Order F25-67

MINISTRY OF ATTORNEY GENERAL

Elizabeth Vranjkovic
Adjudicator

August 26, 2025

CanLII Cite: 2025 BCIPC 77
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 77

Summary: An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Attorney General (Ministry) for access to records about them sent to or from a named Ministry employee. The Ministry disclosed the responsive records but withheld some information under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), 15(1)(l) (harm to a system or property) and 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA. The adjudicator found that the Ministry was authorized or required to withhold some of the information under ss. 13(1), 14 and 22(1) but that some of the withheld information did not fall within the claimed exceptions. The adjudicator ordered the Ministry to give the applicant access to the information it was not authorized or required to refuse to disclose.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 13(1), 13(2)(n), 13(3), 14, 15(1)(l), 22(1), 22(2), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(3), 22(3)(a), 22(3)(d), 22(3)(f), 22(4), 22(4)(e) and 22(5).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) requested access to all records containing information about them sent to or from a named employee (Executive Director) of the Ministry of Attorney General (Ministry).

[2] The Ministry provided the responsive records to the applicant but withheld some information under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), 15(1)(l) (harm to a system or property) and 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA.[1]

[1] From this point forward, whenever I refer to section numbers I am referring to sections of FIPPA.

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

Preliminary issue – information no longer in dispute

[4] In their response submission, the applicant offered not to seek access to two provincial government employee identifiers (IDIR usernames) in the records if the Ministry instead provided those employees' first and last names.[2] The Ministry subsequently disclosed the first and last name of one of those employees. As a result, I find that one of the IDIR usernames is no longer in dispute.[3] The other individual's IDIR username remains in dispute under ss. 15(1)(l) and 22(1).

[5] The applicant also said that that they have "no interest in third party addresses, financial status, relationship status, or vaccine status."[4] Some of the information in dispute is a third party's address. As a result, I conclude this information is no longer in dispute.[5]

ISSUES

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

1. Is the Ministry authorized to refuse to disclose the information in dispute under ss. 13(1), 14 and 15(1)(l)?

2. Is the Ministry required to refuse to disclose the information in dispute under s. 22(1)?

[7] Under s. 57(1), the Ministry has the burden of proving that the applicant has no right to access the information in dispute under ss. 13(1), 14 and 15(1)(l).

[8] Under s. 57(2), the applicant has the burden of proving that disclosing the information at issue under s. 22(1) would not unreasonably invade a third party's personal privacy. However, the Ministry has the burden of proving the information at issue qualifies as personal information.[6]

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[2] Applicant's response submission at para 84.
[3] Information on pages 80 and 82.
[4] Applicant's response submission at para 91.
[5] Information on pages 84, 147, 150 and 162.
[6] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

DISCUSSION

Background

[9] The applicant is a Ministry employee currently on long-term disability leave. Prior to the applicant's leave, there were two investigations into the applicant's conduct, each of which resulted in the applicant being suspended from the workplace. The applicant has also made several reports of misconduct by managers in the workplace.

[10] The applicant believes that the suspensions were unjust and that their reports of misconduct were not investigated. As a result of these matters, the applicant's union filed grievances on their behalf against the Ministry. Some of those grievances were referred to arbitration. There is at least one arbitration ongoing that relates to the applicant's suspensions.

[11] To be clear, the merits of the workplace investigations, suspensions and grievances are not at issue in this inquiry and I make no findings about those matters.

Information at issue

[12] The responsive records total 215 pages. The information at issue is in emails, complaints, draft investigative summaries, draft letters, payroll expenditure reports, grievance forms and an investigation report.

[13] In some instances, the Ministry applied more than one FIPPA exception to the same information. In going through my analysis, if I found that one exception applied, I did not consider the other cited exceptions.

Solicitor-client privilege, s. 14

[14] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. For the purpose of s. 14, "solicitor-client privilege" includes legal advice privilege and litigation privilege. The Ministry is withholding one email chain on the basis of both legal advice privilege and litigation privilege and 12 emails and email chains solely on the basis of litigation privilege.

Sufficiency of evidence to substantiate the s. 14 claim

[15] The Ministry did not provide me with any of the information it withheld under s. 14. Instead, it provided affidavit evidence from a lawyer (Lawyer A) with the Legal Services Branch of the Ministry of Attorney General (LSB) and the Executive Director. It also provided a table of records containing a brief description of the information withheld under s. 14.

[16] After conducting a preliminary review of the Ministry's submissions and evidence, I determined that the Ministry had not provided a sufficient evidentiary basis for me to determine whether the records the Ministry withheld under s. 14 are subject to solicitor-client privilege. While s. 44(1)(b) authorizes me, as the Commissioner's delegate, to order production of records to review during the inquiry, due to the importance of solicitor-client privilege to the proper functioning of the legal system, I would only do so when absolutely necessary.[7] For that reason, I offered the Ministry an opportunity to provide additional submissions and evidence in support of its privilege claim.

[17] In response to my request, the Ministry provided additional submissions, an affidavit from another lawyer with LSB (Lawyer B) and a more detailed table of records appended to Lawyer B's affidavit. Based on that additional information, I determined I had sufficient information to determine whether s. 14 applies and that it was not necessary to order production of the records for my review. I also provided the applicant an opportunity, which they did not take, to respond to the Ministry's additional submissions and evidence.

Legal advice privilege

[18] Legal advice privilege applies to communications that:

1. are between a solicitor and a client,
2. entail the seeking or giving of legal advice, and
3. are intended to be confidential by the parties.[8]

[19] In addition, legal advice privilege extends to other kinds of documents and communications that do not strictly meet the above test. For example, legal advice privilege applies to the "continuum of communications" between lawyer and client that do not specifically request or offer advice but are "part of the necessary exchange of information between solicitor and client for the purpose of providing advice."[9]

[20] The Ministry says that legal advice privilege applies to one email chain because it begins with a confidential communication between solicitor and client that entails the giving of legal advice and the subsequent emails are communications between Ministry employees discussing that legal advice. This

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[7] Order F14-19, 2014 BCIPC 16 at para 10; *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para 17; *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 at para 68.
[8] *Solosky v the Queen*, 1979 CanLII 9 (SCC) at p 847.
[9] *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 42.

email chain was the only record that the Ministry withheld because of legal advice privilege.

[21] The applicant says that the Ministry could disclose information to which s. 14 applies in the spirit of openness and transparency.[10] The applicant also says they are concerned the Ministry is using s. 14 to hide "a misuse of managerial authority leading to the bullying of a staff member."[11]

Analysis and findings, legal advice privilege

[22] The first question is whether the initial email in the email chain is a communication between a solicitor and a client. I accept the evidence of the Executive Director and Lawyer A that the first email was sent from an LSB lawyer who has since left the public service (the Previous Lawyer) to the Executive Director, a Public Service Agency (PSA) employee working on the applicant's file, an LSB legal assistant and an LSB paralegal.[12] Therefore, I must decide whether the PSA and the Ministry were the Previous Lawyer's clients.

[23] Past orders have accepted that multiple government entities are the client where the public body provides evidence that a lawyer advised a group of government ministries or entities who were working on a specific matter.[13]

[24] In his affidavit evidence, Lawyer A says that the Executive Director and the PSA employee were the Previous Lawyer's client representatives at the Ministry and the PSA.[14] The Executive Director says that she worked with the Previous Lawyer in relation to the applicant's employment matters and that the PSA employee was working on the applicant's file.[15]

[25] Based on the affidavit evidence outlined above, I am satisfied that both the Ministry and the PSA were the Previous Lawyer's client in relation to matters involving the applicant. Therefore, I conclude that the first email in the email chain is a communication between a solicitor and their clients.

[26] With respect to the second part of the test, Lawyer A and the Executive Director say that in the first email, the Previous Lawyer provides an update and legal advice about the applicant's arbitration. [16] I accept this evidence and find that the first email entails the Previous Lawyer giving legal advice.

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[10] Applicant's response submission at para 65.
[11] Applicant's response submission at para 71.
[12] Executive Director's affidavit at para 26. Lawyer A's affidavit at para 23.
[13] Order F22-11, 2022 BCIPC 11 at paras 36-38; Order F20-18, 2020 BCIPC 20 at paras 35-43.
[14] Lawyer A's affidavit at para 23.
[15] Executive Director's affidavit at paras 25-26.
[16] Lawyer A's affidavit at para 23; Executive Director's affidavit at para 26.

[27] Turning to the last part of the test, Lawyer A says that he believes, based on the context and content of the email thread and his experience as a lawyer, that the parties would have understood the communication was confidential.[17] The Executive Director also says that she considered the Previous Lawyer's legal advice confidential and has not shared it with anyone outside those who need to know at the Ministry and the PSA.[18] As a result, I find that the first email was intended to be confidential.

[28] For these reasons, I conclude that the first email is a confidential communication between a solicitor and their clients for the purpose of giving legal advice, so legal advice privilege applies.

[29] With respect to the remainder of the email chain, the Executive Director and Lawyer A say that the Executive Director forwarded the first email to another Ministry employee, and they discussed the Previous Lawyer's update and legal advice.[19]

[30] It is well-established that legal advice privilege includes communications between employees which transmit or comment on privileged communications with lawyers.[20] Considering the evidence of Lawyer A and the Executive Director, I find the remainder of the email chain comprises communications between the Executive Director and another Ministry employee which transmit and comment on a privileged communication, therefore, legal advice privilege applies to the remainder of the email chain.

Litigation privilege

[31] Since I have found that legal advice privilege applies to the email chain described above, I do not need to consider it again here. As a result, 12 emails and email chains remain at issue under litigation privilege (the "remaining emails").

[32] The purpose of litigation privilege is to ensure an effective adversarial process by giving parties to litigation a "zone of privacy" in which to prepare their case.[21]

[33] Litigation privilege applies to documents where:

1. Litigation was ongoing or was reasonably contemplated at the time the document was created; and

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[17] Lawyer A's affidavit at para 25.
[18] Executive Director's affidavit at para 28.
[19] Lawyer A's affidavit at para 24; Executive Director's affidavit at para 27.
[20] *Bank of Montreal v Tortora*, 2010 BCSC 1430 at para 12.
[21] *Blank v Canada (Minister of Justice)*, 2006 SCC 39 at paras 27 and 34 [*Blank*].

2. The dominant purpose of creating that document was to prepare for that litigation.[22]

[34] Litigation privilege ends when the litigation that gave rise to the privilege ends, unless there are closely related proceedings.[23]

[35] Previous orders have held that "litigation", for the purposes of s. 14 encompasses grievance arbitration proceedings.[24] While the applicant says that arbitration does not qualify as litigation,[25] they do not explain, and I do not see, why the findings of past orders should not apply in this case. Therefore, consistent with past orders, I find that the applicant's grievance arbitration proceeding qualifies as litigation for the purpose of litigation privilege.

Was litigation ongoing or in reasonable prospect when the communications were created?

[36] The first question is whether litigation was in reasonable prospect when the remaining emails were created. Litigation is in "reasonable prospect" when a reasonable person, fully informed, would conclude it is unlikely that the claim in question will be resolved without litigation.[26] Litigation need not be a certainty, but it must be more than mere speculation.[27]

[37] In her affidavit evidence, Lawyer B says that:

- She has reviewed all of the remaining emails;[28]
- All but three of the remaining emails include her;[29] and
- The remaining emails were sent while the arbitration was underway as an expedited arbitration and when it changed from an expedited arbitration to formal arbitration.[30]

[38] I accept this evidence and find that arbitration was ongoing when the remaining emails were created.

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[22] *Keefer Laundry Ltd v Pellerin Milnor Corp et al*, 2006 BCSC 1180 at para 96 citing *Dos Santos v Sun Life Assurance Co of Canada*, 2005 BCCA 4 at paras 43-44.
[23] *Blank*, *supra* note 21 at para 36.
[24] Order F11-29, 2011 BCIPC No 35 at paras 13-14; Order F22-24, 2022 BCIPC 26 at paras 55-57.
[25] Applicant's response submission at paras 67-68.
[26] *Raj v Khosravi*, 2015 BCCA 49 [*Raj*] at paras 10-11, citing *Hamalainen (Committee) of v Sippola*, 1991 CanLII 440 (BC CA) at para 20 and *Sauve v ICBC*, 2010 BCSC 763 at para 30.
[27] *Raj*, *supra* note 26 at para 10.
[28] Lawyer B's Affidavit at para 9.
[29] Lawyer B's Affidavit at para 9.
[30] Lawyer B's affidavit at paras 18-19.

Was the dominant purpose of creating the relevant documents to prepare for that litigation?

[39] The second part of the litigation privilege test is more challenging to meet.[31] It requires the party claiming privilege to prove that the dominant purpose of the document, when it was produced, was to conduct or aid in the conduct of litigation.[32] Litigation privilege may apply to a document created for more than one purpose, but only if the dominant purpose of the document was for the purpose of litigation.[33]

[40] Lawyer B says that:

- At the time the remaining emails were sent, she was assigned to work on the applicant's grievance.[34]
- All the emails she sent and received had no purpose other than preparing for the arbitration.[35]
- The emails that did not include her had no purpose other than preparing for the arbitration and relate exclusively to the arbitration.[36]

[41] The applicant says that none of the documents were created for the dominant purpose of litigation.[37]

[42] Lawyer B's evidence is consistent with the descriptions of the remaining emails in the table of records attached to her affidavit. I accept Lawyer B's evidence and find that the dominant purpose of the remaining emails was preparing for arbitration. As a result, I conclude that litigation privilege applies to the remaining emails.

Has the litigation privilege expired?

[43] Lawyer A deposes that the arbitration hearing has not yet occurred and the dispute between the union and the Ministry is still "live."[38]

[44] As a result, I conclude that the arbitration is ongoing and litigation privilege continues to apply to the remaining emails.

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[31] *Raj*, *supra* note 26 at para 12.
[32] *Ibid.*
[33] *Ibid* at para 17.
[34] Lawyer B's affidavit at para 11.
[35] Lawyer B's affidavit at para 21.
[36] Lawyer B's affidavit at para 22.
[37] Applicant's response submission at para 68.
[38] Lawyer A's affidavit at para 17.

Conclusion, s. 14

[45] In summary, I found that legal advice privilege applies to one email chain and litigation privilege applies to the remaining emails and email chains. Therefore, I conclude the Ministry is authorized to refuse to disclose the information it withheld under s. 14.

Advice or recommendations, s. 13(1)

[46] Section 13(1) authorizes the head of 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, subject to certain exceptions.

[47] The purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny.[39]

[48] The first step in the s. 13 analysis is to determine whether the information at issue would reveal advice or recommendations developed by or for a public body or minister if disclosed.

[49] "Recommendations" include material relating to a suggested course of action that will ultimately be accepted or rejected by the person being advised.[40] The term "advice" is broader than "recommendations"[41] and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.[42] Section 13(1) also encompasses information that would allow an individual to make accurate inferences about any advice or recommendations.[43]

[50] The OIPC has consistently held that s. 13(1) does not apply to records simply because they are drafts.[44] The usual principles apply, and a public body can only withhold those parts of a draft which reveal advice or recommendations about a suggested course of action that will ultimately be accepted or rejected during a deliberative process.[45] While it may be possible in some cases to make

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[39] See for example Order F15-33, 2015 BCIPC 36 at para 15.
[40] *John Doe v Ontario (Finance)*, 2014 SCC 36 at para 23.
[41] *Ibid* at para 24.
[42] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.
[43] Order F19-28, 2019 BCIPC 20 at para 14.
[44] Order 00-27, 2000 CanLII 14392 (BC IPC) at page 6; Order 03-37, 2003 CanLII 49216 (BC IPC) at para 59; Order F14-44, 2014 BCIPC 47 at para 32; Order F15-22, 2015 BCIPC 36 at para 23; Order F18-38, 2018 BCIPC 41 at para 17; Order F17-13, 2017 BCIPC 14 at para 24; Order F20-37, 2020 BCIPC 43 at para 33; and Order F24-17, 2024 BCIPC 23 at para 69.
[45] Order F18-38, 2018 BCIPC 41 at para 17; Order F20-37, 2020 BCIPC 43 at para 33; Order F24-72, 2024 BCIPC 82 at para 36; Order F24-12, 2024 BCIPC 16 at para 70; and Order F24-17, 2024 BCIPC 23 at paras 69-70.

inferences about the content of advice or recommendations from the changes made between various versions of a draft, the author of a draft may also make changes of their own accord without receiving advice or recommendations to do so.

[51] The OIPC has also consistently held that a question may lead to advice or recommendations, but the question itself does not amount to advice unless it would allow for accurate inferences as to the advice actually received. [46]

[52] If the information is "advice" or "recommendations", the next step is to determine whether any of the circumstances in ss. 13(2) or 13(3) apply. If the information falls within ss. 13(2) or (3), the public body may not refuse to disclose it, even if it is "advice" or "recommendations" within the meaning of s. 13(1).

Would disclosing the disputed information reveal advice or recommendations?

[53] The information at issue under s. 13(1) is in several emails, four versions of a draft investigative summary (draft summary), a draft letter (the draft 2018 letter) and two versions of another draft letter (the draft 2019 letters).

[54] The Ministry says the disputed information is editorial advice, advice about payment and remuneration, suggested wording for correspondence, and wording in draft documents that differs from the final version and could accordingly allow for accurate inferences as to editorial advice.[47]

[55] In her affidavit, the Executive Director states that:

- The records contain advice and recommendations shared amongst Ministry executives and the PSA regarding the applicant's workplace and employment issues, including advice about the contents of draft documents such as the letters and the draft summary.
- Some advice appears in comment boxes on drafts or via tracked changes.[48]
- One page contains advice about how to respond to the applicant's correspondence.[49]

[56] The applicant says they seek access to "basic HR manager discussions" that do not amount to public body or ministry advice or recommendations.[50] They

[46] Order F19-27, 2019 BCIPC 29 at para 32; Order F14-19, 2014 BCIPC 22 at para 35; OrderF12-01, 2012 BCIPC 1 at para 32.
[47] Public body's initial submission at para 33.
[48] Executive Director's affidavit at para 22.
[49] Executive Director's affidavit at para 23.
[50] Applicant's response submission at para 60.

also say it is in the public interest to know how public servants are spending tax dollars.[51]

[57] For the reasons that follow, I find that disclosing some but not all of the information withheld under s. 13(1) would reveal advice or recommendations developed by or for the Ministry.

Emails[52]

[58] After reviewing the emails, I am satisfied that disclosing most of the disputed information would reveal advice or recommendations. This information includes:

- Editorial advice about the draft investigative summary;[53]
- An individual's advice about how to proceed in a specific matter;[54] and
- A recommended response to an email.[55]

[59] However, some of the withheld information is an employee's explanation of why she wants another employee to review the recommended email response.[56] I find that information would not reveal advice or recommendations and the Ministry is not authorized to withhold it under s. 13(1).

Draft 2019 letters[57]

[60] The Ministry says that the information at issue in the draft 2019 letters differs from the final version of the 2019 letter so disclosure could allow for accurate inferences as to editorial advice.[58]

[61] The Ministry did not provide any evidence about how the specific information at issue in the draft 2019 letters differs from the final version, nor did it provide the final version for me to review. Considering the nature of the withheld information, I question whether any changes between the draft 2019 letters and the final version would have resulted from editorial advice.

[62] Additionally, based on all the materials before me, including other information in the Ministry's initial submission, it seems to me that the first piece of information withheld by the Ministry in the draft 2019 letters, which is the same in both drafts, would not have changed in the final version, so I do not see how

[51] Applicant's response submission at para 61.
[52] Information on pages 38, 101 and 110.
[53] Information on page 38.
[54] Information on page 101.
[55] Information on page 110.
[56] Information on page 110.
[57] Information on pages 71 and 74.
[58] Public body's initial submission at para 33. Information on pages 71 and 74.

disclosure of this information would allow for accurate inferences as to editorial advice as argued by the Ministry.[59]

[63] In the absence of further explanation or evidence, I am not persuaded that disclosing the information at issue in the draft 2019 letters would reveal advice or recommendations. The Ministry is not authorized to withhold this information under s. 13(1).

Draft 2018 letter[60]

[64] The Ministry says the information at issue would reveal advice and recommendations in comment boxes and tracked changes in Microsoft Word as well as wording which differs from the final version and could allow for accurate inferences as to editorial advice.[61]

[65] Unlike the draft 2019 letters, the responsive records include the final version of the 2018 letter, so I can see what has changed between the draft and final versions. I can also see from the records that the author of the draft 2018 letter sent it to the Executive Director for comments. Based on what I can see in the records, including the nature of the changes between the draft 2018 letter and the final version, I am satisfied that disclosing most of the disputed information in the draft 2018 letter would reveal advice.

[66] However, I find that the initials of an individual who made comments on the draft 2018 letter would not reveal advice or recommendations, so the Ministry is not authorized to withhold that information under s. 13(1).[62]

Draft summaries

[67] The Ministry is withholding information from a total of 25 pages across four versions of a draft investigative summary under s. 13(1).[63]

[68] The Ministry says that the information at issue on six of the pages contains wording that is different than the final version and could allow for accurate inferences as to editorial advice.[64] The Ministry does not say anything about the information at issue on the other 19 pages of the draft summaries.[65]

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[59] I cannot specify which paragraph of the Ministry's submissions I find relevant without disclosing the information in dispute.
[60] Information on pages 138-139.
[61] Information on pages 138-139. Ministry's initial submission at para 33.
[62] Information on pages 138-139.
[63] Information on pages 42-47, 51-57, 63-68 and 95-100.
[64] Public body's initial submission at para 33. Information on pages 47, 56-57, 67 and 100.
[65] Information on pages 42-46, 52-55, 63-66, 68 and 95-99.

[69] Based on my review of the information at issue and the different versions of the draft summaries, I find that some of the information would reveal advice or recommendations. That information is:

- Advice and recommendations about the contents and organization of the draft summaries;[66] and
- Information in some versions that could be compared with other versions and allow someone to infer the advice and recommendations described above.[67]

[70] However, I am not satisfied that disclosing the following information would reveal advice or recommendations:

- Questions about the draft summaries;[68]
- Information that identifies the person who made comments on the draft summaries;[69] and
- Most of the information on the 19 pages the Ministry says nothing about.

[71] The Ministry does not adequately explain, and it is not evident on the face of the records, how disclosing this information would reveal advice or recommendations.

[72] To summarize, I find that disclosing some of the information at issue in the emails, the draft 2018 letter and the draft summaries would reveal advice or recommendations.

Do any of the exceptions in s. 13(2) apply?

[73] The Ministry says none of the s. 13(2) exceptions apply.[70] The applicant says s. 13(2)(n) applies.[71] I will address s. 13(2)(n) below. I considered whether there are any other s. 13(2) provisions that may apply and find there are no other applicable provisions.

[66] Information on pages 51 and 56-57.
[67] Information on pages 46-47, 57, 67 and 99-100.
[68] Information on pages 51 and 57.
[69] Information on pages 56-57.
[70] Public body's initial submission at para 35.
[71] Applicant's response submission at paras 62-63.

Decision that affects the rights of the applicant, s. 13(2)(n)

[74] Section 13(2)(n) says that the head of a public body must not refuse to disclose under subsection 13(1) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[75] The applicant says that s. 13(2)(n) applies because a decision was made in the exercise of a discretionary power that affected their employment with the public service and personally impacted them.[72]

[76] The Ministry says none of the information at issue under s. 13(1) is a decision made in the exercise of a discretionary power or adjudicative function, so s. 13(2)(n) does not apply.[73]

[77] Previous orders have established that for s. 13(2)(n) to apply, the disputed information must contain a decision or reasons for a decision.[74] None of the information that I found above would reveal advice or recommendations is a decision or reasons for a decision. Therefore, s. 13(2)(n) does not apply.

Does s. 13(3) apply?

[78] Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. In this case, the records are not that old, so s. 13(3) does not apply.

Harm the security of a property or system, s. 15(1)(l)

[79] Section 15(1)(l) says that the head of a public body may refuse to disclose information if disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[80] The standard of proof applicable to harms-based exceptions like s. 15(1)(l) is whether disclosure of the information could reasonably be expected to cause the specific harm.[75] The Supreme Court of Canada has described this standard as "a reasonable expectation of probable harm" which falls in "a middle ground between that which is probable and that which is merely possible."[76]

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[72] Applicant's response submission at paras 62-63.
[73] Public body's reply submission at para 13.
[74] For example, Order F24-31, 2024 BCIPC 38 (CanLII) at para 62; Order F07-17, 2007 CanLII 35478 (BC IPC) at para 37.
[75] Order F13-06, 2013 BCIPC 6 at para 24.
[76] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

[81] There must be a clear and direct connection between disclosure of the withheld information and the anticipated harm.[77] General speculative or subjective evidence will not suffice.[78] The amount and quality of the evidence required will vary depending on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences."[79] As former Commissioner Loukidelis has explained:

> …harms-based exceptions to disclosure operate on a rational basis that considers the interests at stake. What is a reasonable expectation of harm is affected by the nature and gravity of the harm in the particular disclosure exception. There is a sharp distinction between protecting personal safety or health and protecting commercial and financial interests.[80]

[82] The Ministry withheld an IDIR username under s. 15(1)(l). I do not need to decide whether s. 15(1)(l) applies to the IDIR username because of my findings under s. 22(1) below.

[83] The Ministry also withheld email pathway information (pathway information) under s. 15(1)(l).[81] The pathway information contains a name, an active directory identifier, and combinations of letters and numbers that are incomprehensible on the face of the records.

[84] The Ministry submits disclosing the pathway information could reasonably be expected to harm the security of the government's computer systems. The Ministry relies on affidavit evidence from the provincial government's Acting Chief Information Security Officer (Acting Chief Officer), who says that:

- Pathway information is created automatically when an email is sent and contains technical and non-technical attributes of the path or routing journey an email takes to get from the sender to the recipients.[82]
- The details can vary and can include additional details such as sender name, email address, date/time, server names, IP addresses and the active directory identifier affiliated to the email.[83]
- The pathway information could be at risk of misuse if disclosed publicly.[84]

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[77] Order 02-50, 2002 CanLII 42486 (BC IPC) at para 137; Order F13-06, 2013 BCIPC 6 (CanLII) at para 24.
[78] Order F08-03, 2008 CanLII 13321 (BC IPC) at para 27.
[79] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras 94 and 195-206.
[80] Order F08-02, 2008 CanLII 70316 (BC IPC) at para 48.
[81] Information on pages 3-4, 36, 145 and 158.
[82] Acting Chief Officer's affidavit at para 39.
[83] Acting Chief Officer's affidavit at paras 39-40.
[84] Acting Chief Officer's affidavit at para 42.

- Disclosure of the pathway information is "unnecessary oversharing outside of the original and intended context and without visibility that the pathway information is both being exposed and shared."[85]
- In the current cybersecurity context, "we are actively taking steps to ensure we are not exposing ourselves to threat actors."[86]

[85] Section 15(1)(l) explicitly refers to harm to security of a "computer system." I am satisfied that the government's computer systems are "systems" for the purposes of s. 15(1)(l).[87]

[86] However, in my view, the affidavit evidence does not establish that disclosing the specific information at issue here could reasonably be expected to harm the security of the government's computer systems.

[87] The Acting Chief Officer does not explain, and I do not see, how any of the specific components of the pathway information (the name, the directory identifier, or the incomprehensible letters and numbers) are relevant to the security of the government's computer systems.

[88] It is particularly unclear to me what the incomprehensible letters and numbers mean and how they are relevant to the security of the government's security systems. The Acting Chief Officer describes the details that *can* be included in pathway information but does not explain what details are actually included in the pathway information. Instead, I can see from the records that some of the information the Acting Chief Officer says can be in pathway information is not contained in the pathway information at issue here. As a result, the Acting Chief Officer's evidence does not help me understand the incomprehensible letters and numbers or how they are relevant to the security of the government's computer systems.

[89] Additionally, I question how disclosure could reasonably be expected to harm the security of the government's computer systems when the Ministry has openly disclosed one component of the pathway information. I cannot be more specific without revealing the information in dispute, but the fact that the Ministry has already disclosed this information undermines it arguments that the disclosure of this information could reasonably be expected to result in the alleged harm or create a security risk.

[90] The Acting Chief Officer says the pathway information "could be at risk for misuse" if disclosed and disclosing this information would expose the government to "threat actors" but does not elaborate on what threat actors could do with this information or how "misuse" amounts to harm to the security of the

[85] Acting Chief Officer's affidavit at para 43.
[86] Acting Chief Officer's affidavit at para 43.
[87] For a similar finding, see Order F15-72, 2015 BCIPC 78 (CanLII) at para 18.

government's computer systems. The Ministry may be referring to hacking attempts or unauthorized access to government systems but it is unclear. Previous OIPC orders have also rejected such arguments on the basis government computer systems have security controls in place and are not "fragile."[88]

[91] Finally, while disclosure may be considered "unnecessary oversharing," that is not the question under s. 15(1)(l). Ultimately, I was not provided with sufficient explanation or evidence that persuades me that disclosure of the pathway information could reasonably be expected to harm the security of the government's computer systems, as required under s. 15(1)(l).

[92] For these reasons, I find the Ministry has not established the required "clear and direct connection" between the disclosure of the disputed information and the alleged harm.[89] The Ministry is not authorized to refuse access to the pathway information under s. 15(1)(l).

Unreasonable invasion of a third party's personal privacy, s. 22(1)

[93] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.[90]

[94] There are four steps in the s. 22(1) analysis,[91] and I will apply each step in the analysis under the headings that follow.

Personal information

[95] The first step in any s. 22 analysis is to determine if the information at issue is personal information.

[96] FIPPA defines personal information as "recorded information about an identifiable individual other than contact information."[92] Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.[93]

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[88] For example, Order F15-72, 2015 BCIPC 78 at paras 19 and 22, citing Order F10-39, 2010 BCIPC 59 at para 17.
[89] Order F08-03, 2008 CanLII 13321 at para 27.
[90] Schedule 1 of FIPPA says: "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons, or organization other than (a) the person who made the request, or (b) a public body.
[91] Order F15-03, 2015 BCIPC 3 at para 58 provides a summary of those four steps.
[92] Schedule 1.
[93] Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

[97] FIPPA defines contact information 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."[94] Whether information is contact information depends on the context in which it appears.[95]

[98] The Ministry says most of the information in dispute under s. 22 is evidence provided by witnesses in the investigations, who "are all identifiable given the information in the [records]."[96] The Ministry did not identify what specific information in the records would allow the applicant to identify these witnesses.

[99] For the reasons that follow, I find that some of the information at issue is not about an identifiable individual.

[100] First, I find that information in the disputed records that refers to people as a group and some information that refers to unnamed individuals by their role in an investigation is not about identifiable individuals.[97] Although previous orders have found that information may be personal information if it is about a small group of identifiable people, the Ministry, who has the burden of proof on this point, does not adequately explain how these individuals could be identified if the information at issue were disclosed to the applicant.[98] From what I can see in the records, I am not satisfied that this information is about identifiable individuals or can be linked to known and identifiable individuals so that it qualifies as personal information under FIPPA. For example, as noted, some of the information at issue refers to unnamed individuals by their role in the investigation. However, I can see there were several individuals who occupied the same role and the information at issue does not refer to a specific identifiable person. Therefore, without sufficient explanation from the Ministry, it is unclear how disclosing this information would identify a particular individual.

[101] Additionally, I find that the following information is not about identifiable individuals:

- Heading information in one of the payroll expenditure reports;[99] and
- A word that appears in conjunction with a series of letters.[100]

[102] Again, the Ministry, who bears the burden of proof on this point, does not adequately explain how any of this information is about identifiable individuals.

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[94] Schedule 1.
[95] Order F20-13, 2020 BCIPC 15 at para 42.
[96] Public body's initial submission at para 103.
[97] Information on pages 39, 41-46, 49, 51-57, 60, 62-68, 92 and 94-100.
[98] Order F05-30, 2005 CanLII 32547 at paras 33-35.
[99] Information on page 78.
[100] Information on pages 36 and 158.

[103] However, I find that the remainder of the information at issue under s. 22(1) is about identifiable individuals, including the applicant. For much of the information at issue under s. 22(1), although the third parties' identities have been withheld, I conclude that the applicant could identify the third parties based on their pre-existing knowledge and contextual information in the records. I conclude, therefore, that this information is about identifiable individuals.

[104] Additionally, I find that the date of a complaint made about the applicant is about an identifiable individual. Based on what I can see in the complaint itself, I am satisfied that disclosing the date of the complaint would allow the applicant to identify the complainant.[101]

[105] Finally, I find that all of the information about identifiable individuals is personal information because it is not contact information. Employee names and email addresses would generally be considered contact information, however, in the context of this matter, I find that this information is not contact information because its disclosure would reveal who complained about the applicant.[102]

Disclosure not an unreasonable invasion of privacy, s. 22(4)

[106] The second step in the s. 22 analysis is to consider s. 22(4), which sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If the disputed information falls into one of the enumerated circumstances, s. 22(1) does not apply and the public body must disclose the information.

[107] The Ministry says that s. 22(4) does not apply.[103] The applicant does not say anything about s. 22(4). I have considered whether any of the subsections in s. 22(4) apply and, for the reasons that follow, I find that s. 22(4)(e) applies to some of the personal information.

Public body employee's position, functions or remuneration, s. 22(4)(e)

[108] Section 22(4)(e) says that it is not an unreasonable invasion of an individual's personal privacy to disclose information about their position, functions, or remuneration as an officer, employee or member of a public body or as a member of a minister's staff.

[109] Section 22(4)(e) applies to information about what a third party said or did in the normal course of discharging their job duties, but not qualitative assessments of those actions.[104]

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[101] Information on page 32.
[102] Information on pages 31-32, 35 and 157.
[103] Public body's initial submission at para 107.
[104] Order 01-53, 2001 CanLII 21697 (BC IPC) at para 40.

[110] The Ministry says that s. 22(4)(e) does not apply to the personal information at issue because it either relates to the investigations or is "not basic facts about an employee's tangible activities in the normal course of work-related activities."[105]

[111] The payroll expenditure reports contain the personal information of Ministry employees. I find that s. 22(4)(e) applies to the names, job descriptions and hourly rates of those individuals in the payroll expenditure reports because that information is clearly about the position and remuneration of public body employees.[106] However, I find s. 22(4)(e) does not apply to the rest of the information in the payroll expenditure reports because this information is about an employee's employment history rather than their normal work activities. I discuss that information further below under s. 22(3)(d).

[112] I also find that s. 22(4)(e) applies to the pathway information.[107] I can see that the pathway information was automatically generated when the Executive Director responded to meeting invitations related to investigations or arbitrations involving the applicant. It is not in dispute that the Executive Director is a Ministry employee and is, therefore, a public body employee for the purposes of s. 22(4)(e). I am also satisfied that the Executive Director would have responded to those meeting invitations in the normal course of discharging her job duties.[108]

[113] I am aware that previous OIPC orders have found that "information arising from workplace investigations into specific employee behaviour does not fall within s. 22(4)(e).[109] However, the information at issue here is different, for example, the information is not part of an investigation report, nor does it reveal anything about a third party except their official functions. In my view, all that the pathway information reveals about the Executive Director is that she responded to certain meeting invitations in the normal course of discharging her job duties, so I conclude s. 22(4)(e) applies to this information.

[114] I have considered the other circumstances listed in s. 22(4) and I find that none apply.

Presumptions of unreasonable invasion of privacy, s. 22(3)

[115] The third step in the s. 22 analysis is to determine whether any circumstances in s. 22(3) apply to the personal information. If so, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

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[105] Public body's initial submission at para 112.
[106] Information on pages 76 and 78.
[107] Information on pages 3, 4, 36, 145 and 158.
[108] I make this finding considering the Executive Director's affidavit at paras 2-4, 25 and 30.
[109] For example, Order F08-04, 2008 CanLII 13322 (BCIPC) at para. 24.

[116] The Ministry says ss. 22(3)(a), (d) and (f) apply. The applicant does not say anything about s. 22(3). I have considered whether any of the subsections in s. 22(3) apply and, for the reasons that follow, I find that ss. 22(3)(a) and (d) apply to some of the personal information and that s. 22(3)(f) does not apply to any of the personal information.

Medical history, treatment and evaluation, s. 22(3)(a)

[117] Section 22(3)(a) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the third party's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[118] The Ministry says that s. 22(3)(a) applies to information that relates to a third party's medical history.[110]

[119] I find that a small amount of information is about a third party's medical history, so s. 22(3)(a) applies to that information.[111]

Employment history, s. 22(3)(d)

[120] Section 22(3)(d) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the third party's employment, occupation or educational history.

[121] The Ministry says that s. 22(3)(d) applies to almost all the personal information at issue.[112]

[122] To begin, I find that s. 22(3)(d) applies to the IDIR username that remains in dispute.[113] This finding is consistent with previous orders, which have concluded that IDIR usernames may form part of a public body employee's employment history under s. 22(3)(d) because the usernames are a unique combination of letters derived from an employee's name, are assigned to them alone, and are used by them as part of their employment.[114]

[110] Public body's initial submission at para 116.
[111] Information on page 189.
[112] Public body's initial submission at para 118.
[113] Information on page 78.
[114] Order F24-93, 2024 BCIPC 106 at para 94; Order F24-36, 2024 BCIPC 44 at para 89; and Order F21-35, 2021 BCIPC 43 at para 189.

[123] Additionally, I find that s. 22(3)(d) applies to some information about several third parties in the payroll expenditure reports.[115] This information includes employee ID numbers, the hours worked by named employees and information about time taken from leave banks, all of which previous orders have generally considered to be an employee's work history under s. 22(3)(d).[116] Therefore, I agree with those past orders and find the presumption under s. 22(3)(d) applies to this information.

[124] I also find that s. 22(3)(d) applies to some information that reveals complaints made about the applicant.[117] Previous OIPC orders have found and I agree that, in the context of a workplace dispute, a complainant's allegations and evidence about what another person said or did to the complainant in the workplace is the complainant's employment history under s. 22(3)(d).[118] I am satisfied some of the information at issue here is similar to what those previous orders have considered under s. 22(3)(d) and, therefore, find the presumption under s. 22(3)(d) applies.

[125] Finally, I find that s. 22(3)(d) applies to information that reveals the applicant's allegations about the workplace behaviour of other employees.[119] Even though the applicant already knows those allegations, a record that captures an applicant's allegations or complaints about a third party's workplace behaviour is part of that third party's employment history under s. 22(3)(d).[120] Whether or not the disclosure of those allegations to the applicant would unreasonably invade the personal privacy of those third parties is a different question, which I address further below.

[126] However, I find that s. 22(3)(d) does not apply to the information provided by other individuals in the investigations. This information only reveals what these individuals observed, said or did regarding workplace interactions with the applicant and is about the applicant's workplace behaviour. Unlike the information previously described above, these individuals were not subjected to an investigation or complaint about their workplace conduct. Therefore, I find that this information is not about their employment history under s. 22(3)(d).[121]

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[115] Information on pages 76 and 78.
[116] See for example Order F15-17, 2015 BCIPC 18 at paras 35-37.
[117] Information on pages 31-35, 39, 49, 60, 92 and 157.
[118] For example, see Order 01-53, 2001 CanLII 21607 (BC IPC) at para 38; Order F21-43, 2021 BCIPC 42 at para 42; and Order F23-56, 2023 BCIPC 65 at para 77.
[119] For example, information on pages 42-46.
[120] For example, Order 01-53, 2001 CanLII 21607 at paras 36-37.
[121] For a similar finding, see Order F25-13, 2025 BCIPC 15 at para 64; Order F20-13, 2020 BCIPC 15 at para 55; Order F19-41, 2019 BCIPC 46 at para 62; Order F21-43, 2021 BCIPC 42 at para 43; and Order 01-53, 2001.
CanLII 21607 at para 41.

Income information, s. 22(3)(f)

[127] Section 22(3)(f) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal information if the personal information describes a third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[128] The Ministry says that s. 22(3)(f) applies to payroll information.[122]

[129] I previously found that s. 22(4)(e) applies to the names, job descriptions and hourly rates of several public body employees. I, therefore, find that s. 22(3)(f) does not apply to that information.[123] However, the payroll expenditure reports also contain an amount that captures each third-party employee's total pay during a specific period. I find that s. 22(3)(f) applies to the total pay period amount because that reveals the employee's income during a given pay period.[124]

Relevant circumstances, s. 22(2)

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

[131] The Ministry makes submissions about ss. 22(2)(c), (e), (f) and four other circumstances not listed under s. 22(2).

[132] The applicant says that ss. 22(2)(a) and (c) apply and disputes that ss. 22(2)(e) and (f) apply.

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

[133] Section 22(2)(a) asks whether disclosure of the personal information is desirable for subjecting the activities of a public body to public scrutiny. If s. 22(2)(a) applies, then this factor will weigh in favour of disclosure. The purpose of s. 22(2)(a) is to make public bodies more accountable, and not to scrutinize the activities of individual third parties.[125]

[134] The applicant says s. 22(2)(a) applies. They say that they seek to shed light on public service managers misusing their authority and to create a more just and ethical public service.[126]

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[122] Public body's initial submission at para 124.
[123] For a similar finding, see Order F15-60, 2015 BCIPC 64 at para 34.
[124] I did not find that s. 22(4)(e) applies to this information because it reveals information about the employees' use of leave banks and hours worked.
[125] Order F18-47, 2018 BCIPC 50 at para 32; Order F16-14, 2016 BCIPC 16 at para 40.
[126] Applicant's response submission at para 93.

[135] The Ministry says it is unclear how disclosing the specific personal information at issue will subject the Ministry to public scrutiny. The Ministry says the applicant provides no evidence to support their allegations about managers and none of the information at issue under s. 22(1) is about any manager's use of their authority.[127]

[136] I recognize that the applicant has concerns about the conduct of managers in the public service. However, I am not persuaded that disclosing the specific personal information at issue would reveal anything about managers misusing their authority or subject the activities of the Ministry to public scrutiny in any other way. As a result, I conclude that s. 22(2)(a) does not apply.

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

[137] Section 22(2)(c) asks whether the personal information is relevant to a fair determination of the applicant's rights. Previous OIPC orders have established the test for s. 22(2)(c) to apply:

1. The right in question must be a legal right drawn from the common law or 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 underway or 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 ensure a fair hearing.[128]

[138] I will apply the same test in this matter.

[139] With respect to the first three parts of the test, the applicant says the information at issue is relevant to their grievances and they have a right to know who is accusing them and to challenge their testimony.[129] The Ministry says the applicant's legal rights are at issue in the arbitration which is underway, and some of the information at issue under s. 22 may have some bearing on the arbitration.[130]

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[127] Public body's reply submission at para 26.
[128] Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 at para 24.
[129] Applicant's response submission at para 95.
[130] Public body's initial submission at para 129.

[140] I find that the first two steps of the s. 22(2)(c) test are met because the applicant's legal rights are at issue in the arbitration which is about the applicant's workplace suspensions. Their legal right to grieve their workplace suspension comes from the collective agreement and, as noted by the Ministry, the arbitration of the grievance is underway and has not been completed.

[141] The third part of the test requires the personal information sought by the applicant to have some bearing on, or significance for, the determination of the applicant's rights. The applicant must prove there is a connection between the withheld information and the legal right.[131] I find there is a connection here. The personal information at issue includes the evidence the Ministry gathered in the workplace investigations and relied upon to suspend the applicant. The applicant's ability to review this information clearly has significance for a determination of their legal right to grieve their workplace suspensions. Therefore, I am satisfied the third part of the s. 22(2)(c) is met.

[142] Turning to the fourth part of the test, the Ministry says the personal information is not necessary to prepare for the arbitration or ensure a fair hearing because the union and the applicant have already received the relevant information through the arbitration's pre-hearing disclosure process.[132] Lawyer A deposes that the information at pages 184-197 and that a final version of the draft summaries, which is similar but not identical to the draft summaries, was disclosed to the union for the arbitration.[133]

[143] The applicant says they have not received any evidence about one of the suspensions.[134] In reply, the Ministry says the applicant provides no evidence to support their claim that they have not received all the relevant evidence.[135]

[144] The Ministry submits the fourth part of the test is not met because the applicant can obtain the information by another means, specifically through the arbitration process. However, past orders have found that to meet part four of the test, the applicant need only prove that the personal information itself is necessary to prepare for the proceeding or to ensure a fair hearing, and does not need to prove that the FIPPA process is the only way they can access the information.[136] I agree with and adopt this approach. I find that the applicant will need to know what information the Ministry relied on in deciding to suspend them in order to prepare for proceedings concerning those suspensions. As a result, I find that the fourth part of the test is met and that s. 22(2)(c) weighs in favour of disclosing some of the personal information.

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[131] Order F16-36, 2016 BCIPC 40 (CanLII) at paras 52 and 62.
[132] Public body's initial submission at para 130.
[133] Lawyer A's affidavit at para 20.
[134] Applicant's response submission at para 99.
[135] Public body's reply submission at para 27.
[136] See for example Order F16-36, 2016 BCIPC 40 at para 56.

Unfair exposure to harm, s. 22(2)(e)

[145] Section 22(2)(e) asks whether disclosure of the personal information will unfairly expose a third party to financial or other harm. Previous OIPC orders have established that "other harm" includes "serious mental distress or anguish or harassment."[137] Such harm must exceed "embarrassment, upset or a negative reaction to someone's behaviour."[138]

[146] The Executive Director says she believes disclosure would cause some individuals to fear for their safety, given what staff have expressed to her in the past about the investigations. She says that she cannot be more specific without violating the confidentiality of those conversations and the privacy of third parties.[139]

[147] The applicant says s. 22(2)(e) does not apply and that the Executive Director's evidence is not based in reality.[140]

[148] The Executive Director does not say who would fear for their safety as a result of disclosure or provide any detail that would allow me to understand what specific personal information others are concerned about having disclosed. As a result, I cannot determine which personal information is relevant under s. 22(2)(e). Therefore, I find that s. 22(2)(e) does not apply.

Supplied in confidence, s. 22(2)(f)

[149] Section 22(2)(f) asks whether the personal information was supplied in confidence. For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information and that the third party had an objectively reasonable expectation of confidentiality at the time that information was supplied.[141]

[150] The Ministry says that s. 22(2)(f) weighs strongly against disclosing information that relates to the workplace investigations.[142] More specifically, the Ministry says the third party who provided the complaints about the applicant would have had an objectively reasonable expectation of confidentiality given the sensitive nature of the information and the context in which it was supplied.[143]

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[137] Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42.
[138] Order 01-15, 2001 CanLII 21569 (BC IPC) at paras 49-50; Order F20-37, 2020 BCIPC 43 at para 120.
[139] Executive Director's affidavit at para 31.
[140] Applicant's response submission at paras 105-106.
[141] Order F11-05, 2011 BCIPC 5 at para 41, citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras 23-26 regarding s. 21(1)(b).
[142] Public body's initial submission at para 138.
[143] Public body's initial submission at para 140.

The Executive Director also says that interviewees in the workplace investigations were told their interviews were confidential.[144]

[151] Previous OIPC orders have typically found that information that reveals complaints about an applicant, as well as information provided by individuals in the course of workplace investigations, is supplied in confidence.[145] Considering the findings of previous orders, the nature of the information at issue and the Executive Director's evidence that interviewees were told their interviews were confidential, I find that s. 22(2)(f) applies to information the third parties provided in the course of the workplace investigations and to the third parties' complaints about the applicant.[146]

[152] Additionally, some of the personal information is an employee's forthright comment that was only shared with the Executive Director.[147] Given the personal nature and subject matter of the comment, and the fact it was only shared with the Executive Director, I find it reasonable to conclude that the employee expected their comment to remain confidential.

[153] As a result, I conclude that s. 22(2)(f) weighs against disclosure of some of the personal information.

Implied undertaking of confidentiality

[154] Previous orders have found that where the disputed information was disclosed to an applicant in prior proceedings subject to an implied undertaking of confidentiality, this factor weighs in favour of withholding the disputed information.[148]

[155] The Ministry says that it disclosed some of the personal information pursuant to its disclosure obligations in the arbitration process. It says that this information is subject to an implied undertaking of confidentiality, which weighs heavily against disclosure.[149] Lawyer A says that the Ministry disclosed the information on pages 184-197 of the responsive records and a final version of the investigative summaries.[150]

[156] I do not have the final version of the draft summaries so I cannot tell precisely what personal information was disclosed to the applicant during the

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[144] Executive Director's affidavit at para 14 and 16.
[145] See for example Order F25-12, 2025 BCIPC 14 at para 71 and Order F24-83, 2024 BCIPC 95 at para 48.
[146] Information on pages 31-35, 39, 42, 44, 49, 52, 54, 60, 63, 65, 92, 95, 97, 157 and 189-196.
[147] Information on page 83.
[148] Order F21-50, 2021 BCIPC 58 at paras 151-153 and Order F20-12, 2020 BCIPC 14 at para 51.
[149] Public body's initial submission at para 144.
[150] Lawyer A's affidavit at para 20.

arbitration process and, therefore, what information is subject to an implied undertaking of confidentiality. However, I accept Lawyer A's evidence that the information on pages 184-197 of the responsive records was disclosed to the applicant in arbitration proceedings and is, therefore, subject to an implied undertaking of confidentiality. Disclosure under FIPPA would be inconsistent with and undermine the implied undertaking because it must be treated as disclosure to the world and FIPPA places no restrictions on the use of information received in response to an access request. Consistent with past orders, I conclude that this factor weighs against disclosing the personal information on pages 184-197.

Applicant's knowledge

[157] Past orders consistently find that an applicant's knowledge of disputed information weighs in favour of disclosing that information.[151]

[158] The Ministry says that the applicant's knowledge does not weigh in favour of disclosure because disclosure under FIPPA is presumed to be disclosure to the world, and the world does not know the disputed personal information.[152]

[159] Some of the information at issue consist of questions the investigators put to the applicant and direct quotes or summaries of their responses. The applicant obviously knows this information.[153] Additionally, considering Lawyer A's evidence that the information on pages 184-197 of the records was disclosed to the applicant, I find that the applicant also knows the information on those pages.

[160] In my view, the fact that the applicant already knows some of the personal information weighs in favour of disclosing that information, although it does not weigh as strongly in favour of disclosure as if the information was widely known.

Applicant's personal information

[161] Previous orders have found that where the personal information at issue is the applicant's own information, then this factor will weigh in favour of disclosure.[154]

[162] The Ministry says this factor does not weigh in favour of disclosure because none of the information is solely the applicant's personal information.[155]

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[151] Order 01-30, 2001 CanLII 21584 (BC IPC) at para 20; Order F05-34, 2005 CanLII 39588 (BC IPC) at para 57; Order F17-01, 2017 BCIPC 1 at paras 70-74.
[152] Public body's initial submission at para 146.
[153] Information on pages 42-45, 52-55, 63-66 and 95-98.
[154] Order F18-30, 2018 BCIPC 33 (CanLII) at para 41; Order F14-47, 2014 BCIPC 51 (CanLII) at para 36; Order F24-59, 2024 BCIPC 69 (CanLII) at para 138.
[155] Public body's initial submission at para 148.

[163] Contrary to the Ministry's assertion, I find that some of the information is solely the applicant's personal information. This includes what an unidentified person or group of people said about the applicant and the applicant's statements that are not about any other identifiable individuals.[156]

[164] I find that this factor weighs in favour of disclosing the applicant's personal information. However, where the applicant's personal information is also the personal information of third parties or intertwined with that information, I give this factor less weight.

Sensitivity

[165] The Ministry says that some of the personal information is sensitive on its face and because it is in the context of a workplace investigation. The Ministry says this factor weighs strongly against disclosure.[157]

[166] Previous orders have found that the sensitivity of disputed information is a relevant factor under s. 22(2).[158] I find that some of the information at issue is sensitive because it relates to the emotions or feelings of third parties in relation to a workplace investigation. I also find that some of the information is sensitive because of what it reveals about an individual's personal life.[159]

[167] However, I am not persuaded that the balance of the personal information is sensitive. In my view, that information is not sensitive on its face, nor is it sensitive simply because it relates to a workplace investigation.

[168] Additionally, some of the personal information is general information about the Executive Director's travels.[160] Previous orders have found this kind of information to be "innocuous" and have held that this favours disclosure, particularly where the information is over two years old.[161] In this case, all of the information about the Executive Director's travels is over two years old. Therefore, consistent with previous orders, I find this information is not sensitive, which favours disclosing that information.

[169] To summarize, I find that the sensitivity of some of the personal information weighs against disclosing that personal information, while the innocuous nature of some of the personal information weighs in favour of disclosing that personal information.

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[156] For example, information on pages 39 and 42-47.
[157] Public body's initial submission at para 151.
[158] Order F22-31, 2022 BCIPC 34 (CanLII) at para 87.
[159] Information on pages 1 and 154.
[160] Information on pages 23, 37 and 159.
[161] Order F19-27, 2019 BCIPC 29 at para 71; Order F24-12, 2024 BCIPC 16 at para 143.

Conclusion, s. 22(1)

[170] For the reasons that follow, I find that disclosing some but not all of the information at issue under s. 22(1) would *not* be an unreasonable invasion of a third party's personal privacy.

[171] I found some of the information at issue is not personal information; therefore the Ministry is not required to withhold that information under s. 22(1).[162] Additionally, I found s. 22(4)(e) applies to the pathway information and the public body employee names, job descriptions and hourly rates.[163] The Ministry is also not required to withhold this information under s. 22(1).

[172] Some of the information is only the applicant's personal information, so I conclude disclosure of this information would not be an unreasonable invasion of a third party's personal privacy.[164]

[173] I found there was information about the Executive Director's past travels that was innocuous and not sensitive. I also find there are no circumstances that weigh against disclosing this information, so I conclude disclosure of this information would not be an unreasonable invasion of the Executive Director's personal privacy.[165]

[174] I also found there was some information that was both the applicant's personal information and the information of third parties. Some of this information is subject to an implied undertaking of confidentiality and some of it was supplied in confidence. However, I find some of this information is known to the applicant and it is relevant to a fair determination of the applicant's rights. After weighing all of the above, I conclude that disclosing this information would not be unreasonable invasion of a third party's personal privacy.[166]

[175] Additionally, I found that some of the personal information of third parties is relevant to a fair determination of the applicant's rights. Some of this information is subject to an implied undertaking of confidentiality and some of it is known to the applicant. After weighing all of the above, I conclude disclosure of this information would not be an unreasonable invasion of a third party's personal privacy.[167]

[176] Finally, in my view, if the Ministry were to withhold the names of several third parties, some of the information about them could be disclosed without any

[162] Information on pages 36, 39, 41-43, 46, 49, 51-53, 56, 60, 62-64, 67, 78, 92, 94-96, 99 and 158.
[163] Information on pages 3, 4, 36, 76, 78, 145 and 158.
[164] Information on pages 39, 42-47, 49, 52-57, 60, 63-68, 92 and 95-100.
[165] Information on pages 23, 37 and 159.
[166] Information on pages 42-46, 52-56, 63-67 and 95-99.
[167] Information on pages 40-42, 50-52, 61-63, 93-95 and 187-189.

risk of identifying those third parties. I found this combined information qualified as the personal information of several third parties; however, having considered all the relevant circumstances, I am satisfied some of this information can be disclosed. This would allow the applicant to know more about the contents of an email without any risk of identifying the individuals named in the email. Since this information can be disclosed without revealing a third party's identity or their personal information, I find it would not be an unreasonable invasion of a third party's personal privacy to disclose this information to the applicant.[168]

[177] However, I find that disclosure of the remaining information, all of which is personal information, *would* be an unreasonable invasion of a third party's personal privacy.

[178] I found the presumptions under ss. 22(3)(a), (d) and (f) apply to some of the personal information at issue. While there were some factors that weighed in favour of disclosing that information, such as the information is relevant to a fair determination of the applicant's rights in accordance with s. 22(2)(c), I conclude those factors did not rebut the s. 22(3) presumptions. In reaching this conclusion, I considered the fact the third parties supplied some of the information in confidence in accordance with s. 22(2)(f), the sensitivity of some of the personal information and the fact that some of the personal information is subject to an implied undertaking of confidentiality. After weighing all of the above, I find that disclosing this information would be an unreasonable invasion of a third party's personal privacy.

[179] There was some personal information that was not subject to a s. 22(3) presumption. I found some of this information was sensitive and some of it was supplied in confidence. For some of the information, no circumstances favoured disclosure. However, some of the information is relevant to a fair determination of the applicant's rights, which weighed in favour of disclosure. After weighing all of the above, I conclude the disclosure of this personal information would be an unreasonable invasion of a third party's personal privacy.

Summary, s. 22(5)

[180] Section 22(5) requires a public body to provide a summary of the personal information in dispute to the applicant in certain circumstances. This provision says:

> On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless

[168] Information on page 177.

> (a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, or
>
> (b) with respect to subsection (3)(h), either paragraph (a) of this subsection applies or the applicant could reasonably be expected to know the identity of the third party who supplied the personal recommendation or evaluation, character reference or personnel evaluation.

[181] The Ministry says it cannot prepare a summary without disclosing the identity of the third parties or allowing the applicant to make accurate inferences about their identities.[169]

[182] In my view, given the applicant's knowledge of the workplace investigations and the surrounding circumstances, the information that third parties supplied in confidence about the applicant cannot be meaningfully summarized without disclosing the identities of the third parties. Therefore, I find that s. 22(5) does not require the Ministry to provide a summary of that information.

CONCLUSION

[183] For the reasons given above, I conclude the Ministry is authorized or required to withhold some of the information at issue in this inquiry under ss. 13(1), 14 and 22(1), but it is not authorized to withhold information under s. 15(1)(l). Accordingly, I make the following order under s. 58 of FIPPA:

1. I confirm the Ministry's decision to refuse the applicant access to the information withheld under s. 14.

2. I confirm in part, subject to item 3 below, the Ministry's decision to refuse the applicant access to the information withheld under ss. 13(1) and 22(1).

3. The Ministry is required to give the applicant access to the information that I have determined in my decision that it is not authorized to withhold under ss. 13(1) and 15(1)(l) or required to withhold under s. 22(1). I have highlighted this information in green on pages 3-4, 23, 31-33, 35-37, 39-47, 49-57, 60-68, 71, 74, 76, 78, 92-100, 110, 138-139, 145, 157-159, 177 and 186-189 of the copy of the records that will be provided to the Ministry with this order.

4. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records/pages described at item 3 above.

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[169] Public body's initial submission at paras 158-159.

[184] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by **October 8, 2025**.

August 26, 2025

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F23-93017