including the College's failure to provide the s. 15(1)(a) records, the sufficiency of the College's s. 14 evidence, and the College's failure to provide a table of records to the applicant as well as to give both parties the opportunity to provide further evidence and argument about these matters. In reviewing the College's decision to withhold information from the records, I have considered both the parties' initial submissions as well as their supplemental submissions that followed my letter.

PRELIMINARY ISSUES

Section 15(1)(a) no longer in dispute

[6] In response to my letter, the College advised that it was no longer seeking to withhold any information from the s. 15(1)(a) records and provided an unredacted copy of those records to the applicant. As the College did not withhold any information under s. 15(1)(a), I find that s. 15(1)(a) is no longer in dispute and I will not consider it further.

Applicant's request to add ss. 6(1) and 25

[7] In his supplemental submission, the applicant requested that ss. 6 and 25 be added as issues to the inquiry.

[8] The OIPC fact report states that the applicant previously raised ss. 6 and 25, and that the OIPC considered and concluded these issues in separate OIPC files.[2] Thus, the OIPC investigator has already decided the ss. 6 and 25 issues would not proceed to inquiry and for that reason they were not included in the notice of inquiry. This inquiry is not the proper forum for the applicant to seek to

[2] The fact report is a statement of facts agreed to by the parties (see Guide to OIPC Processes (FIPPA) at page 12 (https://www.oipc.bc.ca/resources/guidance-documents/). The Fact Report provides that "3) On November 10, 2022, the applicant asked the OIPC to review the public body's decision to withhold information. The applicant also requested that the OIPC review whether CPSBC is required by section 25 of FIPPA to disclose the records in the public interest and whether the public body performed an adequate search as required by section 6. Those matters were concluded under files F22-91443 and F22-91609 respectively."

relitigate the investigator's decision. In conclusion, these issues are not before me, and I will not reconsider the investigator's conclusions here.[3]

Settlement privilege

[9] The College marked four pages of records with the words "settlement privilege".[4] The applicant argues that the College is required to disclose these records because it withdrew its reliance on settlement privilege prior to the start of the inquiry. The College states that while it is not relying on settlement privilege, it continues to withhold these records based on solicitor-client privilege.

[10] I accept the College's explanation. There is nothing to prohibit a party from relying on more than one FIPPA exception to withhold information in a record. While I will not consider the issue of settlement privilege, I will consider the College's decision to withhold the information in this record under s. 14 of FIPPA.

Legibility of copies

[11] In his supplemental submission the applicant identified several pages of records that he said were illegible. The College provided alternate copies of those pages to the applicant and the OIPC. I have reviewed them and find that they are legible. I consider this issue resolved.

Whether to add the physician as an appropriate party

[12] Section 54(b) of FIPPA provides that on receiving a request for a review, the commissioner must give a copy to any other person that the commissioner considers appropriate. Notification under s. 54(b) gives the notified person the opportunity to participate at the inquiry and be informed of its outcome.[5]

[13] The BC Court of Appeal has determined that s. 54 affords a "fair measure of discretion" to the OIPC to decide who would be appropriate to notify and, therefore, given formal standing at any inquiry.[6]

[14] In a recent order, the OIPC set out a non-exhaustive list of factors that may be relevant to determining whether to notify a third party under s. 54(b). Those factors are:

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[3] If the applicant wishes to challenge the OIPC's decision to discontinue and close the files involving the ss. 6 or 25 issues, the appropriate course is to contact the OIPC investigator to request a reconsideration of the investigator's decision.
[4] Pages 21-24 of the Records.
[5] Sections 56(3) and 58(5)(c).
[6] *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at para. 51; *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII) at paras 29 and 33.

- The nature of the records in issue,
- The number of potentially affected third parties,
- The practical logistics of providing notice,
- Potential institutional resource issues,
- Whether giving notice would result in additional delay to the OIPC proceeding,
- Whether the person has already been notified of the OIPC proceedings in another way,
- Whether the notice is unnecessary because the person's views and interests are already being heard or represented at the OIPC proceedings,
- If notice was issued under s. 54(b), would the prejudice to the applicant be greater than the prejudice to any relevant persons for not receiving notice of the OIPC proceedings, and
- Whether or not the public body gave the party notice under s. 23 of FIPPA.[7]

[15] Two factors weigh in favour of giving notice to the physician. The physician is one individual, and this fact weighs in favour of giving notice. In addition, the records in this inquiry relate to legal proceedings arising out of the applicant's complaint about the physician. The outcome of those legal proceedings may affect the physician's career.

[16] However, the remaining factors which I find to be relevant weigh against giving notice. The practical logistics of providing notice weighs against inviting the physician. The records contain highly sensitive information about the applicant, and it is clear that the applicant feels strongly that he was mistreated by the physician. To participate meaningfully, the physician would need to see the inquiry materials which contain this sensitive information. The process of anonymizing these materials or otherwise negotiating the physician's participation would be challenging.

[17] The possibility that the physician has already been notified of the OIPC proceedings weighs against inviting the physician. The physician was a registrant of the College at all material times and is party to ongoing legal proceedings involving the applicant and the College. In addition, the College voluntarily disclosed significant amounts of the physician's personal information to the applicant in the s. 15(1)(a) records, thus engaging its notification obligation under s. 23. Given the relationship between the physician and the College and the College's notification obligation, I find that there is a reasonable probability that the physician is already aware of these proceedings.

[7] Decision F25-01, 2025 BCIPC 40 at paras 23, 28 and 29.

[18] Finally, based on my review of the records and the submissions of the parties, I find that participation of the physician here is not necessary or essential because the College has sufficiently addressed the privacy interests of the physician. The College has made extensive submissions in support of its decision to withhold the physician's personal information, and I can see no additional arguments that the physician could make that would change my analysis under s. 22.

[19] For the reasons above, I find that the physician is not an appropriate person within the meaning of s. 54(b) of FIPPA.

ISSUE IN DISPUTE

[20] The issues in dispute in this inquiry are whether the College:

1. is authorized to refuse to disclose the information at issue under ss. 13 and 14 of FIPPA, and
2. is required to refuse to disclose the information at issue under s. 22 of FIPPA.

[21] Section 57(1) of FIPPA places the burden on the College to prove that the applicant has no right of access to the information withheld under ss. 13 and 14. While under s. 22(1) the College has the initial burden to establish that the information in dispute is personal information about a third party, s. 57(2) places the burden on the applicant to prove that disclosure of any personal information would not be an unreasonable invasion of a third party's personal privacy.[8]

BACKGROUND

[22] The College regulates the practice of medicine in the province of British Columbia under the *Health Professions Act* (*HPA*).[9] As part of its processes, the College governs the hearing and disposition of complaints against physicians.

[23] The applicant was a patient of a physician who was registered with the College (the physician).

[24] In September 2013, the applicant submitted a complaint to the College about the physician. The College hired an external lawyer to investigate and advise the College about the complaint. On February 19, 2015, the College's directed its Registrar to issue a citation against the physician. In September 2016, the College approved a consent agreement, under which the physician admitted to unprofessional conduct, and was subject to a consent order which

[8] Order 03-41, 2003 CanLII 49220 at paras 9–11.
[9] RSBC 1996, c. 183.

required him to complete a multi-disciplinary assessment, counselling, continuing medical education, and other requirements.

[25] The applicant applied for review of the College's disposition to the Health Professions Review Board (HPRB). In a decision dated July 23, 2019, the HPRB confirmed the College's decision to approve the agreement.

[26] The applicant sought judicial review of the HPRB's decision, and the application for judicial review remains open and ongoing.

[27] The applicant also filed a civil claim that relates to the complaint naming the College. The College is no longer a party to the claim.

RECORDS IN DISPUTE

[28] The responsive records consist of decision letters, internal College documents, letters, emails, attachments to those emails, reports, memoranda, notes, and a solicitor's brief. These records relate to the applicant's complaint against the physician, the College's efforts to implement and ensure compliance with the consent agreement, and the applicant's request for review from the HPRB and judicial review.

[29] There are 3592 pages of responsive records, and the College withheld information from approximately 686 pages of those records.

SECTION 14 – SOLICITOR CLIENT PRIVILEGE

[30] Section 14 provides that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. It encompasses solicitor-client privilege and litigation privilege.[10]

[31] While the College did not provide the records it withheld under s. 14 for my review, it describes those records as reports, memoranda, notes, emails, attachments, and a solicitor's brief. It states that these records relate to the legal advice it obtained about the applicant's complaint against the physician, the applicant's request for review from the HPRB, the applicant's judicial review of the HPRB's decision, and the applicant's civil claim. The College withheld 622 pages of records under s. 14.

Evidentiary basis for s. 14 records

[32] The College provided unredacted copies the records containing the information it withheld under s. 14 to the OIPC but asks that I decide the s. 14 issue without reviewing the records, unless I first issue a production order.

[10] Order F22-64, 2022 BCIPC 72 (CanLII) at para 15.

[33] The applicant submits that I should issue a production order and review the s. 14 information and requests that the OIPC conduct an oral inquiry to give him the opportunity to cross examine the College's affiant about the College's evidence in support of its decision under s. 14.

The applicant's request for a production order

[34] While s. 44 of FIPPA empowers the Commissioner to order production of records over which solicitor-client privilege is claimed,[11] the OIPC exercises this authority cautiously and with restraint given the clear direction from the courts that a reviewing body's decision to examine privileged documents must never be made lightly or as a matter of course.[12]

[35] Prior jurisprudence establishes that it may be appropriate for the Commissioner to exercise discretion under s. 44 when the evidence describing the records is not sufficient to adjudicate the privilege claim,[13] or where there is some evidence that the party claiming privilege has done so "falsely"[14] or inappropriately.[15]

[36] In addition to addressing some of the above considerations, the applicant also raises concerns about compliance with the OIPC's Instructions for Written Inquiries and Frequently Asked Questions, procedural fairness, and the principles of natural justice. I will address each of these matters below.

OIPC's practices and procedural fairness

[37] The applicant submits that by failing to provide the records for my review, the College has failed to comply with the OIPC's *Instructions for Written Inquiries* and Frequently Asked Questions document (OIPC guidance documents) which instruct parties that all records in dispute must be visible to the Commissioner. According to the applicant, the College's failure to do so creates a procedural fairness issue.[16]

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[11] Section 44(1)(b) of FIPPA states the Commissioner may order the production of a record, and s. 44(2.1) reinforces that such a production order may apply to a record that is subject to solicitor-client privilege.
[12] Order F19-21, 2019 BCIPC 23 (CanLII) at para 46, citing *GWL Properties Ltd. v WR Grace & Co. of Canada Ltd*., 1992 CanLII 182 (BCSC) at pages 11-12.
[13] Order F17-42, 2017 BCIPC 46 (CanLII) at para 11; Order F19-21, 2019 BCIPC 23 (CanLII) at para 121.
[14] *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 (CanLII) [*Alberta IPC*] *at* para 70.
[15] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District,* 2013 BCSC 1893 (CanLII) [*Bilfinger*], paras 40 – 44; Order F17-43, 2017 BCIPC 47 at para 33.
[16] While the applicant also made arguments about the fact that the College had failed to provide a table or records, the College subsequently corrected this issue (see College's supplementary submissions dated January 28, 2025), and the applicant had the opportunity to provide

[38] To evaluate these submissions, it is necessary to understand the legal framework in which solicitor-client privilege exists in Canada. The Supreme Court of Canada has repeatedly made clear solicitor-client privilege is of central importance to the legal system as a whole,[17] and that it is not "merely a rule of evidence", but also "an important civil and legal right and a principle of fundamental justice in Canadian law."[18]

[39] With respect to how decision makers should approach solicitor-client privilege, the Supreme Court has explained that solicitor-client privilege:

- "should only be set aside in the most unusual circumstances;"[19]
- "will only yield in certain clearly defined circumstances and does not involve a balancing of interests on a case-by-case basis;"[20] and that
- "[e]ven courts will decline to review solicitor-client documents to adjudicate the existence of privilege unless evidence or argument establishes the necessity of doing so to fairly decide the issue."[21]

[40] Owing to the fundamental importance of solicitor-client privilege and the approach required by the courts, the OIPC makes an exception to its usual practice of requiring parties to provide unredacted copies of records in dispute when s. 14 is at issue. Where a party objects to providing information withheld under s. 14 for the OIPC's review, the OIPC's practice is to decide whether solicitor-client privilege applies without reviewing the records unless it is necessary to do so to fairly decide. In this circumstance, the OIPC addresses procedural fairness concerns related to s. 14 by ensuring that the party asserting the privilege provides sufficient evidence so that all other parties and the decision maker may understand the claim. As I will discuss below, in this case, I find that the College has done so.

[41] I am bound by the Supreme Court's jurisprudence on solicitor-client privilege. In my view, that jurisprudence leaves no room to accept the applicant's arguments concerning compliance with the OIPC's guidance documents or procedural fairness.

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submissions in response (see Applicant's supplementary response dated March 4, 2025). Accordingly, I will not address these submissions.

[17] *R. v. McClure*, 2001 SCC 14 (CanLII) at para 2 [*McClure*]; cited in *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para 17 [*Pritchard*].

[18] *Alberta IPC supra* note 14 at para 41, citing *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61 at para 49.

[19] *Pritchard* supra note 17 at para 17.

[20] *McClure* supra note 17 at para 35.

[21] *Canada (Privacy Commissioner) v. Blood Tribe Department of Health,* 2008 SCC 44 (CanLII) at para 17.

Sufficiency of evidence

[42] It may be necessary for the OIPC to review s. 14 information where a party's evidence is insufficient to support its claim of privilege. For the reasons set out below, I find that is not the case here.

[43] To support its claim of privilege, the College provided two affidavits from its Chief Legal Counsel (the Chief Counsel) and a table of records which is appended to the Chief Counsel's second affidavit.

[44] The applicant submits that the College's evidence in support of s. 14 is inaccurate, overly broad, and insufficient to justify its application of s. 14. He also submits that the Chief Counsel does not have direct knowledge of the information in dispute because the Chief Counsel was not the author of some of the records containing the s. 14 information.

[45] In his affidavits, the Chief Counsel states that in addition to providing legal services to the College, he also directed legal services provided by in-house counsel and instructed the College's external legal counsel. The Chief Counsel describes the process of the applicant's complaint (and subsequent litigation) followed at the College, and explains his involvement in providing, directing, and instructing the legal services provided to the College in relation to these matters.

[46] For each record containing s. 14 information, the Chief Counsel attests to: the number of pages in the record, its author, the nature of the record (i.e. email, notes, report), the basis for withholding it, how the record connects to the legal services provided to the College, and for emails, the date on which they were sent and the names of those on the chain.

[47] The Chief Counsel addresses each record individually. He provides evidence about the legal matters at issue, and in my view, his evidence demonstrates his familiarity with those issues. The Chief Counsel was also routinely listed as a party to the email communications at issue in the table of records. Furthermore, as a practicing lawyer, the Chief Counsel has a professional obligation to ensure that privilege is not improperly claimed.[22]

[48] The applicant is correct that the Chief Counsel was not the author of all the communications the College withheld under s. 14. However, based on the circumstances above, I accept that the Chief Counsel has direct knowledge of the matters at issue in those communications, and I find the Chief Counsel's evidence to be informed and reliable. Accordingly, I find that the College's

[22] See *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 [Finance] at para. 86. See also Order F20-16, 2020 BCIPC 18 at para. 10 and *Nelson and District Credit Union v. Fiserv Solutions of Canada, Inc. (Master)*, 2017 BCSC 1139 [*Fiserv*] at para. 54.

evidence is sufficient to adjudicate its decision to withhold information under s. 14.

Principles of natural justice

[49] I now turn to the applicant's natural justice argument. The applicant submits that the principles of natural justice, including the doctrine that no one should judge their own case, requires the OIPC to review the s. 14 records rather than relying on the Chief Counsel's evidence about them.

[50] While I have found the Chief Counsel's evidence to be reliable, that evidence is not dispositive of the College's s. 14 claim. Instead, I will consider his evidence in light of the relevant law and all other relevant factors to arrive at my own determination about the College's application of s. 14 to the information in dispute. As discussed above, this approach is one the Supreme Court of Canada ordinarily requires when considering claims of solicitor-client privilege. I am not persuaded by the applicant's argument that the principles of natural justice require me to take a different approach.

Evidence of a false or inappropriate claim of privilege

[51] Finally, as noted above, it may be appropriate for the Commissioner to review information withheld under s. 14 is where there is evidence that a party has made a false or inappropriate claim of privilege.

[52] The applicant argues that I should not accept the College's affidavit evidence because, in a previous proceeding between the parties, the HPRB held that settlement privilege did not apply to a record the College had withheld on that basis. The applicant also argues that the Chief Counsel's affidavit is inaccurate because he fails to disclose some instances where the withheld communications include attachments. In this regard, the applicant points to five instances where withheld emails list attachments that are not described in the Chief Counsel's affidavit.

[53] The College states that the record that was the subject of the HPRB decision is not at issue in this inquiry, and points to its affidavit evidence in support of this assertion. It denies the applicant's allegation that the Chief Counsel's affidavit is inaccurate and submits that all information withheld under s. 14 has been outlined in that affidavit and in its submissions.

[54] The relevant question is whether or not there is evidence that the College claimed privilege falsely or inappropriately in this inquiry.[23] For the reasons below, I do not accept that there is.

[23] See for example *Alberta IPC supra* note 14 and *Bilfinger supra* note 15.

[55] I begin with the applicant's arguments about settlement privilege in a previous proceeding. I reviewed the decision cited by the applicant (the HPRB Decision)[24] and the parties' submissions. I can see no evidence to suggest that the record addressed in the HPRB decision is at issue in this inquiry. I find that it is not.

[56] In the HPRB Decision, the HPRB rejected the College's assertion of settlement privilege over an agreement, reasoning that for the purpose of its decision, public policy considerations outweighed settlement privilege. In my view, the fact that the HPRB did not agree with the College about what legal conclusion to draw from its evidence about a different legal issue, once, in a different proceeding, before a different decision making body is not sufficient to establish that the College falsely or inappropriately asserted solicitor-client privilege in this inquiry. I do not accept the applicant's first argument.

[57] With respect to the applicant's second argument, I accept the College's submission that its evidence and submissions accurately reflect the nature of the records at issue. The Chief Counsel, who deposes that he has reviewed the records, and describes in detail the nature of other attachments, does not identify attachments to the five emails highlighted by the applicant, and in reply, the College affirms that the Chief Counsel's evidence is complete. Furthermore, there could be a number of explanations for why the five emails might list but not include attachments. For example, all five email messages are replies to earlier messages (the subject lines begin with "Re."), and often reply messages do not transmit attachments from earlier messages. In any event, I prefer the Chief Counsel's direct evidence over the applicant's suspicions about what records might be missing. Accordingly, I am not persuaded that there is any evidence that the College has made a false or inappropriate claim of privilege in this inquiry.

Conclusion – request for production order

[58] In conclusion, for all the reasons above, I do not find it necessary or appropriate to issue a production order requiring the College to produce the s. 14 information for my review.

Applicant's request for an oral hearing

[59] During the supplemental submissions process the applicant requested that the OIPC conduct an oral inquiry in addition to the written inquiry to give him the opportunity to cross examine the Chief Counsel on his affidavits. In support of this request, that applicant references the email attachments issue discussed

[24] 2016-HPA-199(c) - *Complainant v. College of Physicians and Surgeons of British Columbia*, 2019 BCHPRB 9 (CanLII).

above, and asserts that the request is especially significant due to the large volume of records at issue.

[60] While s. 56(4)(a) of FIPPA gives the Commissioner the power to decide whether representations are to be made orally or in writing, for the reasons that follow, I decline to grant the applicant's request.

[61] The notice of inquiry issued in this inquiry provided that submissions were to be made in writing. This is the OIPC's usual process. In addition to the usual submission process, I also convened a second round of submissions to, among other things, permit the parties to address gaps in the College's affidavit evidence concerning s. 14. Through this extensive written submission process, the applicant had multiple opportunities to respond to the Chief Counsel's affidavits and took those opportunities to identify several issues related to their reliability and accuracy.

[62] I took the applicant's submissions into account in assessing his request for a production order. I will consider them again in assessing the merits of the College's application of s. 14 below. The applicant has had the opportunity to respond to the College's evidence, and I have sufficient evidence before me on which to assess the College's decision to withhold information under s. 14. I am not persuaded that the applicant's suspicions about the attachments or the volume of information at issue offer sufficient reason to put the parties or the OIPC to the inconvenience, expense, and delay of convening an in-person hearing at this point in the inquiry. I decline to grant the applicant's request to cross examine the College's affiant.

Solicitor-Client Privilege

[63] I now turn to the merits of the s. 14 issue. Section 14 of FIPPA encompasses both types of solicitor-client privilege found at common law: legal advice privilege and litigation privilege. In this case, the College submits that the information in dispute is protected by legal advice privilege.

[64] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking, formulating, or providing legal advice, opinion, or analysis. For information to be protected by legal advice privilege it must be:

- a communication between solicitor and client (or their agent);
- that entails the seeking or providing of legal advice; and
- that is intended by the solicitor and client to be confidential.[25]

[25] *Solosky v. The Queen,* 1979 CanLII 9 (SCC) at page 837, and *R. v B.*, 1995 CanLII 2007 (BC SC) [*R v B*] at para 22.

[65] Not every communication between client and solicitor is protected by legal advice privilege. If the conditions set out above are satisfied, then legal advice privilege applies.

[66] However, it is not only the direct communication of advice between solicitor and client that may be privileged. Legal advice privilege extends beyond the document that communicates legal advice to those that are "part of the continuum of information exchanged" between the client and the lawyer in order to obtain or provide the legal advice.[26] In this regard, the courts have held that the "continuum of communications" includes the necessary exchange of information between solicitor and client for the purpose of obtaining and providing legal advice such as "history and background from a client" or communications to clarify or refine the issues or facts.[27] The courts have also held that the continuum includes communications at the other end of the continuum, after the client receives the legal advice, such as internal client communications about the legal advice and its implications.[28] In addition, legal advice privilege applies not only to privileged communications themselves, but also to information that would reveal those communications.[29]

Parties' submissions

[67] The College submits that legal advice privilege applies to all the information it withheld under s. 14 because the information is itself confidential communications from the lawyers to their clients, in which the lawyers provided legal advice, or because the information falls within the protected continuum of communications. The College also relies on common interest privilege, an exception to the rule of waiver which applies when privileged communications are shared with parties with sufficient common interest in the same transactions.

[68] To support its application of s. 14, the College relies on evidence from the Chief Counsel. The Chief Counsel explains that some of the records containing the information at issue relate to legal advice provided to the College in respect of the College's disposition of the applicant's complaint. He states that he and an external lawyer (the Investigating Lawyer) the College hired to investigate and provide legal advice about the applicant's complaint both acted in a legal capacity toward the College with respect to the applicant's complaint.

[69] The Chief Counsel describes the records relating to the College's disposition of the applicant's complaint. He says the College withheld two reports

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[26] *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority,* 2011 BCSC 88 (CanLII) [*Camp Development*] at paras 40 – 46; *Bilfinger supra* note 15 at paras 22-24; and *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 [*Huang*] at para 83.
[27] *Ibid Camp Developments, Bilfinger, and Huang.*
[28] *Ibid Camp Developments, Bilfinger, and Huang.*
[29] Order F22-16, 2022 BCIPC 18 (CanLII) at para 31.

and a memorandum that he and the Investigating Lawyer provided to the College staff and that were an integral part of the legal advice they provided to the College. He also says the College withheld the Investigating Lawyer's solicitor's brief, notes to file, and notes of oral legal advice the lawyer provided to College staff. He says that these records were an integral part of the Investigating Lawyer's legal services and formed part of the continuum of communications between lawyer and client, but unlike the reports and memorandum, he does not say that the Investigating Lawyer provided them to the College.

[70] The Chief Counsel deposes that the remaining records relate to the HPRB's review of the College's disposition, the application for judicial review of the HPRB's decision, and a civil claim the applicant filed against the College. He explains that lawyers from the Investigating Lawyer's law firm (collectively External Lawyers) represented the College in respect of these matters, and describes the records related to these proceedings as emails between the External Lawyers and the College; emails between the External Lawyers' legal assistant and the College; emails between the External Lawyers and the physician's counsel or the HPRB's counsel; and attachments to these emails.

[71] With respect to the attachments, the Chief Counsel states that some of the above-described email communications relate to the seeking, formulating, and provision of legal advice with respect to the attachments,[30] and that the attachments are written communications sent as part of privileged communications.[31] In its submissions, the College writes "that the attachments … are … privileged, both on their own, and as an integral part of the privileged communication to which [they are] attached and which would reveal that communication either directly or by inference."[32]

[72] The Chief Counsel states that all the records it withheld under s. 14 were intended to be, and were in fact, treated as confidential by the College.

[73] Finally, the College provided a table of records which forms part of the Chief Counsel's affidavit. In the table of records, the Chief Counsel attests to the number of pages in each record, the name of the individual who wrote it, the nature of the record, general information about the basis for withholding the record such as "for the formulating and seeking of legal advice," the names of the people in each email chain and the dates of the emails.

[74] The applicant submits that the College's vague language is insufficient to support its assertion of privilege. He also submits that s. 14 does not apply to information found in records that discuss transcription services because they relate to non-legal work. He also says that attachments are not privileged

[30] Affidavit no. 1 of Chief Counsel at para 4.
[31] Affidavit no. 2 of Chief Counsel at para 12.
[32] College's initial submission at para 27.

because they were not initially privileged and did not become privileged simply because they were sent to a lawyer. The applicant also asserts that I should require the College to sever the privileged information from the records and to provide the remainder of the records to him. In addition, he says that the College is not authorized to withhold certain email subject lines because they do not reveal privileged information.

Findings and analysis

[75] In his affidavits and the table of records, the Chief Counsel provided evidence about the date and nature of the records, context about the College's complaint process and the relevant legal proceedings, the identities of the authors and recipients of the records, and the College's relationship with the various individuals who wrote, sent or received the records. I have already found the Chief Counsel's evidence to be informed and reliable, and I accept his evidence about these factual matters.

[76] In addition, the College severed some of the records containing s. 14 information and disclosed those portions of the records that it did not withhold under s. 14. In determining the College's application of s. 14, I have also considered the context provided by those parts of the records that have been disclosed.

[77] Based on the Chief Counsel's evidence and the information in the records, I find that the s. 14 information can be categorized as follows:

- Records related to the applicant's complaint to the College;
- Emails between the External Lawyers and College staff;
- Emails between the External Lawyers' legal assistant and College staff;
- Emails between External Lawyers and counsel to other parties to proceedings involving the College (i.e., the HPRB and the physician); and
- Attachments to the emails described above.

I will address each of these categories in turn.

Records related to the applicant's complaint to the College

[78] The records that fall under this first heading are:

- a report and memorandum the Chief Counsel provided to College staff;[33]
- a report the Investigating Lawyer provided to College staff;[34]

[33] Chief Counsel's report is found at pages 31-34 of the records, while his memorandum is found at pages 85-86.
[34] Records pages 26-30.

- the Investigating Lawyer's notes to file;[35]
- the Investigating Lawyer's notes of oral legal advice provided to the College;[36] and
- the Investigating Lawyer's solicitor's brief which is comprised of the Investigating Lawyer's investigative documents, report to the College, notes to file, notes of oral legal advice provided to the College, draft documents, and legal research.[37]

[79] The term "solicitor's brief" has specific legal implications relating to something referred to by the courts as solicitor's or lawyer's brief privilege. Recently, the OIPC has held that solicitor's brief privilege is not a distinct class of privilege under FIPPA, but rather that it falls under litigation privilege. In those orders the OIPC also held that to the extent that solicitor's brief privilege is a distinct class of privilege, it will only apply where there is an exercise of judgment and skill on the part of the lawyer or lawyers who assembled the allegedly privileged information.[38]

[80] The College does not assert that solicitor's brief privilege or litigation privilege apply to this information or make any other submissions which would lead me to conclude that the College is attempting to assert solicitor's brief privilege. Furthermore, the College has also not led any clear evidence which would establish that solicitor's brief privilege applies, on either interpretation of the term. I find that the College is not asserting solicitor's brief privilege, and I will not consider the concept further.

[81] Having considered the Chief Counsel's evidence about the content of what he describes as the solicitor's brief, I find that the term "file" is also appropriate. Given the implications of the term solicitor's brief, I prefer this term and will use it going forward.

[82] From the Chief Counsel's description of the Investigating Lawyer's file, it is clear that the file is comprised of individual records which were created and used in different ways that are material to the test for legal advice privilege. Accordingly, where I address the Investigating Lawyer's file below, I will address the records contained in it individually where appropriate.

[83] As these records were created by the Chief Counsel and the Investigating Lawyer, the first question is whether there was a solicitor-client relationship between the College and the Chief Counsel and between the College and the

[35] Records pages 18-20, 67, and 87.
[36] Records page 70.
[37] Records pages 1745 – 1995.
[38] Order P23-06, 2023 BCIPC 63 (CanLII), and Order F23-107, 2023 BCIPC 123 (CanLII).

Investigating Lawyer with respect to the applicant's complaint to the College. For the reasons that follow, I accept that there was.

[84] Privilege does not attach to communications involving a lawyer who is hired as an investigator unless "the lawyer is conducting the investigation for the purposes of giving legal advice to her client."[39] In this case, the Chief Counsel deposes that the College retained the Investigating Lawyer to not only investigate, but also to provide legal advice to the College about the applicant's complaint. I accept this evidence, and I am satisfied that there was a solicitor-client relationship between the College and the Investigating Lawyer with respect to the investigation.

[85] Similarly, while legal advice privilege applies to in-house counsel, provided they are acting in a legal capacity,[40] "owing to the nature of the work of in-house counsel, often having both legal and non-legal responsibilities, each situation must be assessed on a case-by-case basis to determine if the circumstances were such that the privilege arose."[41] In this case, the Chief Counsel attests that he was acting in a legal capacity in respect of the report and memorandum he provided to the College, and I accept that evidence.

[86] I find that some of the documents described above satisfy the test for legal advice privilege.

[87] Based on the Chief Counsel's evidence, I accept that he and the Investigating Lawyer provided the reports and the memorandum to the College, and that these documents were an integral part of the legal advice the two lawyers provided to the College about the complaint. As there is no indication that the reports or memoranda were shared outside the College's confidential relationships with its lawyers, I also accept his evidence that these records were intended to be and were treated by the College as confidential. Thus, I find that all three criteria required to establish a claim of legal advice privilege have been met. That is, the reports and memoranda are written communications from the lawyers to their clients, in which the lawyers provided confidential legal advice.[42]

[88] I come to the same conclusion about the Investigating Lawyer's notes recording oral legal advice provided to the College. The oral legal advice was clearly a communication between lawyer and client for the provision of legal advice, and there is no evidence to suggest that the advice was shared beyond

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[39] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 (CanLII) [*College*] at para 42.
[40] *Pritchard supra* note 17 at paras 19-21.
[41] *Pritchard, ibid* at para 20.
[42] The Investigating Lawyer's report is located twice in the records, once on its own and a second time in the lawyer's file. This finding applies equally to both copies as disclosing either copy would reveal the very information found in the other. The Investigating Lawyer's report is found at pages 26-30 and somewhere in pages 1745-1994 of the records.

the solicitor-client relationship. As noted above, legal advice privilege applies not only to privileged communications themselves, but also to information that would reveal those communications. As the notes record a privileged communication, I find that disclosing them would reveal privileged information.[43]

[89] On the other hand, I do not accept that the balance of the records related to the applicant's complaint to the College satisfy the test for legal advice privilege.

[90] What remains are what the Chief Counsel describes as investigative documents, notes to file, draft documents, and legal research, most of which are found in the Investigating Lawyer's brief.

[91] As discussed above, the Chief Counsel does not suggest that the Investigating Lawyer provided these records to the College as part of her legal advice, but rather that they were an integral part of the Investigating Lawyer's legal services and formed part of the continuum of communications between lawyer and client. Based on this evidence, I find that the remaining records are not themselves a communication between lawyer and client, but rather the lawyers' own materials which she prepared for the purpose of formulating and providing legal advice to the College. In this way, these materials can be distinguished from the records discussed above, which the Investigating Lawyer provided to the College.

[92] In making this finding, I note that there is a statement in the College's initial submission that some of the notes, among other things, "formed part of the advice subsequently provided to client."[44] To the extent that the College intends to say that the Investigating Lawyer provided these notes to the College as part of her legal advice, that submission is not clear when the above statement is examined in the context of the paragraph as a whole, and it does not accord with the Chief Counsel's evidence which does not suggest that the record was provided to the College. Whatever the College intends by this submission, I prefer Chief Counsel's evidence to the College's submission, both because it is evidence and because it is clear.

[93] I do not accept that these records fall within the protected continuum of communications. While the College makes this assertion, it does not situate these documents within the continuum of communications as it has been defined by the courts.[45] In this regard, the College does not describe them as part of the necessary exchange of information between solicitor and client; communications

[43] This finding applies equally to the notes on their own and to those found in the Investigating Lawyer's file. The notes of oral legal advice are found at pages 70 of the records and somewhere in pages 1745-1994 of the records.
[44] College's initial submission at para 32.
[45] See para 66 above.

at the other end of the continuum, after the client receives the legal advice, such as internal client communications about the legal advice and its implications; or information that would reveal those communications.[46]

[94] Rather, the College acknowledges that they are documents the Investigating Lawyer relied on in advising the College. The courts have repeatedly refused to accept that legal advice privilege protects documents simply because they are in a lawyer's file. In *General Accident Assurance Co. v. Chrusz* [*Chrusz*], the Ontario Court of Appeal flatly rejected the notion that legal advice privilege protects "all communications or other material deemed useful by the lawyer to properly advise [their] client,"[47] explaining that such an interpretation "would deny opposing parties and the courts access to much information which could be very important in determining where the truth lies in any given case."[48] Similarly, in *British Columbia (Securities Commission) v. BDS* [*BDS*], the BC Supreme Court refused to accept that legal advice privilege extends beyond communications between solicitors and clients to all documents created in the course of providing legal services.[49]

[95] Based on the College's evidence, I find that the remaining records fall squarely under the analysis set out in *Chrusz* and *BDS.* The College has not provided evidence that they are communications between lawyers and their clients, or that they otherwise fall within the continuum of communications. Rather, the College's evidence is that they are simply documents the Investigating Lawyer used to advise her clients. Accordingly, I find that the College has not established that these records are subject to legal advice privilege.

Emails between the External Lawyers and College staff

[96] The College withheld emails between the External Lawyers and the College relating to the applicant's application for review to the HPRB and his civil claim.[50]

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[46] See para 66 above.
[47] 1999 CanLII 7320 (ON CA) at para 127.
[48] *Ibid* at para 127.
[49] *British Columbia (Securities Commission) v. BDS*, 2002 BCSC 664 at para 10 [BDS]; aff'd on appeal: *British Columbia (Securities Commission) v. CWM*, 2003 BCCA 244 [*CWM*]. Leave to appeal to SCC dismissed: [2003] SCCA No 341.
[50] Records pages 113, 117-118, 124, 125, 126-127, 128-129, 136-138, 149, 150-151, 202, 211-214, 215-222, 223-228, 247-255, 295, 297, 306, 485, 517, 520, 523, 525, 558, 584, 586, 590, 628-629, 630, 636, 639, 649, 652, 689, 711, 718-720, 721-723, 735, 742-743, 747-748, 751, 754, 760, 763-764, 766-767, 771-772, 790-791, 796-797, 801-802, 816-817, 829-830, 835-836, 838-839, 939-942, 947, 954-955, 998-1072, 1074-1078, 1079-1083, 1084-1155, 1156-1161, 1163-1169, 1171-1175, 1176-1182, 1184-1189, 1262-1270, 1272-1279, 1280-1288, 1452, 1479-1481, 1517-1518, and 1580.

[97] I accept the Chief Counsel's evidence that there was a solicitor-client relationship between the External Lawyers and the College with respect to the applicant's application for review to the HPRB and civil claim. The emails are, therefore, communications between lawyer and client.

[98] The table of records describes these emails as for the purpose of seeking, formulating, and/or provision of legal advice. The applicant argues that this kind of vague language is insufficient to support the College's assertion of privilege.

[99] While the College's evidence in this regard is not detailed, it must be examined in its full context. In addition to these statements, the College provided evidence about the nature of the legal proceedings to which the emails relate, the External Lawyers' relationship to the College with respect to those proceedings, and details about the dates and authors of these emails. Past OIPC orders have accepted similar evidence where it is accompanied by the kind of contextual information provided by the College.[51] In addition, the BC Supreme Court has recently commented that when considering affidavit evidence in support of a claim of solicitor-client privilege, "some weight has to be given to the judgement of counsel," and that "the task before an adjudicator is not to get to the bottom of the matter and some deference is owed to the lawyer claiming the privilege."[52] Considering the College's evidence as a whole in light of the relevant authorities, I accept that the College's evidence is sufficient to establish that the emails entail the seeking or providing of legal advice.

[100] I can see from the table of records that the only individuals on these emails were College representatives and the External Lawyers. Thus, I accept the Chief Counsel's evidence that these records were intended to be and were treated by the College as confidential.

[101] Finally, I am not persuaded by the applicant's submission that emails with an articling student that discuss transcription services are not privileged. I do not have sufficient information to find in the applicant's favour. It is also not clear on what basis the applicant asserts that some of the records relate to transcription services as he does not explain why he believes that some of the records relate to transcription services. Moreover, legal advice privilege is broad and covers all communications made with a view to obtaining legal advice, even those that concern financial or administrative matters.[53] To the extent that emails about transcription services arise in the context of an ongoing solicitor-client relationship in respect of ongoing proceedings, it is more probable than not that any such emails, if they do exist, would be covered by solicitor-client privilege.

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[51] See for example Order F17-31, 2017 BCIPC 33 (CanLII); Order F23-33, 2023 BCIPC 39 (CanLII) at paras 29 and 30; Order F23-43, 2023 BCIPC 51 (CanLII); Order F19-41, 2019 BCIPC 46 (CanLII); Order F23-101, 2023 BCIPC 117 (CanLII) at para 62.
[52] *Minister of Finance supra* note 23 at para 86.
[53] *Descôteaux v Mierzwinski*, 1982 CanLII 22 (SCC) [*Descôteaux*] at pp 892-893.

[102] Thus, I find that all three criteria required to establish a claim of legal advice privilege have been met. That is, the emails are confidential, lawyer-client communications that entail the seeking or providing of legal advice.

Emails between the External Lawyers' legal assistant and College staff

[103] The College also withheld emails between the External Lawyers' legal assistant and College Staff that relate to the applicant's HPRB review application and his civil claim.[54]

[104] The Chief Counsel's evidence about these emails is substantially the same as his evidence about the lawyer-client emails – that is, he says that the emails were for the purpose of purpose of seeking, formulating, and providing legal advice and that they were intended to be and were in fact treated as confidential by the College. Again, I accept this evidence.

[105] In its oft-cited decision, *Descôteaux v Mierzwinski,* the Supreme Court of Canada explained a client's communications with a lawyer's staff should be treated the same as that client's communications with the lawyer for the purpose of assessing privilege:

> a lawyer's client is entitled to have all communications made with a view to obtaining legal advice kept confidential. Whether communications are made to the lawyer himself or to employees, and whether they deal with matters of an administrative nature such as financial means or with the actual nature of the legal problem, all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attached to confidentiality.[55]

[106] Thus, I find that the College's emails with the legal assistant also satisfy the test for legal advice privilege.

Emails between the External Lawyers and counsel to other parties to proceedings involving the College

[107] The College also withheld emails between the External Lawyers and counsel for the other parties to proceedings involving the College.[56] Nowhere in the Chief Counsel's evidence does he suggest that these emails are or would reveal communications between the External Lawyers and the College.

[54] Records pages 517, 525, 584, 586, 590, 649, 689, 735, 829-830, 838-839, and 1580.
[55] *Descôteaux supra* note 53 at pages 893-894.
[56] Records pages 152-153, 508-509, 804-815, 818-819, 851-854, 855-857, and 858-860.

[108] 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.[57] However, if the persons outside the solicitor-client relationship had a sufficient common interest with the client, then privilege is not waived.[58] Therefore, privilege must exist in the first place before common interest privilege can arise.[59]

[109] Accordingly, the first question is whether the information in these emails is protected by legal advice privilege in the first place, before the External Lawyers communicated that information to the counsel for the other parties. While the College makes extensive submissions in support of its position that there was a common interest, it does not explain how the information in these emails satisfies the test for legal advice privilege in the first place. Furthermore, its evidence about these emails does not suggest that they contain or would reveal privileged confidential communications between the College and its External Lawyers.

[110] I am not persuaded the information in the emails was protected by solicitor-client privilege in the first place – before it was even shared with the other parties. As a result, I find that the emails between External Lawyers and counsel to other parties to proceedings involving the College do not satisfy the test for legal advice privilege. Accordingly, I need not consider whether the common interest privilege exception to waiver applies.

Attachments

[111] According to the Chief Counsel, the College withheld three attachments from the emails between the External Lawyers and the College: two draft submissions, a draft letter,[60] and one attachment from the emails between the External Lawyers and counsel to other parties: a draft submission.[61]

[112] Solicitor-client privilege does not necessarily apply to all attachments to privileged communications.[62] Rather, an attachment may be privileged on its own

[57] *Hainan Dehong Real Estate Development Corporation v WestBay Partners*, 2022 BCSC 24 at para 56.
[58] *Maximum Ventures Inc. v De Graaf*, 2007 BCCA 510 (CanLII) at para 14.
[59] *Ross v Bragg*, 2020 BCSC 337 at para 22.
[60] Records at pages 137-138, 998-1069, and 1084-1155.
[61] Records at pages 804-814.
[62] *Minister of Finance supra* note 23 at para 110.

or because it is an integral part of the privileged communication to which it is attached and it would reveal that communication either directly or by inference.[63] The party claiming privilege over an attachment must provide some basis for that claim.[64]

[113] While the College submits that the attachments are privileged on both bases, the Chief Counsel's evidence is only about how the attachments are privileged because they are an integral part of the privileged communication in the emails. In this regard, Chief Counsel states that the emails relate to the seeking, formulating, and provision of legal advice with respect to the attachments,[65] and that the attachments are sent as part of the privileged communications contained in the emails.[66]

[114] The applicant submits that the attachments were not initially privileged and did not become privileged simply because they were sent to a lawyer.

[115] There is no evidence before me to suggest that any of the attachments are privileged in their own right. As for the question of whether disclosing the attachments would reveal the privileged emails to which they are attached, I note that this question is only relevant to the attachments to the emails between the External Lawyers and the College, given my finding that the emails between the External Lawyers and other parties are not subject to legal advice privilege. Therefore, I find that the attachment to the emails between the External Lawyers and counsel to other parties is not privileged.[67]

[116] I understand the Chief Counsel's statement that the privileged emails relate to the seeking, formulating, and provision of legal advice with respect to the attachments to mean that the emails discuss the attachments, and therefore that revealing the attachments would risk revealing the privileged communications.

[117] I accept that the attachments are appended to emails in which the College and the External Lawyers discussed, on a confidential basis, legal advice related to the attachments. Therefore, I find that revealing the attachments would risk allowing an accurate inference to be made about the content of the privileged communications in the emails. Accordingly, I find that the attachments are an integral part of the emails between the External Lawyers and the College and are protected by the same privilege as the emails.[68]

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[63] Order F18-19, 2018 BCIPC 22 (CanLII) at paras 36-44.
[64] *Minister of Finance supra* note 23 at para 111.
[65] Affidavit no. 1 of Chief Counsel at para 4.
[66] Affidavit no. 2 of Chief Counsel at para 12.
[67] Records at pages 804-814.
[68] Records at pages 137-138, 998-1069, and 1084-1155.

Severance

[118] The applicant submits that I should require the College to sever the privileged information from the records and to provide the remainder of the records to him. In particular, he submits that the College is not authorized to withhold certain email subject lines because they do not reveal privileged information.

[119] The applicant's arguments relate to s. 4(2) of FIPPA, which requires a public body to provide access to part of a record, if the information that is properly excepted from disclosure can reasonably be severed from the record.

[120] Because of the importance of solicitor-client privilege, the BC Court of Appeal has cautioned that severance should only be considered when it can be accomplished without any risk that the privileged legal advice will be revealed.[69]

[121] The records that remain at issue under s. 14 are the reports, the memorandum, the notes of oral legal advice, and the lawyer-client (or administrative assistant) emails. I am not persuaded by the applicant's submission that certain email subject lines should be severed. The applicant does not explain why disclosing them would not risk revealing privileged information. More broadly, I do not have sufficient evidence and nothing in the nature of the records on which to find that severance of any of these records could be accomplished without any risk of revealing the privileged information. For these reasons, I find that the College is authorized to withhold the privileged records in their entirety.

Conclusions

[122] In conclusion, I find that s. 14 authorizes the College to refuse to disclose the information withheld from the Chief Counsel and the Investigating Lawyer's reports to the College,[70] the Chief Counsel's memorandum to the College,[71] the Investigating Lawyer's notes of the oral legal advice he provided to College staff,[72] the emails between the External Lawyers and the College including their

[69] *British Columbia (Attorney General) v Lee*, 2017 BCCA 219 at para 36.
[70] Chief Counsel's report is found at pages 31-34 of the records. The Investigating Lawyer's report is found at pages 26-30 of the records and again somewhere in pages 1745 – 1995.
[71] Chief Counsel's memorandum is found at pages 85-86 of the records.
[72] The Investigating Lawyer's notes of oral legal advice are found at age 70 of the records and throughout pages 1745 – 1996 of the records.

attachments,[73] and the emails between the External Lawyers' legal assistant and the College.[74]

[123] However, I find that the College is not authorized to withhold: the Investigating Lawyer's investigative documents, notes to file, draft documents, and legal research;[75] the emails between External Lawyers and counsel to other parties to proceedings involving the College[76] and the attachments to those emails.[77] The College does not assert that any other exceptions to disclosure apply to the information it withheld on the basis of s. 14. Accordingly, I need not consider the information the College is not authorized to withhold under any other exceptions to disclosure.

SECTION 13(1) – ADVICE AND RECOMMENDATIONS

[124] Section 13(1) allows a public body to refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister. However, s. 13(3) provides that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. Therefore, if s. 13(3) applies to information, the public body cannot withhold that information under s. 13(1).

[125] In this case, I find that the College's decision to withhold information under s. 13(1) can be resolved based on s. 13(3).

[126] The College withheld a single record under s. 13(1) – a draft decision letter of the panel responsible for deciding the applicant's complaint, prepared by one member for review by another. The College withheld the draft letter in its entirety.

[127] The applicant submits that s. 13(3) applies to the record; the College submits that it does not. Neither explain the basis for their position.

[128] The draft letter is dated. Absent any explanation from the College to the contrary, I find that the date on the letter reflects the date the letter was created.

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[73] Records pages 113, 117-118, 124, 125, 126-127, 128-129, 136-138, 149, 150-151, 202, 211-214, 215-222, 223-228, 247-255, 295, 297, 306, 485, 517, 520, 523, 525, 558, 584, 586, 590, 628-629, 630, 636, 639, 649, 652, 689, 711, 718-720, 721-723, 735, 742-743, 747-748, 751, 754, 760, 763-764, 766-767, 771-772, 790-791, 796-797, 801-802, 816-817, 829-830, 835-836, 838-839, 939-942, 947, 954-955, 998-1072, 1074-1078, 1079-1083, 1084-1155, 1156-1161, 1163-1169, 1171-1175, 1176-1182, 1184-1189, 1262-1270, 1272-1279, 1280-1288, 1452, 1479-1481, 1517-1518, and 1580. The attachments are found on pages 137-138, 998-1069, and 1084-1155.
[74] Records pages 517, 525, 584, 586, 590, 649, 689, 735, 829-830, 838-839, and 1580.
[75] Records pages 18-20, 67, 87, and 1745 - 1995 (excepting the notes of oral legal advice and the copy of the Investigating Lawyer's report which the College may withhold).
[76] Records pages 152-153, 508-509, 804-815, 818-819, 851-854, 855-857, and 858-860.
[77] Records at pages 804-814.

[129] While the letter was not older than 10 years on the date the College responded to the applicant's access request, it is now more than 10 years old. Accordingly, if the applicant were to request the letter today, s. 13(3) would apply and the College would not be authorized to refuse access under s. 13(1).

[130] FIPPA does not state whether s. 13(3) should be assessed based on the date the public body responds to an access request or the date on which a request for review is decided at inquiry. In past orders, the OIPC has held that the appropriate date in these circumstances is the date at which the inquiry is decided. The logic of such an approach is that it would not be practical or reasonable to require an applicant to repeat the FIPPA access request process when the passage of time clearly bars the public body from relying on s. 13(1).[78] I agree with this reasoning and adopt the same approach in this inquiry. I add that requiring the applicant to make a fresh access request in these circumstances would be an extremely inefficient use of time and resources.

[131] I find that s. 13(3) applies to the information in the draft decision letter because, as of the date of this decision, the letter has been in existence for more than 10 years. Therefore, the College may not withhold the information in the draft decision letter under s. 13(1).[79]

SECTION 22 – UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY

[132] Section 22 of FIPPA requires a public body to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.[80]

Personal information

[133] As s. 22 only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information within the meaning of FIPPA.

[134] Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." Information is "about an identifiable individual" when it is "reasonably capable of identifying an individual, either alone or when combined with other available sources of information."[81]

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[78] See Order F24-100, 2024 BCIPC 114 (CanLII) at paras 80 and 81; Order F23-78, 2023 BCIPC 94 (CanLII) at paras 61-63; and Order F14-34, 2014 BCIPC 37 (CanLII) at para 26 and note 22.
[79] The draft decision letter is found at pages 10 – 17 the records.
[80] A "third party" is defined in schedule 1 of FIPPA as any person other than (a) the person who made the request, or (b) a public body.
[81] Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

[135] "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."[82]

Description of the information in dispute under s. 22(1)

[136] The information the College withheld under s. 22(1) is found in its own internal documents, letters, and emails related to its efforts to implement and ensure compliance with the consent agreement it approved. These records were created after the College approved the consent agreement resolving the complaint against the physician – that is, after the College investigated and issued its decision about the complaint. They document the physician's compliance with the terms of the consent agreement and the steps the College took to arrange and document that compliance.

[137] The information the College withheld under s. 22(1) is:

- the physician's name, College ID number, Medical Service Plan ID number, professional designation, practice status information, and address;
- the names of other individuals who have files with the College that are not related to the applicant's complaint;
- invoices, receipts, and statements of account related to the physician's financial accounts with the College;
- an overview of the nature of the complaint;
- a summary of the physician's statements about the complaint;
- information about the physician's personal, family, medical, psychological, education and employment histories;
- assessments of the physician;
- reference letters about the physician;
- procedural information about the College's efforts to confirm and document the physician's compliance with the terms of the consent agreement; and
- standard information that typically appears in emails and letters such as letterhead, names and addresses of sender and recipients of letters; dates, generic salutations, pleasantries, and sign offs.

[82] Schedule 1.

Findings and analysis – personal information

[138] I find that some of the information the College withheld is not personal information either because it is either contact information or because it is too general to identify a specific individual.

[139] In their submissions both parties agreed that the physician's address was contact information relating not his business address. I agree with the parties, and I find that it is not personal information.[83]

[140] The College also withheld addresses, telephone numbers, fax numbers, email addresses, and website information associated with businesses and organizations from letterheads and email signatures. It also withheld addressee information and to and from lines from professional letters and emails. It is my view that the purpose for which this kind of information is provided is to allow the individuals to be contacted at their place of business. I find that this information is contact information, and thus not personal information.[84]

[141] Finally, the College withheld dates, generic salutations, pleasantries, and sign offs from emails and letters. I find that this information is too general be reasonably capable of identifying an individual and thus is not personal information.[85]

[142] I find that the remaining information is recorded information about identifiable individuals that is not contact information and is therefore personal information.

[143] This information is unique identifiers (names and identification numbers) and substantive information that relates to specific individuals who are named in the records. The names and unique identifiers are about the physician, individuals involved in the physician's file with the College, and other individuals who have files with the College that do not relate to applicant's complaint against the physician except. The named and identified individuals can clearly be identified from this information. All the substantive information relates to the applicant's complaint against the physician. Thus, I find that those familiar with the circumstances could identify the individuals whose personal information appears in the records even if their names were redacted.

[83] Records pages 37, 38, 51.
[84] Records pages 43, 44, 52, 56, 57, 58, 59 – 62, 65, 66, 68, 71, 72, 84.
[85] Records pages 43, 44, 45 52, 56, 57, 59, 62, 65, 66, 71, 72, 84.

Section 22(4) - not an unreasonable invasion of privacy

[144] The second step in the s. 22 analysis is to consider whether s. 22(4) applies to any of the information that I have found is "personal information." Section 22(4) lists circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. If information falls into one of the circumstances enumerated in s. 22(4), the public body is not required to withhold the information under s. 22(1).

[145] The College submits that none of the circumstances listed in s. 22(4) apply to the personal information at issue.

[146] The applicant submits that s. 22(4)(b), (c), and (i) apply to some of the information in dispute.

Sections 22(4)(b) and (c)

[147] Sections 22(4)(b) and (c) provide that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

> (b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,
>
> (c) an enactment of British Columbia or Canada authorizes the disclosure,

[148] The applicant did not provide submissions to support his position with respect to ss. 22(4)(b) or (c). It is not clear to me how these provisions could apply to any of the information in dispute, and absent an explanation from the applicant, I am not persuaded that they do.

Disclosure of information about a license or certificate - s. 22(4)(i)

[149] Section 22(4)(i) provides that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

> the disclosure, in respect of
>
> (i) a licence, a permit or any other similar discretionary benefit, or
> (ii) a degree, a diploma or a certificate,
>
> reveals any of the following with respect to the applicable item in subparagraph (i) or (ii):
>
> (iii) the name of the third party to whom the item applies;

(iv) what the item grants or confers on the third party or authorizes the third party to do;
(v) the status of the item;
(vi) the date the item was conferred or granted;
(vii) the period of time the item is valid;
(viii) the date the item expires.

[150] The applicant asserts that s. 22(4)(i) applies to the certificates issued to the physician. The College does not address this submission.

[151] For s. 22(4)(i) to apply, the information at issue must be (1) in respect of a licence, a permit or any other similar discretionary benefit, or a degree, a diploma, or a certificate, and (2) reveal the information listed in subsections (iii) – (viii).

[152] The College withheld information about the physician's College ID number, practice status information in respect of a license to practice medicine in BC, a certificate related to professional training, and other information related to that certificate. I find that this information relates to a license and certificate within the meaning of s. 22(4)(i)(i) and (ii).

[153] Furthermore, I find that the practice status information reveals information about the date the license expires, and that the certificate and related information reveal the name of the person to whom the certificate applies, what the certificate confers on that person, and the date the certificate was conferred. Accordingly, I find that the s. 22(4)(i) exclusion applies to this information.[86]

[154] However, I find that s. 22(4)(i) does not apply to the College ID number because it does not reveal any of the information listed in ss. 22(4)(i), (iii)-(viii).

[155] Having considered the remaining subsections in s. 22(4), I find that no others apply.

Section 22(3) – disclosure presumed to be an unreasonable invasion of third-party personal privacy

[156] The third step in the s. 22 analysis is to consider whether the presumptions listed in s. 22(3) apply to any of the personal information that is not excluded under s. 22(4). Section 22(3) lists circumstances where disclosure is

[86] Records pages 37, 69, 89, 90.

presumed to be an unreasonable invasion of a third party's personal privacy. The remaining information is:

- the physician's name, College ID number, Medical Service Plan ID numbers;
- invoices, receipts, and statements of account related to the physician's financial accounts with the College;
- the names of other individuals who have files with the College that are not related to the applicant's complaint;
- an overview of the nature of the complaint;
- a summary of the physician's statements about the complaint;
- information about the physician's personal, family, medical, psychological, education and employment histories;
- assessments about the physician;
- reference letters;
- procedural information about the College's efforts to confirm and document the physician's compliance with the terms of the consent agreement; and
- email and letter subject lines.

[157] The College submits that ss. 22(3)(a), (b), (d), (f), (g), and (i) apply to the information in dispute. While the applicant states that s. 22(3)(b) applies, he makes no submissions in support of this position and given his position that the information should be disclosed, I assume that the reference to s. 22(3)(b) was in error.

Employment, occupational or educational history – s. 22(3)(d)

[158] Section 22(3)(d) creates a presumption against disclosure of personal information that relates to the employment, occupational, or educational history of a third party.

[159] The College submits that s. 22(3)(d) applies to the physician's College ID number because a College ID number is a unique personal identifier that pertains to a physicians' registration with the regulator that governs their profession and therefore relates to a physician's "occupational history."

[160] The applicant does not address s. 22(3)(d).

[161] I accept the College's submissions about the physician's College ID number. Previous orders have found that physicians' College ID numbers are "unique personal identifiers that pertain to [a] physician['s] registration with the

regulatory body that governs their profession"[87] and therefore relate to physicians' "occupational history" for purposes of s. 22(3)(d). I adopt that conclusion, and I find that the College ID number relates to a physician's occupational history within the meaning of s. 22(3)(d).

[162] In addition, the remaining information about the physician relates to the fact that the physician is the subject of a College complaint, and action taken by the College in response to that complaint. In past orders, the OIPC has held that investigations of professionals, including a regulatory body's review of medical care provided by a physician, comprise that professional's "occupational history."[88] I agree with and apply that same reasoning here. Further, I find this reasoning is equally applicable to information relating to the outcomes of a regulatory body's decision making processes against a licensee. Therefore, I find that s. 22(3)(d) applies to all the personal information that relates to the physician.

Sections 22(3)(a), (b), (f), (g), and (i)

[163] The College submits that the presumptions described above apply to some of the information to which I found s. 22(3)(d) applies. Given my findings about s. 22(3)(d) and my ultimate conclusion about this information, I need not consider whether these other presumptions against disclosure also apply to the information in dispute in order to decide whether the College is required to withhold this information under s. 22(1). Accordingly, I decline to do so.

Conclusions – s. 22(3)

[164] In conclusion, with the exception of the names of other individuals who have files with the College that do not relate to the applicant's file, I find that the s. 22(3)(d) presumption against disclosure applies to all the personal information that remains in dispute because it is the physician's occupational history.

Section 22(2) – all relevant circumstances

[165] The fourth and final step in the s. 22 analysis is to consider the impact of disclosing the personal information at issue in light of all relevant circumstances, including those listed in s. 22(2). It is at this stage that the s. 22(3) presumptions may be rebutted.

[166] The College submits that there are no relevant circumstances weighing in favour of disclosure of the information in dispute, and in particular that s. 22(2)(c) does not apply to the information that remains in dispute. The applicant submits

[87] Order F23-14, 2023 BCIPC 16 at para. 87.
[88] Order 00-11, 2000 CanLII 10554 (BC IPC) at p. 11; Order 02-01, 2002 CanLII 42426 (BC IPC) at paras. 121-122; Order F05-18, 2005 CanLII 24734 (BC IPC) at paras. 45–46.

that ss. 22(2)(a), (b), (c), and (g), as well as the fact that some of the information is known to him and captured by s. 33(2)(q) of FIPPA, favour disclosure of the information. I also find that the applicant's prior knowledge of some of the information is a relevant factor to consider.

Subject the activities of a public body to public scrutiny - s. 22(2)(a)

[167] Section 22(2)(a) requires a public body to consider whether the disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny. However, for s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting the public body's activities to public scrutiny as opposed to subjecting an individual third party's activities to public scrutiny.[89]

[168] The applicant submits that s. 22(2)(a) weighs in favour of disclosure. I understand the applicant to argue that the physician's actions toward him and others were a danger to public safety, and that there is a public interest in subjecting the activities of the physician and the College's decision making process about the applicant's complaint to public scrutiny.

[169] I accept that the overview of the nature of the complaint and summary of the physician's statements about the complaint could contribute to subjecting the College's decision making processes to public scrutiny. I make this finding because this information summarizes, in part, the facts and circumstances relevant to the decision the College made about how to proceed with the applicant's complaint. However, this information is also about the physician and as a result, its disclosure could also subject him to public scrutiny. For this reason, while I find that s. 22(2)(a) applies to this information, I attribute less weight to it.

[170] I am not persuaded that s. 22(2)(a) applies to the balance of the information. What remains is too generic to meaningfully contribute to subjecting the activities of the College to public scrutiny. In any event, most of it is exclusively about the physician or other individuals and, therefore, would not reveal anything about the activities of the College.

Promotion of public health and safety – s. 22(2)(b)

[171] Section 22(2)(b) requires a public body to consider whether disclosure of the personal information is likely to promote public health and safety.

[172] The applicant's arguments about s. 22(2)(b) are substantially the same as his arguments under s. 22(2)(a). The applicant also says he wants access to the

[89] Order F16-14, 2016 BCIPC 16 (CanLII) at para 40, and Order F24-48, 2024 BCIPC 56 (CanLII) at para 105.

reference letters because any College registrant who was aware of the allegations against the applicant had a duty to report those allegations to the College. I understand the applicant to argue that information about the individuals who wrote the reference letters will allow him to raise the duty to report issue to the College.

[173] The applicant's complaint concerned how the physician treated him during and after a doctor's visit which resulted in sanctions from the College. Again, the overview of the nature of the complaint and summary of the physician's statements summarize, in part, what the physician did and said that resulted in the complaint. I accept that disclosing this information could promote public health by contributing to a conversation about appropriate conduct by physicians. Accordingly, I find that s. 22(2)(b) weighs in favour of disclosure of this information.

[174] However, in making this finding, I note that the information itself is quite limited, a short summary, and is found in a letter relating to compliance with the consent order, rather than in any kind of formal investigation or decision context. Given its nature and context, I find that the value it might contribute to the promotion of public health is somewhat limited.

[175] I am not persuaded by the applicant's arguments about the reference letters and the duty to report. The reference letters relate to compliance with the terms of the consent order, a process that took place after the College had considered and decided the applicant's complaint. Without seeking to provide a fulsome interpretation of the duty to report under the *HPA,* I am confident that it does not include a duty to re-report a complaint that the College has already decided.

[176] I find that s. 22(2)(b) does not apply to the balance of the information in dispute because it is too generic to meaningfully contribute to the promotion of public health.

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

[177] Section 22(2)(c) requires a public body to consider whether the personal information is relevant to a fair determination of the applicant's rights.

[178] Past orders establish a four-part test, each step of which 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;

> 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.[90]

[179] The applicant submits that s. 22(2)(c) favours disclosure because he is the applicant in an ongoing application for judicial review of the HPRB decision in which he is challenging the adequacy of the College's investigation into his complaint and the reasonableness of its decision about that complaint. He says the information at issue has a bearing on the matters at issue in his application for judicial review. The applicant goes on to highlight several descriptions of the information in dispute from the College's submission, and asserts that with that information, he could prove several specific allegations in his application for judicial review.[91]

[180] The College submits that the information in dispute has no bearing on or significance to the application for judicial review because it was created after the College reached its decision about the applicant's complaint. The College also submits that the applicant has all the information he needs for the hearing because the HPRB filed the record on which its decision was based with the court.

[181] Parts one and two of the s. 22(2)(c) test require that the right in question be a legal right that relates to a proceeding that is underway or contemplated. There is no dispute between the parties that the applicant has an ongoing application for judicial review challenging the HPRB's decision to confirm the College's decision. In light of the ongoing application, I have no difficulty finding that the first two steps of the test are met.

[182] Part 3 of the test requires that the personal information at issue have some bearing on, or significance for, determination of the right in question. For the reasons that follow, I am not persuaded that any of the information in dispute satisfies step 3.

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[90] Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 at para 24; and Order F24-09, 2024 BCIPC 12 (CanLII) at para 48.

[91] These allegations are found in paragraphs 124-139 of the applicant's response submission. The applicant also submits that he requires the physician's email address so that he can serve the physician with materials related to the application for judicial review. As I have already determined that the physician's business address and email address are not personal information, I will not address this argument.

[183] The overview of the nature of the complaint and summary of the physician's statements are found in summary form in a letter drafted by the College for a purpose related to compliance with its consent order. The letter postdates the circumstances that were before the HPRB. It was not created by the HPRB. There is no evidence to suggest that the letter was before the HPRB when it issued the decision that is the subject of the application for judicial review. This information is simply a brief summary that the College included in a letter related to compliance with the consent order.

[184] The applicant's application for judicial review challenges the HPRB's decision, not the College's compliance process. There is no information before me to connect the letter or the information in it to the HPRB's decision or decision making process. For this reason, I do not accept that the nature of the complaint and summary of the physician's statements found in the letter could have any bearing on, or significance for, a determination of the applicant's rights in the application for judicial review.

[185] I find that the balance of the information is too generic to have any bearing on or significance to the applicant's application for judicial review.

[186] I do not accept that s. 22(2)(c) favours disclosure of any of the information in dispute.

Likely to be inaccurate or unreliable – s. 22(2)(g)

[187] Section 22(2)(g) requires a public body to consider whether the personal information is likely to be inaccurate or unreliable. Past orders make clear that this factor weighs *against* disclosure if the personal information is likely to be inaccurate or unreliable, or if disclosure could result in third parties being misrepresented in a public way.[92]

[188] The applicant argues that s. 22(2)(g) weighs in favour of disclosure because some of the information in dispute is about him and likely to be inaccurate.

[189] The applicant's interpretation is inconsistent with the purpose of s. 22, the words of s. 22(2), and the OIPC past case law. For the reasons below, I do not accept that s. 22(2)(g) should be interpreted in the manner advocated by the applicant.

[190] Section 22 concerns *third party* personal privacy. A "third party" is defined in schedule 1 of FIPPA as any person other than (a) the person who made the request, or (b) a public body. Thus, by definition, the applicant, is not a third party

[92] See for example Order F24-100, 2024 BCIPC 114 (CanLII) at para 112; Order F23-102, 2023 BCIPC 118 (CanLII), at para 33; and Order F24-09, 2024 BCIPC 12 (CanLII), at para 64.

for the purposes of this inquiry.[93] Section 22(2), along with ss. 22(3), and (4), are tools to analyze whether or not disclosure of the information at issue would be an unreasonable invasion of a *third party's* personal privacy. This purpose is clearly indicated in the words of s. 22(1) and (2), both of which expressly reference "unreasonable invasion of third party's personal privacy."

[191] Accordingly, I find that s. 22(2)(g) must be interpreted through the lens of third party personal privacy, as in the OIPC's past decisions, not through the privacy interests of the applicant.

[192] No party suggests that any of the *third party* personal information at issue is likely to be inaccurate or unreliable, and based on the information before me, I cannot identify any that is likely to be. I find that s. 22(2)(g) does not apply.

About the applicant

[193] Where an applicant is seeking release of their own personal information, this can weigh in favour of disclosing that information to them. However, where the applicant's personal information is interwoven with the personal information of third parties, this factor carries less weight.[94]

[194] Most of the information in dispute is not about the applicant. However, the information about the nature of the complaint and summary of the physician's statements about the complaint summarizes the applicant's involvement in the complaint and the circumstances giving rise to it. This information is about both the applicant and the physician. Consistent with past orders, I find that this factor weighs in favour of disclosure but assign it limited weight.

Captured by s. 33(2)(q) of FIPPA

[195] The applicant submits that s. 33(2)(q) favours disclosure of the information in dispute because this provision permits the College to disclose the information at issue. Section 33(2) of FIPPA concerns when a public body may disclose personal information and subsection (q) provides that one such circumstances is "for the purposes of licensing, registering, insuring, investigating or disciplining persons regulated by governing bodies of professions or occupations."

[196] I find that s. 33(2)(q) is not relevant. Disclosing information to the applicant in connection with his access request is not for the purpose of licensing, registering, insuring, investigating or disciplining persons regulated by governing bodies of professions or occupations.

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[93] For a more fulsome discussion of this issue see Order F24-66, 2024 BCIPC 76 (CanLII) at paras 66-68 and 78.
[94] Order F14-47, 2014 BCIPC 51 at para 36.

Conclusion – s. 22

[197] I found that some of the information in dispute was not personal information either because it is contact information or because it was not reasonably capable of identifying anyone, specifically: the physician's address; other addresses, telephone numbers, fax, email addresses, and website information found in letterheads and the to and from lines in emails associated with businesses and organizations; and dates, generic salutations, pleasantries, and sign offs from emails and letters. Consequently, s. 22(1) does not apply to this information.[95]

[198] I found that s. 22(4)(i) applied to the physician's status information in respect of a license to practice medicine in BC, a certificate related to professional training, and other information related to that certificate. Therefore, in accordance with s. 22(4)(i), I find disclosure of this information would not be an unreasonable invasion of personal privacy under s. 22(1).[96]

[199] The remaining personal information is:

- the physician's name, College ID number, Medical Service Plan ID numbers;
- invoices, receipts, and statements of account related to the physician's financial accounts with the College;
- the names of other individuals who have files with the College that are not related to the applicant's complaint;
- an overview of the nature of the complaint;
- a summary of the physician's statements about the complaint;
- information about the physician's personal, family, medical, psychological, education and employment histories;
- assessments about the physician;
- reference letters;
- procedural information about the College's efforts to confirm and document the physician's compliance with the terms of the consent agreement; and
- email and letter subject lines.

[200] I found that no presumptions or considerations applied to the names of other individuals who have files with the College that are not related to the applicant's file. Given the context in which they are found, disclosing these names would reveal that these individuals have files with the College and thus would reveal information about their activities in relation to the medical

[95] Records pages 37, 38, 43, 44, 45, 51, 52, 55, 56, 57, 58, 59 – 62, 65, 66, 68, 71, 72, 84.
[96] Records pages 37, 69, 89, 90.

profession. Conversely withholding this information would not impair the applicant's ability to understand the records, except to the extent of knowing the identities of these individuals. I find that it would be an unreasonable invasion of the personal privacy of these individuals to disclose their names.

[201] With respect to the description of the nature of the complaint and summary of the physician's statements, I found that the presumption against disclosure of occupational history in s. 22(3)(d) applies to this information. I also found that several circumstances weighed in favour of its disclosure – the interest of subjecting the activities of a public body to public scrutiny in s. 22(2)(a), the interest of promoting public health in s. 22(2)(b), and the fact some of the information was the applicant's personal information. However, I also found that the weight of these factors was diminished by the fact that the information was also about the physician and by the nature of and context in which the information was found.

[202] Disclosing this information would reveal details about the nature of a professionalism complaint about the physician. Professionalism complaints can have serious consequences for the professional involved. For this reason, it is the very kind of information that the s. 22(3)(d) information is intended to protect. Conversely, the information itself is quite limited, a short summary, is found in a letter relating to compliance with the consent order, rather than in any kind of formal investigation or decision context and is more about the physician than the applicant. Ultimately, given diminished weight of the factors favouring disclosure, I find that the factors favouring disclosure are not sufficient to rebut the s. 22(3)(d) presumption.

[203] There are no factors favouring disclosure of the balance of the information. Therefore, based on the presumption against disclosure in s. 22(3)(d), I find that it would be an unreasonable invasion of the privacy of the physician and the other third parties to disclose the remaining information.

CONCLUSION

[204] For the reasons given above, I make the following order under ss. 58(2) and (4) of FIPPA:

1. Subject to item 3, below, I confirm the public body's decision to refuse access to the information it withheld under s. 14.

2. Subject to item 3, below, I require the public body to refuse access to the information it withheld under s. 22.

3. I require the public body to give the applicant access to the information I found the public body was not authorized or required to withhold under ss. 13(1), 14 or 22(1). That information is as follows:

a. The information the public body withheld under s. 14 from pages 152-153, 804-815, 818-819, 851-854, 855-857, 858-860, and 1745-1994. This does not include the notes of oral legal advice and the copy of the Investigating Lawyer's report, both of which the public body may withhold, and that are located somewhere in pages 1745-1994; and

b. The information the public body withheld under ss. 13 and 22 that I have highlighted on pages 10-17, 37, 38, 43, 44, 45, 51, 52, 55, 56, 57, 58, 59 – 62, 65, 66, 68, 69, 71, 72, 84, 89, and 90 in the copy of the records provided to the public body with the order.

4. I require the public body to copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the information it discloses to the applicant in compliance with item 3 above.

5. I require the public body to indicate in its cover letter to the applicant which pages out of the Investigating Lawyer's file (pages 1745-1994) it is withholding because they are notes of oral legal advice or a copy of the Investigating Lawyer's report.

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

June 19, 2025

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File Nos.: F22-90934
F22-91609
F22-91443