Order F25-92

MINISTRY OF ATTORNEY GENERAL

Lisa Siew
Adjudicator

December 1, 2025

CanLII Cite: 2025 BCIPC 108
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 108

Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the Ministry of Attorney General (Ministry) provide access to records related to a Canadian Human Rights Tribunal hearing. The Ministry withheld information in the responsive records under one or more of the following FIPPA exceptions: ss. 14 (solicitor-client privilege), 16(1)(b) (information received in confidence from an agency) and 22(1) (unreasonable invasion of third-party personal privacy). At an inquiry to review the Ministry's decision, the adjudicator partly confirmed the Ministry's decision to refuse access under s. 14. The adjudicator ordered the Ministry to provide the applicant with access to the information that could not be withheld under s. 14 and which the Ministry had only withheld under that exception. There was some information in the responsive records that the Ministry did not provide for the adjudicator's review but withheld only under s. 22(1) or had applied ss. 16(1)(b) or 22(1) to the same information that the adjudicator found could not be withheld under s. 14. For that information, under s. 44(1)(b), the adjudicator ordered the Ministry to produce the relevant records so the adjudicator could determine whether the Ministry properly applied those other FIPPA exceptions to refuse access.

Statute and sections discussed in order: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 14 and 44(1)(b).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a journalist (applicant) requested the Ministry of Attorney General (Ministry) provide access to records related to a Canadian Human Rights Tribunal (Tribunal) hearing. The hearing centered on allegations that the Royal Canadian Mounted Police (RCMP) engaged in discriminatory behaviour and practices during an investigation. The applicant's request was for records from May 1 to September 27, 2023.

[2] The Ministry initially withheld all the records responsive to the applicant's request under s. 14 (solicitor-client privilege) of FIPPA. The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision. The OIPC's investigation and mediation process did not resolve the dispute between the parties, and the matter proceeded to this inquiry.

[3] During the inquiry, the Ministry sought and received the OIPC's approval to add ss. 16(1)(b) (information received in confidence from an agency) and 22(1) (unreasonable invasion of third-party personal privacy) to the inquiry. The Ministry applied ss. 16(1)(b), 22(1) or both exceptions to some of the same information that it withheld under s. 14. The Ministry also applied s. 22(1) to a small amount of information on one page of the records.[1] The Ministry also reconsidered its decision to refuse the applicant access to entire pages of records and released some information within the responsive records to the applicant.

ISSUES AND BURDEN OF PROOF

[4] The issues I must decide in this inquiry are the following:

1. Is the Ministry authorized to refuse to disclose the information at issue under s. 14?

2. Is the Ministry authorized to refuse to disclose the information at issue under s. 16(1)(b)?

3. Is the Ministry required to refuse to disclose the information at issue under s. 22(1)?

[5] Section 57(1) of FIPPA places the burden on the Ministry to prove the applicant has no right of access to the information that it withheld under ss. 14 and 16(1)(b).

[6] Section 57(2) of FIPPA places the burden on the applicant to establish that disclosure of the information at issue would not unreasonably invade a third-party's personal privacy under s. 22(1). However, the Ministry has the initial burden of proving the information at issue is personal information.[2]

DISCUSSION

Background

[1] Information located on p. 494 of the records. The Ministry did not withhold this information under s. 14.
[2] Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

[7] The RCMP previously investigated allegations that an individual had abused Indigenous children at certain schools in British Columbia.[3] The RCMP's past investigation did not result in any criminal charges being laid against the alleged abuser.

[8] Several people (the Complainants) filed a federal human rights complaint against the RCMP. The Complainants alleged the RCMP discriminated against them and others by failing to properly investigate their claims about the alleged abuser. Among other things, the Complainants claimed their race was a factor and that alleged stereotypes and biased attitudes toward Indigenous complainants caused deficiencies in how the RCMP carried out the investigation and resulted in preferable treatment towards the alleged abuser. Their complaint was eventually forwarded to the Tribunal for a hearing.

[9] While the Tribunal process was underway, lawyers on behalf of the Attorney General of BC (Attorney General) applied to be added as a party to the hearing (the Application). The Attorney General argued their participation in the hearing was necessary to provide the Tribunal with relevant information regarding certain remedies sought by the Complainants. The Tribunal denied the Application, but granted the Attorney General interested person status, which means the Attorney General or their representative was allowed to participate in the hearing in a limited role.[4]

Records and information at issue

[10] The records in dispute total 519 pages and the information at issue in this inquiry is found on approximately 490 of those pages. The Ministry withheld 487 pages of the records in their entirety and withheld some information on the remaining three pages of the disputed records. The Ministry describes the records in dispute as emails, attachments to emails, a briefing note and meeting invitations. The Ministry did not provide any of the records at issue for my review.

Sufficiency of the evidence provided by the Ministry regarding s. 14

[11] The Ministry chose not to provide the disputed s. 14 records and information for my review. Instead, the Ministry relies on affidavit evidence and a table of records describing the s. 14 records and information at issue to support its claims of privilege. The Ministry submits this combined evidence is sufficient for me to decide whether s. 14 applies to the information and records at issue; therefore, it argues a production order under s. 44(1)(b) is unnecessary in this

[3] The information in this background section is compiled from the parties' submissions and evidence.

[4] A person or organization may be allowed to participate as an interested person if it is affected by the proceedings and can assist the Tribunal in making its decision.

case. The applicant, however, argues that it is necessary to order production of the records at issue. I will address the applicant's arguments further below.

[12] Under s. 44(1)(b), the Commissioner or their delegate can order a public body to produce a record for the purposes of conducting an inquiry under s. 56, including records over which solicitor-client privilege is claimed.[5] The Commissioner, however, exercises this authority cautiously and with restraint given the clear direction by the Courts that a reviewing body's decision to examine privileged documents must never be made lightly or as a matter of course.[6] Therefore, given the importance of solicitor-client privilege, and in order to minimally infringe on that privilege, the Commissioner will only order production of records being withheld under s. 14 when it is absolutely necessary to decide the issues in dispute at an OIPC inquiry.[7]

[13] Moreover, when s. 14 is at issue, the OIPC makes an exception to its usual practice of requiring the public body to provide the OIPC with an unredacted copy of the records in dispute.[8] Where a public body declines to provide the information or records withheld under s. 14 to the OIPC for adjudication, it is expected to provide a description of the information or records in a manner that, without revealing privileged information, enables the other party and the adjudicator to assess the validity of the claim of privilege.[9] Where a public body relies on affidavit evidence to support its claim of privilege, the evidence should specifically address the records subject to the privilege claim and should come from an affiant with direct knowledge of the disputed records.[10]

[14] In the present case, the Ministry provided a description of the records in its submissions and in an affidavit affirmed by a lawyer in the litigation group of the Ministry's Legal Services Branch (LSB). I will refer to this person as the Lawyer. The Ministry also provided a table that describes the s. 14 records, which includes the date of the record, its general purpose and identifies the parties involved in the various communications.

[15] After reviewing those materials, I wrote to the Ministry with questions about how s. 14 applied to the disputed records and provided it with an

---

[5] Section 44(1)(b) of FIPPA states the Commissioner may order the production of a record, and s. 44(2.1) confirms that a production order may apply to a record that is subject to solicitor-client privilege.
[6] 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 pp. 11-12.
[7] Order F19-14, 2019 BCIPC 16 (CanLII) 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 (CanLII) at para. 68.
[8] Order F25-48, 2025 BCIPC 56 (CanLII) at para. 40.
[9] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para. 78. I will refer to this case as *Minister of Finance*.
[10] *Ibid* at para. 91.

opportunity to submit additional information and evidence to support its s. 14 claim. The Ministry made additional arguments about the validity of its s. 14 decision. I also gave the applicant an opportunity to address the Ministry's further arguments. After reviewing the parties' additional submissions, I determined that I had sufficient information to decide whether s. 14 applied without needing to examine the records themselves.

[16] I understand the applicant has doubts that the Ministry properly claimed privilege because the Ministry later decided to disclose some information that it originally claimed should be withheld under s. 14. The applicant says the Ministry applied s. 14 "in an overly broad manner" and that, by not providing the records for my review, the Ministry is essentially asking the OIPC and the public to trust its decision to withhold almost all the responsive records under s. 14.[11] However, I note the Ministry's legal representative in this inquiry explained that the Ministry's decision to reconsider its application of s. 14 to certain information was a result of the legal representative's full review of the responsive records in preparation for this inquiry and their subsequent discussions with the Ministry.[12]

[17] Public bodies are required to understand the FIPPA exceptions to access and conduct a thorough and careful review of the records before refusing access. However, given the complexities of solicitor-client privilege, it is plausible that public bodies may later decide s. 14 does not apply to certain information or records after the involvement of experienced legal counsel, which I accept occurred in this case. Therefore, without more, I am not persuaded that the Ministry's decision to disclose information previously withheld under s. 14 means the Ministry has improperly applied s. 14 to the other information and records at issue in this inquiry.

[18] I also understand the applicant strongly believes it is necessary in this case for me to review the records because it would promote transparency, encourage public trust in government and demonstrate accountability. However, even the Courts will decline to review allegedly privileged documents to adjudicate the existence of privilege unless there is evidence or argument that establishes the necessity of doing so to fairly decide the issue. For the reasons given above, I do not find it necessary to exercise my authority, under s. 44(1)(b), to order the Ministry to produce an un-redacted version of the disputed records and information for my review to decide if s. 14 applies. Whether or not the Ministry has established that s. 14 applies to the information at issue is another matter which I consider below.

---

[11] Applicant's submission received by the OIPC on June 10, 2025 at paras. 25-29. I note the applicant incorrectly dated their submission June 10, **2024**. The OIPC's registrar of inquires received the applicant's submission on June 10, **2025** and not in 2024; therefore, I assume the year 2024 is a minor typographical error and the Applicant meant to write 2025.

[12] Email from Ministry's legal representative dated April 10, 2025 to OIPC's registrar of inquiries and applicant.

Solicitor-client privilege – s. 14

[19] Section 14 of FIPPA states that a public body may refuse to disclose information that is subject to solicitor-client privilege. It is well-established that s. 14 encompasses both legal advice privilege and litigation privilege.[13] The Ministry is claiming both legal advice privilege and litigation privilege over the information withheld under s. 14.[14] I will first address legal advice privilege. If I find legal advice privilege applies to any of the s. 14 records, then it is not necessary for me to consider whether those records are also protected by litigation privilege.

Legal advice privilege

[20] Legal advice privilege applies to confidential communications between a solicitor and client for the purposes of obtaining and giving legal advice, opinion or analysis.[15] The Supreme Court of Canada explained that "without the assurance of confidentiality, people cannot be expected to speak honestly and candidly with their lawyers, which compromises the quality of the legal advice they receive."[16] Therefore, the privilege has been characterized as "fundamental to the proper functioning of our legal system." Given its importance, the Supreme Court of Canada has said the privilege "should only be set aside in the most unusual circumstances."[17]

[21] It is well-established that legal advice privilege can only be claimed document by document, with each document being required to meet the following criteria:

1. A communication between a solicitor and client (or their agent);

2. Which entails the seeking or giving of legal advice; and

3. Which is intended by the parties to be confidential.[18]

[22] Legal advice privilege does not apply to all communications or documents that pass between a lawyer and their client.[19] However, the Courts have found

---

[13] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para. 26.
[14] Ministry's submission dated May 15, 2025 at para. 17.
[15] *College*, *supra* note 13 at para. 31.
[16] *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII) [*Calgary*] at para. 34.
[17] *Calgary, supra* note 16 at para. 34, citing *Pritchard v. Ontario (Human Rights Commission*, 2004 SCC 31 (CanLII) at para. 17.
[18] *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 838, [1980] 1 SCR 821 at p. 13.
[19] *Keefer Laundry Ltd v. Pellerin Milnor Corp et al,* 2006 BCSC 1180 at para. 61.

that legal advice privilege extends to communications that are "part of the continuum of information exchanged" between the client and the lawyer in order to obtain or provide the legal advice.[20] A "continuum of communications" involves the necessary exchange of information between a client and their solicitor 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.[21] The continuum also covers communications after the client receives the legal advice, such as internal client communications about the legal advice and its implications.[22]

Parties' arguments about legal advice privilege

[23] The Ministry submits s. 14 applies to all the information at issue because the disclosure of this information would reveal "confidential solicitor-client communications relating to LSB's providing of legal advice to the [Attorney General] relating to the Application."[23] The Ministry's submission and the Lawyer's affidavit both say the client in this case is the Attorney General and the solicitor who gave legal advice to the Attorney General was the Lawyer.[24] Among other things, the Lawyer says the legal advice that they gave to the Attorney General is "captured in the responsive records to this inquiry."[25] The Ministry also says in its submission that other LSB lawyers gave legal advice to the Attorney General.[26]

[24] Given the Ministry's submission and the Lawyer's evidence, I was expecting the s. 14 records to be described as communications between the Attorney General and the Lawyer or between the Attorney General and other LSB lawyers. However, based on how the records are described in the Ministry's submissions, in the Lawyer's affidavit and in the table of records, none of the records at issue are communications between the Attorney General and a lawyer. In other words, none of the records at issue are communications between a solicitor and their client as argued by the Ministry and the Lawyer, and as required under the first part of the legal advice privilege test. Instead, most of the records at issue are described in the Ministry's materials as communications between various lawyers with no identifiable client involved in those

[20] *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83; *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [*Camp Development*] at paras. 40-46.
[21] *Camp Development*, *supra* note 20 at para. 40.
[22] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras. 22-24.
[23] Ministry's submission dated May 15, 2025 at para. 40.
[24] Ministry's submission dated May 15, 2025 at para. 28.
[25] Lawyer's affidavit at para. 12.
[26] Ministry's submission dated May 15, 2025 at paras. 29 and 36.

communications.[27] Therefore, the Ministry's assertion that disclosing the records at issue in this inquiry would reveal privileged communications between the Attorney General and an LSB lawyer conflicts with how the records are described in its submission, the Lawyer's affidavit and in the table of records.

[25] Given this inconsistency, I requested the Ministry clarify how the disclosure of the records at issue in the inquiry would reveal legal advice given by the Lawyer or another LSB lawyer to the Attorney General (the client), as argued and stated by the Ministry in its submissions and affidavit evidence.[28] In response, the Ministry acknowledged that the Attorney General or their representative was not involved in any of the communications at issue.[29] It continued to argue, however, that the Attorney General was the client and that the Lawyer, and the other LSB lawyers identified in the communications, were the Attorney General's legal counsel.[30]

[26] Citing two previous OIPC orders, the Ministry also argued legal advice privilege applies to communications that do not include a client but are solely between two LSB lawyers who are working together to give legal advice to a client.[31] The Ministry says some of the s. 14 records are those type of communications because they are "internal LSB discussions as well as the discussions with [federal Department of Justice] legal counsel" and those discussions "were relevant to the legal advice LSB provided to the Attorney General."[32]

[27] Citing s. 2(i) of the *Attorney General Act*, the Ministry also notes the Attorney General has "the regulation and conduct of all litigation for or against the government or a ministry in respect of any subjects within the authority or jurisdiction of the legislature."[33] Therefore, the Ministry argues the Attorney General is responsible for litigation related to the Tribunal proceeding.[34] The Ministry further argues that, even though "there is not a client on the responsive records", legal advice privilege applies because the "LSB lawyers were providing legal services" to the Attorney General in preparing an application to have the Attorney General added as a party to the Tribunal hearing.[35] It says the LSB

[27] Ministry's submission dated May 15, 2025 at paras. 29-33 and Lawyer's affidavit at paras. 12-13 and table of records.
[28] OIPC letter to the parties dated September 15, 2025.
[29] Ministry's submission dated September 24, 2025 at para. 22.
[30] Ministry's submission dated September 24, 2025 at para. 23.
[31] Ministry's submission dated September 24, 2025 at paras. 26-27, citing Order F20-01, 2020 BCIPC 01 at para. 34 and Order F23-107, 2023 BCIPC 123 at paras. 54-56.
[32] Ministry's submission dated September 24, 2025 at para. 28.
[33] *Attorney General Act*, RSBC 1996, c. 22.
[34] Ministry's submission dated September 24, 2025 at paras. 24-25.
[35] Ministry's submission dated September 24, 2025 at para. 23.

lawyers were "serving their client" regardless of whether the Attorney General or their "representative" was a recipient of the communications at issue.[36]

[28] Understandably, the applicant's submissions about s. 14 are limited, but the applicant is not convinced the Ministry properly claimed privilege over the information withheld under s. 14.

Analysis and findings about legal advice privilege

[29] The Lawyer attests that they provided legal advice to the Attorney General relating to the Application which is "captured in the responsive records to this inquiry and continue to provide legal advice to the [Attorney General] in the proceedings themselves."[37] The Ministry submits the Lawyer's assertion is enough to prove that legal advice privilege applies to the records at issue here.[38]

[30] In support of its argument, the Ministry cites the following part of Justice Steeves' judgment from *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*:

> … it is not open to the IPC to treat a claim of privilege as they would any other claim of an exception to disclosure. 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. As to the reliability of a lawyer's claim it first of all needs to be recognized that the lawyer's conduct is subject to the standards of the Law Society. It would be a professional error for a lawyer to misrepresent the nature of solicitor-client communications to an agency like the IPC (or to anyone)…[39]

[31] However, the Ministry's arguments and evidence fail to recognize the full context and meaning of Justice Steeves' statements in the quote cited above. In *British Columbia (Minister of Public Safety) v. British Columbia (Information and Privacy Commissioner)*, Justice Gomery rejected a public body's argument that an OIPC adjudicator must accept a claim of privilege, that was based on a partly erroneous affidavit, because it was made by a lawyer.[40] As part of their decision, Justice Gomery clarified that *Minister of Finance* means the following:

> In *Minister of Finance*, Steeves J. does suggest at para. 86 that "some deference is owed to the lawyer claiming the privilege". This suggestion comes in the course of the following reasoning. Evidence is required to substantiate a claim of privilege, and "an affidavit from counsel is the preferred approach"; para. 85. The party claiming privilege may rely upon

[36] Ministry's submission dated September 24, 2025 at para. 25.
[37] Lawyer's affidavit at para. 12.
[38] Ministry's submission dated September 24, 2025 at para. 28.
[39] 2021 BCSC 266 (CanLII) at para. 86.
[40] 2024 BCSC 345 (CanLII) at paras. 22-23 and 25. I will refer to this case as *Minister of Public Safety*.

> a rebuttable presumption that communications between a lawyer and client and the information they share are confidential in nature; paras. 88-90. However, Steeves J. goes on to hold that the affidavit should specifically address the documents subject to the privilege claim; para. 91. The presumption will not be engaged where the affidavit is inadequate; para. 92. It is for the adjudicator, not counsel, to decide whether the affidavit is adequate; paras. 92-93. The amount of explanation required to substantiate a claim of privilege depends upon documents in question; para. 93.
>
> In short, *Minister of Finance* underscores the point that a claim of privilege must be substantiated by evidence from the party claiming the privilege, and it is incumbent on the adjudicator to evaluate whether the evidence is adequate to the task…[41]

[32] Therefore, I acknowledge that the Courts have been clear that some deference is owed to a lawyer claiming privilege under s. 14 of FIPPA, given their professional obligation to properly claim it; however, no deference is owed where a lawyer's evidence is inadequate, incorrect or there is information that shows the affiant did not exercise due diligence in asserting privilege over the records at issue in the inquiry.[42] For the reasons that follow, I find the Lawyer's evidence and the Ministry's arguments about privilege problematic and inadequate to substantiate the Ministry's claim that privilege applies to all the records at issue.

No communications between a solicitor and their client

[33] The records at issue in this inquiry are described by the Lawyer in their affidavit and by the Ministry in its submission as communications between the Lawyer and other LSB lawyers, between the Lawyer and LSB paralegals, between various LSB lawyers and a Ministry "FOI & Records Analyst," and emails between various LSB lawyers and a lawyer from the federal Department of Justice, and an email that the Lawyer sent to themself.[43] The Ministry acknowledges that neither the Attorney General nor their representative was involved in any of these communications.[44] Therefore, I find the first part of the legal advice privilege test has not been met because none of the records at issue in this inquiry are communications between a lawyer and the Attorney General or their representative. For this same reason, none of the disputed records qualify as part of the continuum of communications between a lawyer and their client. The records at issue in this inquiry do not include any communications between the Attorney General, whom the Ministry and the Lawyer identify as the client, and a lawyer.

---

[41] *Minister of Public Safety*, *supra* note 40 at paras. 24-25.
[42] *Ibid* at paras. 22-25.
[43] Ministry's submission dated May 15, 2025 at paras. 29-33 and Lawyer's affidavit at paras. 11 and 14-18.
[44] Ministry's submission dated September 24, 2025 at paras. 22 and 25.

[34] I note that s. 2 of the *Attorney General Act* indicates the Attorney General has numerous and varied responsibilities, some of which clearly cannot be personally managed or completed by the Attorney General. Therefore, it is plausible that the Attorney General delegates some of their statutory responsibilities and decision-making to others and is not personally involved in those tasks or decisions. There is nothing in the materials before me that shows the Attorney General's delegate had any discussions with or gave instructions to an LSB lawyer or sought legal advice from a lawyer about the Application. As one example, the Ministry withheld an attachment to an email that is described as a Decision Briefing Note.[45] The Lawyer says they co-authored this document and it "constitutes legal advice relating to the Application."[46] However, the Lawyer does not identify the intended recipient of the document or its purpose. It likely relates to a decision of some sort, but I was not provided with any evidence or information that allows me to understand that decision, the intended decision-maker or how it relates to the Application.

[35] I am aware that previous OIPC orders have found s. 14 applies to information that would reveal the content of privileged communications between a lawyer and their client.[47] The Ministry and the Lawyer may mean that disclosing the s. 14 records at issue here would reveal *other* privileged communications that the Attorney General or their delegate had with one or more LSB lawyers, and which are not included in the responsive records here. For example, the Ministry may mean the Attorney General or their delegate had previous discussions with the LSB lawyers about the Tribunal hearing, sought and obtained their legal advice about those proceedings and then instructed the LSB lawyers to make the Application. However, if there were prior confidential discussions between a lawyer and the Attorney General or their delegate where legal advice was sought and given, then the Ministry and the Lawyer did not say so even though there was ample opportunity. I was not provided with any explanation or evidence about other privileged communications that may have occurred between a lawyer and the Attorney General or their delegate that would be relevant to the records at issue here.

[36] What is missing in the Ministry's submissions and the Lawyer's evidence is a connection between the records at issue in this inquiry and a privileged communication between a lawyer and their client. Specifically, the Ministry and the Lawyer do not sufficiently explain how disclosing the records at issue in this inquiry would reveal a privileged communication between the Attorney General or their delegate and an advising lawyer.

---

[45] The Decision Briefing Note is located somewhere between pages 125-161 of the records. The Ministry did not identify where it is located within those pages.
[46] Lawyer's affidavit at para. 16.
[47] For example, Order F20-19, 2020 BCIPC 22 (CanLII) at para. 24 and Order F22-16, 2022 BCIPC 18 (CanLII) at para. 31.

[37] Having found the first part of the legal advice privilege test has not been met, it is not necessary for me to consider whether the other parts of that test have been proven. However, for a variety of reasons, the Ministry argues legal advice privilege still applies; therefore, I will address the Ministry's other arguments about legal advice privilege below.

The records do not reveal the seeking or giving of legal advice

[38] The Ministry argues legal advice privilege applies because the LSB lawyers did work for the Attorney General by preparing and making the Application, which involved communicating with other LSB lawyers, paralegals and a federal lawyer and, therefore, all this work qualifies as providing legal advice to the Attorney General.[48] Citing s. 2(i) of the *Attorney General Act*, the Ministry argues legal advice privilege applies because the LSB lawyers were "serving their client" and "providing legal services" to the Attorney General.[49]

[39] I was not provided with, nor am I aware of any legal authorities, that have broadened the scope of legal advice privilege to cover those types of communications or records. If the Ministry's position were accepted, then legal advice privilege would apply to any legal services that a lawyer performs for a client, even though the Courts have clearly stated that not everything done by a lawyer for a client qualifies as providing legal advice. For example, in *British Columbia (Securities Commission) v. BDS*, the BC Supreme Court rejected the argument that legal advice privilege is a "blanket privilege" that applies to "all communications between solicitor and client as well as to all steps taken, or documents created, in the course of providing legal services."[50] The BC Court of Appeal upheld this finding and clarified that "a claim of privilege does not convert non-privileged documents into privileged documents."[51]

[40] I also do not find s. 2(i) of the *Attorney General Act* supports the Ministry's argument that legal advice privilege applies to the records at issue here. Section 2(i) of the *Attorney General Act* states: "The Attorney General has the regulation and conduct of all litigation for or against the government or a ministry in respect of any subjects within the authority or jurisdiction of the legislature." I understand the Ministry is relying on s. 2(i) of the *Attorney General Act* to argue the LSB lawyers were in a solicitor-client relationship with the Attorney General and provided legal services to the Attorney General by making the Application and, therefore, those services qualify as providing legal advice. However, based

[48] Ministry's submission dated September 24, 2025 at para. 23.
[49] Ministry's submission dated September 24, 2025 at paras. 23 and 25.
[50] *British Columbia (Securities Commission) v. BDS*, 2002 BCSC 664 at para. 10; aff'd on appeal: *British Columbia (Securities Commission) v. CWM*, 2003 BCCA 244 at paras. 42-47. Leave to appeal to SCC dismissed: [2003] SCCA No 341.
[51] *British Columbia (Securities Commission) v. CWM*, 2003 BCCA 244 at para. 45.

on the clear wording of the provision, I find s. 2(i) of the *Attorney General Act* means the Attorney General has certain statutory responsibilities and powers. Section 2(i) does not say anything about the nature of the relationship between the Attorney General and the lawyers employed in LSB or the work that they do for the Attorney General, and the Ministry did not provide any evidence that explains that relationship.

[41] I note, however, that in Order F20-42, the adjudicator accepted the following description about the Attorney General's role in government and their relationship with LSB:

> …the Attorney General is the chief law officer of the Crown. In that role, the Attorney General is the legal advisor to the Lieutenant Governor, cabinet and government ministries. The Attorney General also represents government and ministries in legal proceedings, is responsible for criminal prosecutions in the province, represents the public interest in civil litigation…*LSB supports the Attorney General's mandate by providing or overseeing all legal services to government with respect to civil matters on behalf of the Attorney General*.[52]

[42] Therefore, according to Order F20-42, the Attorney General employs lawyers and staff who work in LSB to carry out some of their statutory responsibilities under the *Attorney General Act*, including providing legal services and legal advice to the various government ministries and bodies regarding civil matters. Therefore, there may indeed be times when the Attorney General requests legal advice from an LSB lawyer on a particular matter; however, there are also clearly times when an LSB lawyer is not providing legal advice but providing legal services to the Attorney General or other government ministries on behalf of the Attorney General. The Ministry's description of the s. 14 records and the Lawyer's evidence indicate the LSB lawyers were providing legal services to the Attorney General by making the Application rather than giving legal advice to the Attorney General, which in my view are two distinct things.[53]

[43] The Ministry seems to be arguing that s. 14 applies because providing legal services and providing legal advice means the same thing. I was not provided with, nor am I aware of, any legal authorities that have reached this conclusion or found that s. 14 of FIPPA applies to all legal services that a lawyer performs for their client. Instead, the BC Court of Appeal has clarified that there is a difference between a confidential communication between a lawyer and their client and a privileged communication:

---

[52] Order F20-42, 2020 BCIPC 51 (CanLII) at para. 18, my emphasis. The description was provided in a senior LSB lawyer's affidavit.
[53] Ministry's submission dated September 24, 2025 at paras. 22-25 and Lawyer's affidavit at paras. 11 and 24-26.

> There is no doubt that lawyers are under an obligation to keep confidential all documents and other communications made to them by their clients, but not all such communications are subject to solicitor-client privilege…
>
> …privilege extends only to documents created for the purpose of giving or receiving legal advice and that the onus lies on the party asserting the privilege.[54]

[44] I also note that another provincial Legislature has distinguished providing legal services from providing legal advice. Saskatchewan's FIPPA has a provision that protects "correspondence between the public body's legal counsel (or an agent of the Attorney General) and any other person in relation to a matter that involved the provision of advice or services by legal counsel (or agent of the Attorney General)."[55] In considering that provision, Saskatchewan orders have defined legal services and legal advice as follows:

> *Legal advice* includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations regarding a matter with legal implications. *Legal service* includes any law-related service performed by a person licensed to practice law.[56]

[45] Considering all the above and the arguments and evidence before me, I am not persuaded that providing legal services to a client means the same thing as giving legal advice to that client. It is obvious that not everything a lawyer does for a client qualifies as giving legal advice about a matter.

[46] For all those reasons, I am not persuaded by the Ministry's argument that legal advice privilege applies to each record at issue in this inquiry because the LSB lawyers were providing legal services to the Attorney General by making the Application.

Discussions between lawyers do not reveal privileged communications

[47] The Ministry also argues a client does not need to be included in the communications for legal advice privilege to apply and that it applies to communications between lawyers working together to give legal advice to a client.[57] Relying on that reasoning, the Ministry says s. 14 applies to "internal LSB discussions as well as the discussions with [Department of Justice] legal

---

[54] *British Columbia (Securities Commission) v. CWM*, 2003 BCCA 244 at paras. 45 and 47 (emphasis in original).
[55] REVIEW REPORT 283-2016, 2019 CanLII 37055 (SK IPC) at para. 32, citing s. 22(c) of *The Freedom of Information and Protection of Privacy Act*, SS 1990-91, c F-22.01.
[56] REVIEW REPORT 283-2016, 2019 CanLII 37055 (SK IPC) at para. 39, emphasis in original.
[57] Ministry's submission dated September 24, 2025 at paras. 26-27.

counsel."[58] The Ministry says all those discussions "were relevant to the legal advice LSB provided to the Attorney General."[59]

[48] Some of the disputed records are described as emails between various LSB lawyers and emails between various LSB lawyers and a lawyer from the federal Department of Justice (the Federal Lawyer).[60] I understand the Ministry is arguing legal advice privilege applies to these records because these lawyers were working together to give legal advice to a client, in this case, the Attorney General.[61] The Ministry cites two past OIPC orders to support its position but fails to recognize that those decision-makers were first satisfied there were privileged communications between a lawyer and their client where legal advice was sought and given or that the disclosure of the relevant records would reveal legal advice given by a lawyer to a client.[62]

[49] In the present case, for the reasons discussed earlier, the Ministry has not established there were confidential discussions between the Attorney General and a lawyer where legal advice was sought and given or that the disclosure of the records at issue here would reveal legal advice that a lawyer gave to the Attorney General or their delegate. Instead, the Ministry acknowledges that neither the Attorney General (which the Ministry identifies as the client in this case) nor their representative was involved in any of the communications at issue.[63] Therefore, unlike those two previous OIPC orders cited by the Ministry, none of the records at issue here are communications between a lawyer and their client.

[50] I also have no evidence that the Federal Lawyer is in a solicitor-client relationship with the Attorney General. Instead, the evidence indicates the Federal Lawyer is representing the "Department of Justice (RCMP)" in the Tribunal proceedings; therefore, their client would be the RCMP and not the Attorney General.[64] Therefore, it is unclear and the Ministry does not sufficiently explain how communications between LSB lawyers that include the Federal Lawyer would be considered confidential solicitor-client communications.

Common interest privilege is not applicable here

[51] The Ministry says s. 14 applies to communications between LSB lawyers and the Federal Lawyer because of common interest privilege. The Lawyer says

[58] Ministry's submission dated September 24, 2025 at para. 28.
[59] Ministry's submission dated September 24, 2025 at para. 28.
[60] Ministry's submission dated May 15, 2025 at para. 16(a) and (c) and Lawyer's affidavit at paras. 14-15.
[61] Ministry's submission dated September 24, 2025 at paras. 26-28.
[62] See Order F20-01, 2020 BCIPC 01 at paras. 31 and 35 and Order F23-107, 2023 BCIPC 123 at paras. 49, 52 and 56.
[63] Ministry's submission dated September 24, 2025 at paras. 22 and 25.
[64] Information disclosed on p. 58 of the records and Lawyer's affidavit at paras. 15 and 30.

the Attorney General has "a common interest with the RCMP in policing-related aspects of this matter."[65] However, the Ministry did not sufficiently explain how a common interest between the Attorney General and the RCMP proves the records at issue here are privileged. The Ministry cites an Ontario Court of Appeal decision and Order F15-61 which discuss "common interest privilege" but does not sufficiently explain how those cases are relevant here. For example, common interest privilege is described in Order F15-61 as:

> Common interest privilege is an exception to circumstances that might otherwise amount to a waiver of privilege. In other words, common interest privilege protects against waiver of privilege when a privileged document – whether protected by legal advice privilege or litigation privilege – is disclosed to someone who otherwise would have no right to it, but with whom the party has a common interest.[66]

[52] The initial issue here for the communications that include the Federal Lawyer is not waiver, but whether the Ministry has first established that any of the records at issue are confidential solicitor-client communications where legal advice was sought and given. As noted in the quote above, waiver involves the disclosure of already privileged information and, for the reasons discussed earlier, the Ministry has not established legal advice privilege applies to any of the records at issue here. Therefore, I do not find the authorities cited by the Ministry about common interest privilege to be applicable or persuasive in proving legal advice privilege applies to the disputed records.

[53] To conclude, despite the Lawyer's assertions, I find the Ministry's submissions and the Lawyer's evidence is inadequate to substantiate a claim that the redacted information is protected by legal advice privilege. Despite being given an opportunity to do so, the Ministry has not sufficiently established or explained how disclosing the records at issue in this inquiry would reveal a privileged communication between the Attorney General (as the client) and a lawyer.

Litigation privilege

[54] I found the Ministry failed to establish that legal advice privilege applies to all the redacted information in the records. I will now consider whether the Ministry has proven litigation privilege applies to the redacted information.

[55] Litigation privilege is a "form of privilege that provides a protected area in which communications and documents created for and used in the process of preparing for and engaging in litigation are free from 'adversarial interference'

[65] Lawyer's affidavit at para. 31.
[66] Order F15-61, 2015 BCIPC 67 (CanLII) at para. 59.

and 'premature disclosure.'"[67] Litigation privilege can apply to a variety of records created for the dominant purpose of litigation such as communications between clients and third parties, communications between lawyers and third parties and documents created by clients or third parties, as well as non-confidential information.[68] However, litigation privilege does not last forever and the privilege expires once the litigation ends, unless there is related litigation that remains pending or may reasonably be apprehended.[69]

[56] The party relying on litigation privilege must establish the following two criteria:

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

(2) The dominant purpose of creating the document was to prepare for that litigation.[70]

[57] The onus is on the party claiming privilege to establish on a balance of probabilities that both parts of the test are met for each document over which privilege is claimed.[71]

Was litigation ongoing at the time the records at issue were created?

[58] The Ministry submits the first part of the test is met because litigation was ongoing.[72] Citing Order F22-52, the Ministry says previous OIPC orders have found a human rights tribunal proceeding qualifies as litigation for the purposes of s. 14.[73] Therefore, the Ministry submits the Tribunal hearing qualifies as litigation as required under the first part of the test.

[59] In Order F22-52, the adjudicator concluded the following about what qualifies as litigation under s. 14:

---

[67] *Raj v. Khosravi*, 2015 BCCA 49 at para. 7.
[68] *Keefer Laundry Ltd. v. Pellerin Milnor Corp. et. al.*, 2006 BCSC 1180 (CanLII) at paras. 91-93.
[69] *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at paras. 8 and 34-41.
[70] *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2014 BCCA 259 (CanLII) at para. 32 and *Raj v. Khosravi*, 2015 BCCA 49 at paras. 8, 12 and 20 and Order F22-52, 2022 BCIPC 59 at para. 59. The Ministry also adopts this test at para. 43 of its submission dated May 15, 2025.
[71] *Raj v. Khosravi*, 2015 BCCA 49 at para. 9, citing *Hamalainen v. Sippola*, 1991 CanLII 440 (BCCA) at para. 19.
[72] The Ministry did not argue litigation was reasonably contemplated at the time the s. 14 records were created so I do not need to address that part of the test or what the relevant legal authorities have said about it.
[73] Ministry's submission dated May 15, 2025 at para. 44, citing Order F22-52, 2022 BCIPC 59 at para. 60.

> Litigation privilege applies to documents created for court proceedings, but it also extends to documents created for other types of litigious disputes. Previous orders have held that "litigation", for the purposes of s. 14, encompasses Human Rights Tribunal complaints…[74] [Citations omitted]

[60] Consistent with previous OIPC orders, I conclude a human rights tribunal complaint can qualify as litigation for the purposes of s. 14. The human rights complaint in this case has led to a hearing before the Tribunal, which is an adversarial and quasi-judicial proceeding. Therefore, I am satisfied the Tribunal hearing qualifies as litigation for the purposes of determining whether litigation privilege applies.

[61] The Ministry also submits the litigation was ongoing because the Tribunal hearing was already underway when the s. 14 records were created. The applicant does not dispute the fact that the Tribunal proceeding was already underway when the Application was made, but clearly not all the records at issue here may have been created at the same time as the Application itself. Therefore, there needs to be some evidence as to when the Tribunal hearing started and when each record at issue was created.

[62] The Ministry did not identify when the Tribunal hearing started, but the applicant says the hearing was scheduled for six weeks, beginning on May 1, 2023, but that it continued into February 2024.[75] The Ministry's table of records also indicates the s. 14 records are dated between September 1 to 29, 2023. Therefore, I am satisfied the Tribunal hearing was ongoing at the time the s. 14 records were created. As a result, I find the first part of the test has been met.

What was the dominant purpose of creating the s. 14 records at issue?

[63] For litigation privilege to apply, each s. 14 record must have been created for the dominant purpose of preparing for the Tribunal hearing. The BC Court of Appeal has clarified that a document may have dual or multiple purposes, but litigation privilege applies only when the document was created for the dominant purpose of litigation.[76]

[64] The Ministry argues the s. 14 records were created for the dominant purpose of preparing the Application. It says the second part of the test is met because "the nature of the Records and narrow date range is such that they all relate to the [Tribunal hearing]."[77] In support of the Ministry's position, the Lawyer says the dominant purpose for creating the s. 14 records was to prepare the Application.[78] The Ministry argues the Lawyer's affirmed statement about the

---

[74] Order F22-52, 2022 BCIPC 59 at para. 60 and the orders cited there.
[75] Applicant's submission received by the OIPC on June 10, 2025 at para. 5.
[76] *Raj v. Khosravi*, 2015 BCCA 49 at paras. 16-17.
[77] Ministry's submission dated May 15, 2025 at para. 49.
[78] Lawyer's affidavit at para. 26.

dominant purpose of the s. 14 records is enough to prove that litigation privilege applies.[79]

[65] However, the BC Court of Appeal has specified that the second part of the litigation privilege test requires a factual determination that is based on a review of all the circumstances and the context leading to the creation of the document.[80] The question, therefore, is whether the Ministry's submissions and evidence provides the necessary context and explanation to establish that the dominant purpose of each s. 14 record was to prepare for the Tribunal hearing. For the reasons that follow, I find the Ministry has established that the dominant purpose for creating some of the records was litigation.

[66] The Lawyer describes the s. 14 records as emails between various lawyers, emails between various lawyers and paralegals or an FOI analyst, documents attached to some of those emails and meeting invitations.[81] To provide context for the records, the Lawyer explains that, on September 19, 2023, the Attorney General applied to the Tribunal to be added as a party to the litigation between the Complainants and the RCMP. The Ministry disclosed information in the records that confirms an application was made to the Tribunal on that date and for that purpose.[82] The Lawyer says the s. 14 records directly relate to them and other LSB lawyers "preparing to make the Application" and were "created in contemplation of the Application."[83] In preparing for the application, the Lawyer says they and other LSB lawyers communicated with the Federal Lawyer.

[67] When the s. 14 records were created, the Attorney General was not involved in the initial dispute between the Complainants and the RCMP or the litigation between those parties. Instead, the Attorney General was seeking to be added as a party to litigation that it was not directly involved in. I was not provided with, nor am I aware of, any legal authorities that have found that litigation privilege applies in those circumstances. The Ministry also acknowledged that it was unable to locate any applicable legal authorities.[84] I note, however, that the Tribunal has published its decision on whether to grant the Application on its website. The Tribunal has classified that decision as a "ruling", which I understand is a decision on a preliminary issue related to the Complainants' human rights matter.[85] Therefore, I accept the Application is related to the Tribunal hearing and, ultimately, forms part of those proceedings.

---

[79] Ministry's submission dated September 24, 2025 at para. 14.
[80] *Raj v. Khosravi*, 2015 BCCA 49 at para. 17.
[81] Lawyer's affidavit at paras. 11 and 14-18.
[82] Pages 57-64 of the records.
[83] Lawyer's affidavit at paras. 24 and 25.
[84] Ministry's submission dated September 24, 2025 at para. 19.
[85] https://chrt-tcdp.gc.ca/en/human-rights/process/hearings-and-decisions and https://www.chrt-tcdp.gc.ca/en/human-rights/process/getting-your-case-ready#motion.

[68] I also accept that the following s. 14 records were created to prepare and make the Application: (1) records dated before September 19, 2023; (2) records dated between September 25-29, 2023; and (3) a Decision Briefing Note. I will discuss these records below.

Records dated before September 19, 2023

[69] The Ministry's table of records indicates that some of the s. 14 records are dated before the Attorney General's September 19, 2023 application to the Tribunal, which supports the Lawyer's assertions about the purpose of those records. The Lawyer describes the records as emails between various LSB lawyers, some with attachments and some that include a paralegal and some meeting invitations. I accept that the LSB lawyers responsible for preparing and making the Application would need to communicate with each other and exchange documents, as well as communicate with their support staff. Therefore, I accept that these records were created for the dominant purpose of preparing for and making the Application.

Records dated between September 25-29, 2023

[70] There are some records described as emails between the Lawyer and other lawyers, including the Federal Lawyer that are dated between September 25-29, 2023.[86] Therefore, some of the s. 14 records are dated after the Application was made, which contradicts the Lawyer's assertions about the dominant purpose of these records. In other words, it is unclear how those records can be for the dominant purpose of preparing for the Application, as claimed by the Lawyer and the Ministry, when the Application had already been submitted when those records were created.

[71] However, I can see there is information disclosed in the responsive records which allows me to understand that the Application process was not limited to a single submission. The representatives of the existing parties in the Tribunal proceedings were given an opportunity to respond to the Application and the Attorney General was allowed to reply to those submissions.[87] The Lawyer and the representatives of the existing parties, including the Federal Lawyer, were informed about this opportunity on September 25, 2023, and the deadlines for those response submissions were set for October 2023. Therefore, it makes sense that there would be communications between the Lawyer and others after receiving an email about those further submissions. As a result, I am satisfied that the records dated between September 25-29, 2023, were created to prepare the Attorney General's further submissions about the Application.

[86] Pages 480-488, 513, 515, 516, 518, 519 of the records.
[87] Information disclosed on p. 514 of the records.

Decision Briefing Note

[72] The Ministry withheld a document attached to an email that it describes as a Decision Briefing Note.[88] The Lawyer says they co-authored this document and that it "constitutes legal advice relating to the Application."[89] Therefore, I accept the Decision Briefing Note is related to the Application and was created for the dominant purpose of litigation.

[73] To summarize my analysis so far, I accept the Ministry's arguments and evidence that some of the records at issue were created to prepare and make the Application. However, I am not satisfied that two email chains were created for the same purpose. I will discuss these records below.

Two email chains

[74] The Ministry redacted some information in the following two emails chains:

- An email chain between the Lawyer, another LSB lawyer, a paralegal and a Ministry "FOI & Records Analyst regarding a separate access to information request."[90] The Ministry disclosed some information on two pages of this record but withheld the rest of the email chain and the name of an attachment to an email in the chain.

- A two-page email chain between the Lawyer, another LSB lawyer, a paralegal and a Ministry "FOI & Records Analyst regarding a separate access to information request."[91] The Ministry disclosed most of the information in this email chain but withheld part of an email that the Lawyer describes as the other LSB lawyer providing "context to the subject matter of the legal advice we provided in the [Decision Briefing Note]."[92]

[75] From the parts of the records that I can see, there was an access request to the Ministry for a copy of "all internal briefing notes" regarding the Tribunal hearing for the period of May 1, 2023 to August 31, 2023.[93] Both email chains are related to that other access request. I can also see that the various lawyers and Ministry employees in these emails attempted to locate records responsive to that access request and discussed how to respond to it. Therefore, contrary to the Ministry's arguments and evidence, I find the dominant purpose for creating

[88] The Ministry did not specify where the Decision Briefing Note is located in the records except to say it can be found within pp. 125-161 of the records.
[89] Lawyer's affidavit at para. 16.
[90] Lawyer's affidavit at paras. 11(c) and 16, email chain located on pp. 125-161 of the records.
[91] Email chain located on p. 411 of the responsive records.
[92] Lawyer's affidavit at para. 17.
[93] Information disclosed on p. 412 of the records regarding access request MAG-2023-32387.

these email chains was to respond to a FIPPA access request and not for litigation.

[76] To conclude, I find litigation privilege applies to some of the information that the Ministry withheld under s. 14. The Ministry did not establish that litigation privilege applies to two email chains related to a FIPPA access request.[94]

Has the litigation ended so that the privilege no longer applies?

[77] As previously noted, litigation privilege has an expiry date. It expires once the litigation ends, unless there is related litigation that remains pending or may reasonably be apprehended. Both parties agree that the Tribunal has yet to issue a decision about the Complainants' human rights matter.[95] I was not provided with any evidence that shows the litigation involving the Complainants' human rights complaint has ended. Therefore, I find the litigation that is the source of the privilege here has not ended, and the relevant records are still protected by litigation privilege.

Conclusion on s. 14

[78] I accept that litigation privilege applies to most of the information redacted in the records at issue. Therefore, the Ministry is authorized to withhold that information under s. 14. The Ministry also applied ss. 16(1)(b) or 22(1) to some of the same information that I found it could withhold under s. 14. It is not necessary for me to consider whether those other FIPPA exceptions also apply to that information, and I decline to do so.

[79] I found, however, that the Ministry did not establish that legal advice privilege or litigation privilege applied to the information redacted in two email chains related to another access request.[96] For some of the redacted information in these records, the Ministry also refused access because it argued ss. 16(1), 22(1) or both those exceptions applied to that information. Therefore, I will need to determine whether these other FIPPA exceptions apply. I will discuss further below how I will make this determination.

[80] There is some information, however, where the Ministry only applied s. 14 and did not refuse access to this information under another FIPPA exception. This information is located on pages 125, 130-133 and 411 of the records. I found the Ministry did not establish that legal advice privilege or litigation privilege applies to the information redacted on these pages; therefore, the

[94] Emails related to another access request located at pp. 125-161 and 411 of the records.
[95] Applicant's submission received by the OIPC on June 10, 2025 at para. 10 and Ministry's submission dated May 15, 2025 at para. 50.
[96] Email chains related to another access request located at pp. 125-161 and 411 of the records.

Ministry is not authorized to withhold this information under s. 14 and must disclose it to the applicant.

[81] In reaching this conclusion, I considered whether to give the Ministry an additional opportunity to provide further explanation or evidence to support its decision to withhold this information under s. 14. In *Minister of Public Safety*, Justice Gomery clarified that "…in a case involving an assertion of solicitor-client privilege where the claim of privilege is plausible but is not made out on the evidence," an OIPC adjudicator has the discretion to allow the public body to provide further evidence and submissions rather than denying the claim based on the public body's failure to meet its burden of proof under FIPPA.[97]

[82] However, Justice Gomery also said this discretion "should only be exercised in exceptional circumstances" and noted the following considerations, alongside other factors, in denying a public body's request to be afforded a second chance to substantiate its claim of privilege:

> …The Province and other public bodies subject to *FIPPA* are invariably well advised and professionally represented. The process by which requests for access to information are adjudicated is already prolonged. The legal principles governing solicitor-client privilege are well established. With the guidance provided by cases such as *Minister of Finance,* public bodies have the means and ample opportunity to assert claims of privilege to which they are entitled, and they should be expected to put forward all of the relevant evidence correctly and at the first available opportunity.[98]

[83] I find those considerations are relevant and applicable here. The Ministry is represented in this inquiry by experienced legal counsel and had several opportunities to support its claim of privilege. As well, in *Minister of Finance* and *Minister of Public Safety*, the BC Supreme Court has clarified what a public body must do to prove a claim of privilege under s. 14 of FIPPA and this guidance was known or available to the Ministry prior to this inquiry.[99]

[84] Moreover, I have already expressed my specific concerns to the Ministry regarding its evidence and claim of privilege and given the Ministry an opportunity to respond. The Ministry has taken the position that it provided sufficient evidence to support its decision to withhold information under s. 14 of FIPPA.[100] Therefore, I conclude the adjudication of s. 14 in this inquiry would not benefit by inviting the Ministry to provide further submissions and evidence about its s. 14 decision.

---

[97] *Minister of Public Safety*, *supra* note 40 at para. 32.
[98] *Minister of Public Safety*, *supra* note 40 at para. 33.
[99] For example, the Ministry has cited *Minister of Finance* in its various submissions.
[100] Ministry's submission dated September 24, 2025 at, for example, paras. 14, 20, 28 and 42-43.

[85] I also agree with Justice Gomery that public bodies are expected to provide their best evidence and arguments at the first available opportunity. Public bodies should not expect the OIPC to alert them to problems regarding their claims of privilege or offer them additional opportunities to bolster their evidence and arguments.

[86] Lastly, I note the applicant made their access request in 2023 and has been waiting over two years for a resolution of its dispute with the Ministry regarding the Ministry's decision to refuse access to the requested records. Therefore, I find it would be unfair to the applicant to further delay this inquiry by seeking additional submissions from the Ministry about its claim of privilege, especially when the Ministry already had ample opportunity to do so.

[87] For all those reasons, I decided not to exercise my discretion to give the Ministry another opportunity to substantiate its claim of privilege to the above-noted records.

Should I order production of the disputed records to consider ss. 16(1)(b) and 22?

[88] There are two categories of records that I need to consider regarding the production powers under s. 44(1)(b) of FIPPA: (1) Information withheld under s. 14 and another FIPPA exception; and (2) Information withheld only under s. 22(1). I will discuss these records below and consider whether production of those records is appropriate or necessary in this case.

Information withheld under s. 14 and another FIPPA exception

[89] The Ministry argued the following FIPPA exceptions applied to the same information that I found could not be withheld under s. 14:

- Pages 127-129: information withheld under s. 22(1)
- Pages 134-139: information withheld under s. 16(1)(b)
- Pages 140-147: information withheld under both ss. 16(1)(b) and 22(1)
- Pages 148-149: information withheld under s. 16(1)(b)
- Pages 150-151: information withheld under both ss. 16(1)(b) and 22(1)
- Pages 152-161: information withheld under s. 16(1)(b)

[90] I will need to determine whether these other FIPPA exceptions apply to this redacted information. As noted earlier, the Ministry did not provide a full unredacted copy of the records at issue in this inquiry; therefore, I must consider whether I should exercise my discretion under s. 44(1)(b) to order the Ministry to produce the relevant records for my review so I can determine whether ss. 16(1) or 22(1) apply.

[91] In similar circumstances, where a public body has failed to prove that s. 14 applies to the information at issue but also refused access based on another FIPPA exception, previous OIPC adjudicators have ordered the public body under s. 44(1)(b) to produce the relevant records so they can decide whether the other relevant FIPPA exceptions applied.[101] In making this determination, those adjudicators found that deciding whether a FIPPA exception applies requires an independent, line-by-line review of the information in dispute.

[92] I find it appropriate in this case to adopt the approach taken by those other adjudicators. I am not aware of any special circumstances or considerations that would warrant departing from this approach. Moreover, I am not satisfied that I can conduct the necessary detailed analysis to determine whether ss. 16(1)(b) or 22(1) applies to the redacted information at issue based on affidavit evidence alone and without reviewing the actual information in dispute.[102] For example, based on their review of the information at issue, it is not uncommon for OIPC adjudicators to identify factors and provisions relevant to the s. 22 analysis that the parties have not identified in their submissions.[103]

[93] Therefore, I find it necessary and appropriate in this case to order the Ministry to produce the relevant records for my review so that I can make an independent and informed decision about whether ss. 16(1)(b) or 22(1) applies. Once I have those records, I will be able to decide if the Ministry is authorized or required to refuse access to the relevant information under those FIPPA exceptions and will issue a separate order under s. 58 of FIPPA regarding that information.

Information withheld only under s. 22(1)

[94] There is one other matter that I need to address regarding the production powers under s. 44(1)(b) of FIPPA. The Ministry withheld a small amount of information solely under s. 22(1) but it chose not to provide that information for my review.[104] The Ministry and the Lawyer say the redacted information is the name of an individual involved in the Tribunal proceeding.[105] The Ministry

---

[101] For example, Order F25-10, 2025 BCIPC 11 (CanLII) at para. 45; Order F23-85, 2023 BCIPC 101 (CanLII) at paras. 41-42 and Order F23-42, 2023 BCIPC 50 (CanLII) at paras. 48-52, partly overturned on judicial review at *British Columbia (Minister of Public Safety) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 345 (CanLII) but not regarding the production order under s. 44(1)(b).

[102] For an example of the detailed analysis required under s. 16(1)(b), see Order F25-67, 2025 BCIPC 77 (CanLII) at paras. 165-187.

[103] For example, Order F25-67, 2025 BCIPC 77 (CanLII) at para. 107 and Order F25-32, 2025 BCIPC 39 (CanLII) at paras. 34 and 42.

[104] Information withheld on p. 494 of the records. At para. 93 of its submission dated May 15, 2025, the Ministry also says the name appears on other pages in the records but does not identify those pages.

[105] Ministry's submission dated May 15, 2025 at paras. 84 and 93. Lawyer's affidavit at paras. 36-37.

submits that it is required to withhold this information because of a publication ban issued in 2022 by the federal court that prohibits disclosing the identity of this individual in relation to the Tribunal hearing.[106] In support of its position, the Ministry provided a copy of the federal court order.[107] The individual's identity has been anonymized and they are referred to in the court order as "A.B."[108]

[95] For the reasons that follow, I am not persuaded by the Ministry's argument that producing the relevant records to the OIPC for the purposes of conducting an inquiry would be contravening a publication ban.

[96] In Order F09-07, Adjudicator Francis rejected a public body's argument that it does not have control over the use of a record because the record was subject to a publication ban that prohibited the public body from publishing or disclosing the record.[109] Adjudicator Francis was not persuaded that a disclosure under FIPPA is a "publication" for the purposes of that ban.[110] She ordered the public body to process the record and decide whether the applicant was entitled to have access to the record under FIPPA. She also explained that her decision and order on this issue did not "vacate" the publication ban, which was still in effect.[111] Adjudicator Francis' decision about that issue was upheld on judicial review.[112]

[97] A similar approach was taken by the office of Ontario's Information and Privacy Commissioner (IPC) in Order MO-2178. Ontario's former Assistant Commissioner concluded that the words "publish" and "publication" meant "making information publicly known" and that providing the records to the IPC was not a publication. He explained that the IPC does not publicly disclose the records but orders the institution to disclose it, and that if an institution disagrees with the IPC's order, then it can request a reconsideration or bring an application for judicial review.[113] Ultimately, the former Assistant Commissioner ordered the institution to provide the records to the IPC to decide the appeal.[114]

[98] I agree with the reasons and the approach in Order F09-07 and Order MO-2178. I find the Ministry would not contravene a publication ban by complying with FIPPA. There are no steps in FIPPA's review or complaint processes that would lead to a publication of the information in dispute between parties. For example, when conducting an investigation or an inquiry under

---

[106] Ministry's submission dated May 15, 2025 at paras. 93-94.
[107] Lawyer's affidavit at Exhibit "A".
[108] Lawyer's affidavit at para. 36. Ministry's submission dated May 15, 2025 at para. 94.
[109] Order F09-07, 2009 CanLII 21709 (BC IPC).
[110] *Ibid* at para. 88.
[111] *Ibid* at para. 91.
[112] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2010 BCSC 931 (CanLII) at paras. 45-48.
[113] Order MO-2178, 2007 CanLII 11131 (ON IPC) at p. 6 of pdf.
[114] *Ibid* at p. 7 of pdf.

FIPPA, the OIPC always accepts the information in dispute on an *in camera* basis, which means it is only reviewed by the Commissioner or their delegate. As well, under s. 47 of FIPPA, the Commissioner or their delegate must not disclose any information obtained in performing their statutory duties or exercising statutory powers under FIPPA, subject to certain very limited exceptions. In particular, the OIPC does not make information that it receives for the purpose of conducting and deciding an inquiry publicly known.

[99] For all those reasons, I am not persuaded that producing the relevant record to the OIPC for the purposes of conducting an inquiry under FIPPA would be contravening a publication ban. As a result, I order the Ministry under s. 44(1)(b) to produce the relevant record for my review so I can determine whether the Ministry is required to refuse access to the information at issue under s. 22(1).

CONCLUSION

[100] For the reasons discussed in this order, I conclude the Ministry is authorized to refuse access under s. 14 to some of the information at issue and I make the following orders:

1. Under s. 58(2)(b) of FIPPA, I confirm the Ministry's decision to refuse access to the information that it withheld under s. 14, except for the information discussed in item 2 below.

2. The Ministry is not authorized to refuse access to the information on pages 125, 127-129 and 130-161 and 411 of the records that it withheld solely under s. 14. Under ss. 58(2)(a) and 59(1) of FIPPA, the Ministry is required to give the applicant access to that information by **January 15, 2026**.

3. Under s. 58(4) of FIPPA, the Ministry must provide the OIPC registrar of inquiries with proof that it has complied with item 2 above.

[101] Under s. 44(1)(b) of FIPPA, the Ministry is required to produce to the OIPC an unredacted copy of pages 127-129 and 134-161 of the records so a determination can be made as to whether ss. 16(1)(b) or 22(1) applies to the information that I found could not be withheld under s. 14. The Ministry is required to clearly identify on those pages whether the information is being withheld under ss. 16(1)(b), 22(1) or both exceptions. To be clear, I am not ordering the Ministry to produce the information that I found it is authorized to refuse to disclose under s. 14 such as the Decision Briefing Note.

[102] The Ministry is also required under s. 44(1)(b) to produce to the OIPC an unredacted copy of page 494 of the records so that a determination can be made about whether s. 22(1) applies to the relevant information. The Ministry is

required to clearly identify what information on that page it is withholding under s. 22(1).

[103] Under s. 44(3), the Ministry must comply with paragraphs 101 and 102 by **December 15, 2025**.

December 1, 2025

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No: F24-96002

ADDENDUM TO ORDER F25-92

MINISTRY OF ATTORNEY GENERAL

Lisa Siew
Adjudicator

December 4, 2025

On December 1, 2025, I issued Order F25-92 following an inquiry held pursuant to s. 56 of FIPPA. At issue in the inquiry was s. 14 (solicitor client privilege) of FIPPA. The Ministry chose not to provide the records at issue in the inquiry for my review and instead relied on affidavit evidence and other materials to describe the records and prove its claim of privilege. Based on those materials, I ultimately determined the Ministry had correctly applied s. 14 of FIPPA to some of the information at issue in the inquiry. For the information that I found could not be withheld under s. 14, I ordered the Ministry, under s. 44(1)(b), to produce the relevant records so a determination could be made about the Ministry's decision to withhold information in those records under other FIPPA exceptions.

On December 3, 2025, the Ministry provided me with clarification about its description of certain records at issue in the inquiry. I determined this latest information required me to revise certain orders that I made under Order F25-92. On that same day, at my request, the applicant also informed me that they were no longer seeking access to certain information that the Ministry had withheld in the records. Therefore, given these latest developments, I issue this addendum to revise paragraph 100 (item 2) of Order F25-92 to now read as follows:

> The Ministry is not authorized to refuse access to the information on pages 125 and 411 of the records that it withheld solely under s. 14. Under ss. 58(2)(a) and 59(1) of FIPPA, the Ministry is required to give the applicant access to that information by **January 15, 2026**.

As well, the latest information given to me by the parties requires me to make the following new determinations:

[1] I rescind my previous order, made under s. 44 of FIPPA, for the Ministry to produce to the OIPC an unredacted copy of pages 127-129 and 134-161 of the records by December 15, 2025. The Ministry has clarified, and I accept, that the information redacted on those pages is part of a record that I found the Ministry could withhold under s. 14 because it is protected under litigation privilege.

[2] I confirm the Ministry's decision to refuse access to the information withheld on page 494 of the records because the applicant has withdrawn their request for this information. For the same reason, I rescind my previous order, made under s. 44 of FIPPA, for the Ministry to produce to the OIPC an unredacted copy of page 494 of the records by **December 15, 2025**.

December 4, 2025

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No: F24-96002