



Order F26-12

MINISTRY OF FINANCE (PUBLIC SERVICE AGENCY)

D. Hans Hwang
Adjudicator

February 12, 2026

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Summary: An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Public Service Agency (PSA) for access to records containing information about herself. The PSA disclosed the responsive records but withheld some information in them under several exceptions to disclosure under FIPPA. The adjudicator found that the PSA was authorized or required to refuse to disclose some of the information under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege) and 22(1) (harm to third-party personal privacy) but that some of the withheld information did not fall within the claimed exceptions. The adjudicator ordered the PSA to give the applicant access to the information it was not required to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 6(1), 13(1), 13(2), 13(3), 14, 15(1)(l), 22(1), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), 22(3)(g), 22(3)(h), 22(4)(a), 22(4)(e), 22(5).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) requested access to records containing information about herself from the Public Service Agency (the PSA), which is an agency within the Ministry of Finance.

[2] The PSA provided the responsive records to the applicant but withheld some information in them under ss. 13 (advice or recommendations), 14 (solicitor-client privilege), 15(1)(l) (harm to security of computer system), 17(1) (harm to the financial or economic interests of a public body), 19(1) (harm to individual or public safety) and 22 (unreasonable invasion of third party personal privacy).

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

[4] Before the close of the submissions phase, the PSA reconsidered its decision to withhold some of the information in dispute, and provided that information to the applicant.¹ After the reconsideration, the PSA no longer relies on ss. 17(1) and 19(1) to withhold any of the information in dispute.² Therefore, ss. 17(1) and 19(a) are not at issue, and I will not consider those sections any further.

Preliminary matters

Issues outside the scope of this inquiry, ss. 6 and 25

[5] In the applicant's submission, she argues that disclosure of the information at issue is in the public interest under s. 25(1).³ In addition, she submits, among other things, a complaint about the PSA not adequately searching for information in response to her access request.⁴ The applicant seems to be suggesting that the PSA failed to comply with its duty to assist under s. 6(1) of FIPPA which imposes a duty on a public body to conduct an adequate search for records.⁵

[6] Sections 6 and 25 are not listed as issues in the OIPC investigator's fact report or the notice of inquiry.

[7] The notice of inquiry⁶ and past OIPC orders⁷ state that parties may only introduce new issues at the inquiry stage if they request and receive prior permission from the OIPC to do so.

[8] The applicant did not request the OIPC's permission to add ss. 6(1) and 25(1) as issues. Also, she did not explain why she did not request permission to add these sections prior to the inquiry, and she did not identify any exceptional circumstances which would warrant a departure from the OIPC's usual approach. Accordingly, I decline to add ss. 6(1) and 25 as issues in this inquiry and will not consider whether these sections apply to the information in dispute.⁸

¹ Agency's June 16, 2025 letter.

² Agency's initial submission at paras 9-10.

³ Applicant's response submission at para 164.

⁴ Applicant's response submission at paras 162 and 165d.

⁵ Order 02-18, 2002 CanLII 42443 (BCIPC) at para 7.

⁶ Notice of inquiry was provided to both parties at the start of this inquiry.

⁷ See, for example, Order F16-34, 2016 BCIPC 38 (CanLII) at para 9.

⁸ See, for similar reasoning, Order F15-15, 2015 BCIPC 16 (CanLII) at para 10; Decision F08-02, 2008 CanLII 1647 (BCIPC) at paras 28-30.

Notice to third parties, s. 23

[9] As part of her submissions about s. 22, the applicant requests the OIPC to direct the PSA to contact individuals to determine whether they are willing to consent to the release of their personal information.⁹ She appears to be referring to s. 23.

[10] Section 23 sets out a public body's obligation to give notice to third parties¹⁰ when the responsive records contain information that may be excepted from disclosure under ss. 18.1, 21 or 22 of FIPPA. A previous OIPC order has said that if a public body intends to disclose a third party's personal information, s. 23 states that it must provide notice to that third party; if a public body intends to withhold the information, then it may (but is not required to) give notice to the third party.¹¹ In this case, the PSA decided to withhold the information at issue under s. 22(1) so it was not required to issue a s. 23 notice to any of third parties.

[11] Taking all the above into account, I will not consider this request further.

ISSUES

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

1. Is the PSA authorized to refuse to disclose the information in dispute under ss. 13(1), 14 and 15(1)(l)?
2. Is the PSA required to refuse to disclose the information in dispute under s. 22(1)?

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

[14] 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 PSA has the initial burden of proving that the information qualifies as personal information.¹²

⁹ Applicant's response submission at para 157.

¹⁰ Schedule 1 of FIPPA defines a "third party" as "in relation to a request for access to a record...any person, group of persons or organization other than the person who made the request or a public body."

¹¹ Order F17-31, 2017 BCIPC 33 (CanLII) at para 11, citations omitted.

¹² Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

DISCUSSION

Background

[15] The PSA is a provincial agency which provides human resources leadership, services, and programs for the Government of British Columbia (the Government) pursuant to s. 5 of the *Public Service Act*.¹³ Also, on behalf of the Government, the PSA has conduct of any grievances filed by the British Columbia General Employee's Union (BCGEU).

[16] The applicant has been an employee with the Government since 2001.¹⁴ She is a member of BCGEU, and is currently on leave from her position with the Ministry of Attorney General (the Ministry).

[17] The applicant was the subject of two workplace investigations between 2017 and 2019. Following the investigations, she filed eight BCGEU grievances against the Ministry about the result of these investigations. BCGEU withdrew or settled six of those eight grievances. Two remain outstanding.

Records and information at issue

[18] The responsive records consist of 1,491 pages of documents comprised of reports, scripts, correspondence, emails, notes, grievance letters, and chronologies.

[19] Also, the PSA is withholding the entirety of 11 audio recordings that range in length between seven to 97 minutes. These audio recordings are recordings of interviews of eight individuals.

Solicitor-client privilege, s. 14

[20] 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. In this case, the PSA claims both privileges.

Sufficiency of evidence to substantiate the s. 14 claim

[21] The PSA did not provide the information withheld under s. 14 for my review.

¹³ RSBC 1996, c 385.

¹⁴ Applicant submits that she commenced her employment with the Government in 2001, and the PSA incorrectly states that she started the employment in 2007.

[22] The applicant submits that I must order the PSA to provide the records in which it withheld information under s. 14 for my review.¹⁵

[23] Section 44(1)(b) gives me, as the Commissioner's delegate, the power to order production of records to review them during an inquiry. However, given the importance of solicitor-client privilege, and in order to minimally infringe on that privilege, I would only order production of records being withheld under s. 14 when it is absolutely necessary to decide the issues in dispute.¹⁶

[24] Past court cases and OIPC orders have discussed the evidence required to establish solicitor-client privilege in the absence of the records.¹⁷ Although there are no steadfast rules and each case depends on its own facts, some general rules have been established, including that:¹⁸

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

[25] For the reasons below, I find that the PSA provided a sufficient evidentiary basis for me to determine whether the information it withheld under s. 14 is subject to solicitor-client privilege.

[26] To support its claims of privilege over the records, the PSA provided affidavit evidence from a lawyer (Lawyer DH) with the Legal Services Branch

¹⁵ Applicant's response submission at para 136.

¹⁶ 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.

¹⁷ *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 [*Minister of Finance*] at paras 76-93 and Order F20-16, 2020 BCIPC 18 at paras 8-10.

¹⁸ *Minister of Finance* at paras 76-93 and Order F20-16, 2020 BCIPC 18 at paras 8-10.

(LSB) of the Ministry,¹⁹ a PSA senior labour relations specialist (Senior Specialist),²⁰ and a PSA employee relations specialist (Specialist).²¹ In addition, the PSA provided a table of records which explains the page number, date and description of the information in dispute, and the grounds on which privilege is claimed.²²

[27] Lawyer DH says that he assumed conduct of arbitration proceedings of the applicant's grievances in 2021. He says that from 2019 until he took over another LSB lawyer (Lawyer MO) was legal counsel assisting the PSA in these proceedings. Lawyer DH also says that he reviewed all of the information withheld under s. 14. I note that as a practising lawyer, Lawyer DH has a professional obligation to ensure that privilege is not improperly claimed.²³

[28] Senior Specialist and Specialist say that the applicant filed eight grievances between 2017 and 2021, six grievances were settled or withdrawn, and two grievances proceeded to arbitration.²⁴ Specialist explains that she has 24 years of experience in employee and labour relations, and she has been in her current position since 2019. Senior Specialist says that she has been in her position since 2018, she has held roles in employee and labour relations at the Government since 2015,²⁵ and she assumed conduct of the applicant's grievances in 2023.²⁶

[29] Specialist and Senior Specialist were not included in the communications in dispute under s. 14, nor did they prepare the content of the records at issue. I find however they both reviewed the records, and have professional experiences in labour and employee relations, and the applicant's arbitration.²⁷

[30] I am satisfied that Lawyer DH, Senior Specialist, and Specialist have direct knowledge of the content and context of the information at issue.

[31] In conclusion, I find affidavits from Lawyer DH, Senior Specialist and Specialist provide sufficient information for me to decide if s. 14 applies, and it is not necessary to order production of the records for my review.

¹⁹ Lawyer DH's affidavit #1.

²⁰ Senior Specialist's affidavit #1.

²¹ Employee Relations Specialist's affidavit #1.

²² Exhibit A to Lawyer A's affidavit #1.

²³ See *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para 86. See also Order F20-16, 2020 BCIPC 18 at para 10 and *Nelson and District Credit Union v. Fiserv Solutions of Canada, Inc. (Master)*, 2017 BCSC 1139 at para 54.

²⁴ Specialist's affidavit #1 at para 15 and Senior Specialist's affidavit #1 at para 22.

²⁵ Senior Specialist's affidavit #1 at para 4.

²⁶ Senior Specialist's affidavit #1 at paras 4-5.

²⁷ Senior Specialist's affidavit #1 at para 21 and Specialist's affidavit #1 at para 4.

Legal advice privilege

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

- a communication between a solicitor and client (or their agent);
- that entails the seeking or providing of legal advice; and
- that is intended by the solicitor and client to be confidential.²⁸

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

[34] Legal advice privilege extends beyond the document that communicates legal advice to those that are “part of the continuum of information exchanged” between the client and the lawyer in order to obtain or provide the legal advice.²⁹ In this regard, the courts have held that the “continuum of communications” includes the necessary exchange of information between solicitor and client for the purpose of obtaining and providing legal advice such as “history and background from a client” or communications to clarify or refine the issues or facts.³⁰ The courts have also held that the continuum includes communications at the other end of the continuum, after the client receives the legal advice, such as internal client communications about the legal advice and its implications.³¹ In addition, legal advice privilege applies not only to privileged communications themselves, but also to information that would reveal those communications.³²

[35] The PSA applied legal advice privilege to withhold information in 14 email strings found at multiple pages.³³ These email strings include communications between PSA staff and Lawyer MO, and communications between PSA staff and the Ministry staff.

[36] To support its position, the PSA provides Senior Specialist and Lawyer DH’s evidence which provides background information about the arbitration. This evidence can be summarized as follows:

²⁸ *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 [*Solosky*] at p. 837.

²⁹ *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 (CanLII) at paras 40-46; *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83.

³⁰ *Ibid.*

³¹ *Ibid.*

³² Order F22-16, 2022 BCIPC 18 (CanLII) at para 31.

³³ Pages 832, 845, 850-913, 924, 1093-1120, 1300, 1315, 1319-1320 of the records.

- There are two forms of arbitration under the BCGEU Collective Agreement: expedited arbitration and formal arbitration.
- Expedited arbitration is intended to facilitate quick resolution of grievances and requires an Agency representative representing an employer.
- Formal arbitration requires a lawyer representing an employer.³⁴
- When a lawyer with LSB assumes conduct of formal arbitration proceedings, both the PSA and the Ministry' representatives provide instructions to that lawyer.³⁵

[37] Lawyer DH explains that throughout the grievance process, the PSA's and the Ministry's representatives collaborate to resolve the grievance.³⁶ He says that Lawyer MO was assigned to conduct formal arbitration of the applicant's grievances and provided legal representation to the PSA and the Ministry about those grievances.³⁷ He also says that the information in dispute is comprised of email strings between Lawyer MO and representatives of the PSA and the Ministry. He explains this information was about:

- Discussing and setting out legal advice about formal arbitration;³⁸
- Sending and receiving documents created for mediation;³⁹ and
- Providing an update on arbitration process and scheduling a future meeting for the provision of legal advice.⁴⁰
- Providing legal advice and discussing legal advice.⁴¹

[38] He also says the disputed information includes email strings between the PSA and the Ministry representatives in which they discussed:

- Strategies for the Ministry's response to the applicant's grievances;
- Options for resolving the grievances, the grievance process and preparing for arbitration;
- Gathering information to support the Ministry's response to the grievances;
- Future communications with BCGEU representatives;
- Confirming instructions about the grievances and the expedited arbitration process;

³⁴ Senior Specialist's at paras 18-20.

³⁵ *Ibid* at para 20.

³⁶ Lawyer DH's affidavit #1 at para 8.

³⁷ *Ibid* at paras 20, 21 and 28.

³⁸ *Ibid* at para 43d).

³⁹ *Ibid* at para 43e).

⁴⁰ *Ibid* at para 43f).

⁴¹ *Ibid* at para 43g).

- Legal advice received from LSB legal counsel and the intention to seek further legal advice from LSB legal counsel.⁴²

[39] Other than to say that it is concerning that the PSA did not provide the information withheld under s. 14, the applicant did not make any other submissions about s. 14 or counter/refute/dispute the PSA's evidence.

Analysis and findings, legal advice privilege

[40] I accept Lawyer DH's evidence about the disputed records, and based on that, I am satisfied that the PSA and the Ministry were Lawyer MO's clients in relation to the applicant's grievance and arbitration. I find that the disputed information in email strings between Agency staff and Lawyer MO is comprised of communications between Lawyer MO and his clients which entail the seeking and giving of legal advice.

[41] Therefore, I conclude that the emails at issue are communications between a solicitor and their client that entail the seeking and providing of legal advice.

[42] Turning to whether the communications at issue were intended by the solicitor and client to be confidential, I accept Lawyer DH's evidence, and I am satisfied that the PSA and the Ministry's representatives who received legal advice understood that it was confidential. Lawyer DH says that there was no waiver of solicitor-client privilege regarding the information in dispute.⁴³ I accept Lawyer DH's evidence that almost all of the emails Lawyer MO sent to the representatives have a confidentiality proviso in the signature block, and no parties outside the PSA and the Ministry were copied or included in the communications.⁴⁴

[43] With respect to communications between the PSA and the Ministry staff, I find that these fall within the continuum of communications and are privileged on that basis. I am satisfied with the description of these communications in the table of records⁴⁵ which shows that each of these communications involves the PSA and the Ministry staff discussing Lawyer MO's legal advice and update on the arbitration process.

[44] It is well-established that legal advice privilege includes communications between employees which transmit or comment on privileged communications with lawyers.⁴⁶ I find that discussions about legal advice between the PSA and

⁴² Lawyer DH's affidavit #1 at para 43c).

⁴³ Lawyer DH's affidavit #1 at paras 50-51.

⁴⁴ Lawyer DH's affidavit #1 at paras 44 and 45.

⁴⁵ Lawyer DH's affidavit #1, Exhibit A.

⁴⁶ *Bank of Montreal v Tortora*, 2010 BCSC 1430 at para 12.

the Ministry staff were confidential internal client communications commenting on Lawyer MO's legal advice. I am satisfied that releasing these communications would reveal the substance of legal advice the PSA and the Ministry sought and received from Lawyer MO. Therefore, I find these communications are privileged.

[45] As a final point, I note that the courts have emphasized that severing privileged records should only be considered when it can be accomplished without any risk that the privileged legal advice will be revealed.⁴⁷ In this case, there are a few instances where the PSA applied s. 14 to withhold information about scheduling future meetings for the provision of legal advice.⁴⁸ This information was included in email strings in which Lawyer MO discussed with the PSA and the Ministry staff about arbitration proceedings. I am not confident that the parts of these emails that are about scheduling meetings can be disclosed without any risk of revealing privileged legal advice, either directly or by inference.⁴⁹ Therefore, I conclude s. 14 applies to all of the information in these emails.

[46] Before concluding, I will briefly address Lawyer DH's statement that "As legal counsel with LSB, I understand that I am in a solicitor-client relationship with the Province as a whole rather than with any particular ministry or agency of the Province."⁵⁰

[47] The PSA provided no facts that would substantiate this assertion. Given the sensitivity and limited nature of the legal issues concerning the applicant's grievance regarding decisions made by the Ministry, it is difficult to conceive of how or why the BC government as a whole could have an interest in advice Lawyer MO provided on this issue. In any event, the BC Supreme Court recently made clear that a global assertion of privilege across government as a whole cannot support a claim of solicitor-client privilege over individual documents.⁵¹ I understand this to mean that a government entity, just like any private client, must provide evidence about the identity of the client for the purpose of each individual communication over which it asserts privilege.

[48] But as I explained above, in this case I was provided with evidence that satisfies me that both PSA and the Ministry were the clients in the relationship with Lawyer MO and Lawyer DH.

⁴⁷ For example, *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at paras 39-40.

⁴⁸ The information is located on pages 1093-1095, 1099-1101 of the records.

⁴⁹ For similar reasoning, Order F13-03, 2013 BCIPC 3 (CanLII) at paras 15-16; Order F25-50, 2025 BCIPC 58 (CanLII) at para 27.

⁵⁰ Lawyer DH's affidavit #1 at para 6.

⁵¹ *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)* 2021 BCSC 266 (CanLII) at paras 133-134.

[49] Considering all of the above, I conclude that the information withheld in the 14 email strings⁵² is confidential communication between solicitor and client which took place for the purpose of seeking and giving of legal advice, so legal advice privilege applies.

Litigation privilege

[50] Since I have found that legal advice privilege applies to 14 email strings described above, I need not decide whether litigation privilege also applies to those email strings. As a result, the only information I will consider under litigation privilege is 17 remaining emails and email strings, grievance chronologies⁵³ and a quantum of discipline analysis.

[51] 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.⁵⁴

[52] Litigation privilege applies to documents where:

1. Litigation was ongoing or was reasonably contemplated at the time the document was created; and
2. The dominant purpose of creating that document was to prepare for that litigation.⁵⁵

[53] Litigation privilege ends when the litigation that gave rise to the privilege ends, unless there are closely related proceedings.⁵⁶

[54] Previous orders have held that “litigation”, for the purposes of s. 14, encompasses grievance arbitration proceedings.⁵⁷ Consistent with past orders, I find that the applicant’s grievance arbitration qualifies as litigation for the purpose of litigation privilege.

⁵² Pages 832, 845, 850-852, 853-911, 912-913, 924, 1093-1095, 1096-1098, 1099-1101, 1102-1104, 1105-1110, 1111-1113, 1114-1116, 1117-1120, 1300, 1315, 1319-1320 of the records.

⁵³ Which include a grievance portfolio (at pages 640-649 of the records), chronology and a grievance chronology (at pages 808-833, 835-845, 1121-1133, 1134-1440 of the records).

⁵⁴ *Blank v Canada (Minister of Justice)*, 2006 SCC 39 at paras 27 and 34.

⁵⁵ *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.

⁵⁶ *Blank v Canada (Minister of Justice)*, 2006 SCC 39 at para 36.

⁵⁷ Order F11-29, 2011 BCIPC 35 (CanLII), at paras 13-14; Order F22-24, 2022 BCIPC 26 (CanLII) at paras 55-57.

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

[55] The first question is whether litigation was in reasonable prospect when the records at issue 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.⁵⁸ Litigation need not be a certainty, but it must be more than mere speculation.⁵⁹

[56] In her affidavit evidence, Senior Specialist affirms that:

- All of the records were created or collected, after June 1, 2018, by the PSA and the Ministry’s representatives and Lawyer MO for the arbitrations,⁶⁰ and at that time, expedited or formal arbitration proceedings were ongoing or in reasonable prospect;⁶¹ and
- The emails at issue were sent while an expedited arbitration was ongoing.⁶²

[57] Lawyer DH provides evidence that:

- The arbitration hearing for the applicant’s unresolved grievances was set to proceed on May 4 and 5, 2023; however, this hearing was adjourned because of the applicant’s health condition;⁶³ and
- The arbitration hearing for the unresolved grievances has not occurred to date.⁶⁴

[58] The applicant submits that an arbitration process is still underway.⁶⁵

[59] Based on the Lawyer DH and Senior Specialist’s affidavit evidence, I find that arbitration was ongoing when the records in dispute were created.

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

[60] The second part of the test for litigation privilege requires that the party claiming privilege prove that the dominant purpose of the document, when it was

⁵⁸ *Raj v Khosravi*, 2015 BCCA 49 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.

⁵⁹ *Raj v Khosravi*, 2015 BCCA 49 at para 12.

⁶⁰ Senior Specialist’s affidavit #1 at paras 35 and 37.

⁶¹ Senior Specialist’s affidavit #1 at para 37.

⁶² Senior Specialist’s affidavit #1 at paras 38-40.

⁶³ Lawyer DH’s affidavit #1 at para 33.

⁶⁴ *Ibid* at para 34.

⁶⁵ Applicant’s response submission at para 146.

created, was to conduct or aid in the conduct of litigation.⁶⁶ 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.⁶⁷

[61] Senior Specialist says that:

- The purpose of the emails, the quantum of discipline analysis, and the grievance chronologies was to prepare for arbitration of the applicant's grievances.⁶⁸
- The emails at issue were sent in preparation for the possible resolution of the grievances;⁶⁹ and
- Grievance chronologies and the quantum of discipline analysis were prepared to have all the necessary facts related to the grievances for resolution discussions and arbitration.⁷⁰

[62] Specialist says that:

- The purpose of the information withheld under litigation privilege was to prepare for either the expedited arbitration or the formal arbitration processes;
- The grievance chronologies were created for tracking the progress of the grievances;
- The quantum of discipline analysis is a material part of defence at arbitration and is a tool for discussion on factors to consider in assessing the seriousness of the alleged misconduct and options of discipline;⁷¹ and
- The emails at issue discuss strategies for the Ministry's response to the grievances, options for resolving the grievances, grievance process and preparing for arbitration, gathering information to support the Ministry's response, and confirming instructions related to the arbitration process.⁷²

[63] I find Senior Specialist and Specialist's affidavit evidence is consistent with the descriptions of the records in the table of records that was attached to Lawyer DH's affidavit.

[64] Based on my review of this table, I am satisfied that the records at issue were created for the purpose of litigation. I find that in the emails and email strings, the Lawyer MO and the PSA and the Ministry staff discussed possible

⁶⁶ *Ibid.*

⁶⁷ *Ibid* at para 17.

⁶⁸ Senior Specialist's affidavit #1 at para 17.

⁶⁹ Senior Specialist's affidavit #1 at paras 38-40.

⁷⁰ Senior Specialist's affidavit #1 at para 16.

⁷¹ Specialist's affidavit #1 at para 19.

⁷² Specialist's affidavit #1 at para 43.

resolutions to the grievances, and they exchanged advice on the grievances and arbitration process.⁷³ I find that the grievance chronologies were prepared for the purpose of tracking and sharing information about the grievances. I also find a quantum of discipline analysis was prepared for the defense at arbitration.

[65] My review of evidence leads me to find that dominant purpose for creating the records⁷⁴ I am considering under litigation privilege was litigation. These records include two email strings between PSA and Ministry staff and Lawyer MO in which they discussed an update on the formal arbitration process. It is clear that these email strings were created for the dominant purpose of litigation, and they were to prepare for the arbitration. Therefore, I find that litigation privilege applies to this information. I also find that the dominant purpose for creating the grievance chronologies and the quantum of discipline analysis was litigation.

Has the litigation privilege expired?

[66] Senior Specialist affirms that the arbitration hearing has not yet occurred, and the disputes concerning the applicant's unsolved grievance are of an ongoing nature.⁷⁵ The applicant does not dispute this.

[67] Based on this, I conclude the arbitration is ongoing and litigation privilege continues to apply to the information in dispute.

Conclusion, s. 14

[68] In summary, I found that legal advice privilege applies to 14 email strings, and litigation privilege applies to the 17 remaining emails and email strings, the grievance chronologies, and the quantum of discipline analysis. As a result, I find that the PSA is authorized to refuse to disclose all the information it withheld under s. 14.

Advice or recommendations, s. 13

[69] Section 13 allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body. The purpose of s. 13 is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.⁷⁶

[70] The test under s. 13 is well-established, and I will apply it below.

⁷³ Lawyer DH's affidavit #1, Exhibit A – Section 14 table of records.

⁷⁴ Information located on pages 1093-1095 and 1099-1101 of the records

⁷⁵ Senior Specialist's affidavit #1 at para 45.

⁷⁶ *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at para 52.

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

[72] Past OIPC orders and court decisions, including judgments of the Court of Appeal and the Supreme Court of Canada, have established the following principles for the interpretation of s. 13(1):

- Section 13(1) applies to information that *would reveal* advice or recommendations and not only to information that *is* advice or recommendations.⁷⁷
- The terms “advice” and “recommendations” are distinct, so they must have distinct meanings.⁷⁸
- “Recommendations” relate to a suggested course of action that will ultimately be accepted or rejected by the person being advised.⁷⁹
- “Advice” has a broader meaning than “recommendations”.⁸⁰ It includes setting out relevant considerations and options, and providing analysis and opinions, including expert opinions on matters of fact.⁸¹ Advice can be an opinion about an existing set of circumstances and does not have to be a communication about future action.⁸²
- “Advice” also includes factual information “compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.”⁸³ This is because the compilation of factual information and weighing the significance of matters of fact is an integral component of an expert’s advice and informs the decision-making process.

[73] Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences to be drawn about advice or recommendations.⁸⁴

[74] 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

⁷⁷ Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 135.

⁷⁸ *John Doe v. Ontario (Finance)*, 2014 SCC 36 [*John Doe*] at paras 43-44.

⁷⁹ *John Doe*, *ibid* at paras 23-24

⁸⁰ *John Doe*, *ibid* at para 24.

⁸¹ *John Doe*, *ibid* at paras 26-27 and 46-47.

⁸² *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 103.

⁸³ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 94

⁸⁴ Order 02-38, 2002 CanLII 42472 (BCIPC); Order F10-15, 2010 BCIPC 24 (CanLII); and Order F21-15, 2021 BCIPC 19 (CanLII).

information falls within ss. 13(2) or (3), the public body may not refuse to disclose it, even if it reveals “advice” or “recommendations” within the meaning of s. 13(1).

[75] Under s. 13(1), the PSA is withholding information in: emails, several versions of a draft investigation report and a draft meeting note, draft letters and investigative questions, and investigative summaries.

Would disclosing the disputed information reveal advice or recommendations?

[76] The PSA submits that the disputed information is advice and recommendations which include the Ministry investigators’ assessment of the credibility of witnesses, and their opinions on whether the alleged misconduct has been substantiated. The PSA says this information also includes editorial advice by the PSA and the Ministry employees on how to address the investigation outcomes, and suggested wording for draft documents and correspondence.⁸⁵

[77] To support its position on s. 13(1), the PSA relied upon the affidavit of Specialist. Specialist says that the information withheld in the records contains advice and recommendations between Agency and Ministry staff about:

- Which witnesses to interview, what to ask witnesses, and how to conduct interviews;
- Credibility of the witnesses and evidence, and opinions on whether the alleged misconduct has been substantiated;
- Investigation outcomes; and
- Editorial advice and suggested wording for draft interview scripts, correspondence, investigation reports and investigative summaries.⁸⁶

[78] The applicant says that she cannot make submissions on whether the PSA has correctly applied s. 13 to the information since she did not have access to that information.⁸⁷

[79] For the reasons that follow, I find that disclosing some of the information withheld in the records under s. 13(1) would reveal advice or recommendations developed by or for the PSA and the Ministry. That information is in the following records:

- Emails;⁸⁸

⁸⁵ Agency’s initial submission at para 69.

⁸⁶ Specialist’s affidavit at para 42.

⁸⁷ Applicant’s response submission at para 116.

⁸⁸ Pages 239, 251, 258, 260, 260, 270, 318-320, 326, 531, 534, 551, 571, 630-631, 805, 847 and 1450 of the records.

- Investigation reports;⁸⁹
- Draft scripts for the investigative interview;⁹⁰
- Draft letters;⁹¹
- Suggested wording for correspondence;⁹²
- Investigative summaries.⁹³

[80] I can see clearly that disclosing most of the disputed information in the Emails would reveal advice and recommendations. That information is the advice and suggestions of the Ministry investigators (the Investigators) about which witness to interview and what to ask,⁹⁴ and their suggestions and recommendations about how to proceed in a specific matter.⁹⁵

[81] The responsive records include five versions of the investigation report, and they are described as draft 1, 2, 3 and 4, and a final version. I find that a small amount of information withheld in the various versions of the investigation reports reveals advice and recommendations. First, under the heading “Next Steps”, the authors of the reports inserted their recommendation for the next steps the Ministry should take. Second, some of the reports contain comment boxes with reviewers’ editorial or wording advice to the reports’ authors.⁹⁶

[82] However, I am not persuaded the rest of the withheld information in the investigation reports reveal advice or recommendations. For instance, I cannot see how a reviewer’s *question* in a comment box would reveal, or allow for accurate inferences about, advice or recommendations.⁹⁷ In addition, the reports are written in a very neutral, observational or factual manner. There is no accompanying analysis, weighing of the facts, or suggestions for the decision maker to follow. I cannot see how disclosing any of that kind of information would reveal, or allow accurate inferences about, advice or recommendations developed by or for a public body.

[83] I have also considered the fact that there are differences in the wording of the various versions of the investigation report.⁹⁸ These differences are apparent because wording changes have been marked by crossed-out and underlined text, and plain text typed in red. In my view, all that is apparent from this is that the author of the document *decided* to change the wording. It is not possible to

⁸⁹ Pages 360, 366, 369-378, 386, 393-402, 407-408, 485 and 488 of the Records.

⁹⁰ Pages 234, 243 and 744-754 of the records.

⁹¹ Pages 527-528, 572-575, 583-586 and 650-651 of the records.

⁹² Pages 534-538 of the records.

⁹³ Pages 757-763 and 780-784 of the records.

⁹⁴ Pages 239, 251, 258, 260, 270, 318-320 and 326 of the records.

⁹⁵ Pages 531, 534, 551, 571, 630-631, 805, 847 and 1450 of the records.

⁹⁶ Pages 507, 762 and 763 of the records.

⁹⁷ Page 757 of the records. For similar reasoning, see Order F14-19, 2014 BCIPC 22 (CanLII) at para 35; and Order F17-23, 2017 BCIPC 24 (CanLII) at para 19.

⁹⁸ For example, pages 390, 391, 485,

determine if the author received any advice or recommendations to change or not change the wording. Therefore, I find that these changes on their own do not reveal advice or recommendations. This finding is consistent with past orders which have also found that s. 13(1) does not apply to records simply because they are drafts or different versions.⁹⁹ The usual principles apply, and a public body can withhold only those parts of a draft or version of a record which actually reveal advice or recommendations about a suggested course of action that will ultimately be accepted or rejected during a deliberative process.¹⁰⁰

[84] With respect to information withheld from draft scripts for the investigative interview, I accept the Specialist's evidence that this information contains advice about which witnesses to interview, what to ask and how to conduct interviews.¹⁰¹ It is clear on the face of the records that this information consists of a reviewer's editorial advice and recommendations about what to ask, the purpose of the questions, how to conduct the interview, and what responses are expected.¹⁰²

[85] Based on my review of the draft letters¹⁰³ I find that information withheld in some of these letters would reveal advice or recommendations. That information is tracked changes and comments about suggested wordings.¹⁰⁴

[86] I find suggested wording for correspondence contains advice and recommendations shared amongst the Ministry staff regarding a letter to a medical examiner.¹⁰⁵

[87] I also find information withheld in the investigative summaries is advice or recommendations. I can see that this information is the Investigators' assessment on credibility of witnesses,¹⁰⁶ and analysis of evidence and consideration, some of which was also selected and compiled in draft and final version of the investigation report.¹⁰⁷ The Specialist says that this information is about the Investigators' advice and recommendations about credibility of the witnesses and evidence, and whether the allegation of misconduct was

⁹⁹ Order 00-27, 2000 CanLII 14392 (BC IPC) at page 6; Order 03-37, 2003 CanLII 49216 (BC IPC) at paras 59-60; Order F14-44, 2014 BCIPC 47 at para 32; Order F15-22, 2015 BCIPC 36 at para 23; Order F20-37, 2020 BCIPC 43 (CanLII) at para 33; Order F24-17, 2024 BCIPC 23 (CanLII) at para 69.

¹⁰⁰ Order F18-38, 2018 BCIPC 41 at para 17; Order F20-37, 2020 BCIPC 43 (CanLII) at para 33; Order F24-72, 2024 BCIPC 82 (CanLII) at para 36; Order F24-12, 2024 BCIPC 16 (CanLII) at para 70.

¹⁰¹ Specialist's affidavit #1 at para 42.

¹⁰² Pages 744-751 and 753 of the records.

¹⁰³ Pages 527, 528, 572-575 & 583-586 and 650-651 of the records.

¹⁰⁴ Pages 572-575 and 583-586 of the records.

¹⁰⁵ Pages 534-538 of the records.

¹⁰⁶ Pages 476-478 of the records.

¹⁰⁷ Pages 736-742, 757-763 and 780-784 of the records.

substantiated.¹⁰⁸ I accept this evidence because it is consistent with my review of the records. I find that disclosing this information would reveal advice or recommendations.

[88] To summarize, I find that disclosing most of the information at issue would reveal advice or recommendations.

[89] However, I am not satisfied that disclosing the rest of the information in dispute would reveal advice or recommendations. This information includes:

- A question about the next steps to take;¹⁰⁹
- A request for further information;¹¹⁰
- An instruction on where to find the suggested wording in an attached document;¹¹¹
- A portion of an email that explains why suggestions were added;¹¹²
- A question to identify an individual referred to in a document;¹¹³ and
- The allegations considered in the investigation.¹¹⁴

[90] I cannot see, and the PSA does not adequately explain, how this information would reveal advice or recommendations. Therefore, I find s. 13(1) does not apply to this information.

Does s. 13(2) apply?

[91] The next step is to decide whether the information that I have found would reveal advice or recommendations under s. 13(1), falls into any of the categories in s. 13(2). If s. 13(2) applies, that information cannot be withheld under s. 13(1). Section 13(2)(a) provides that the head of a public body must not refuse to disclose any “factual material” under s. 13(1).

[92] The PSA says none of the s. 13(2) exceptions apply.¹¹⁵ The applicant does not say that s. 13(2) applies.

[93] The only part of s. 13(2) that is relevant to consider here is s. 13(2)(a) which says that the public body must not refuse to disclose “any factual material” under s. 13(1). Factual material means “source materials” or “background facts in

¹⁰⁸ Specialist’s affidavit at para 42.

¹⁰⁹ Page 672 of the records.

¹¹⁰ Page 847 of the records.

¹¹¹ Page 534 of the records.

¹¹² Page 571 of the records.

¹¹³ Pages 234 and 243 of the records.

¹¹⁴ Pages 527-528 and 650-651 of the records.

¹¹⁵ Agency’s initial submission at para 71.

isolation” that are not necessary to the advice provided.¹¹⁶ If the factual information is compiled and selected by the person providing the advice and is an integral component of their advice, then it is not “factual material” under s. 13(2)(a). Thus, for s. 13(2)(a) to apply, the information must be purely factual material that is not intertwined with the advice or recommendations.¹¹⁷

[94] I find that the information withheld in the draft and final versions of the investigation report includes factual information. However, I find s. 13(2)(a) does not apply to this information because, to the extent that this information contains facts, those facts are intermingled with, and an integral part of, the analysis, opinion, and advice and cannot be separated. Therefore, I find that s. 13(2)(a) does not apply.

[95] Therefore, I find s. 13(2) does not apply to any of the information which I found would reveal advice or recommendations.

Does s. 13(3) apply?

[96] Section 13(3) provides that s. 13(1) does not apply to information that has been in existence for 10 or more years. I find s. 13(3) does not apply because the oldest information in dispute was created in 2017. Therefore, at the time of this inquiry, this information has been in existence for less than 10 years.

Conclusion, s. 13

[97] In conclusion, I find that s. 13(1) authorizes the PSA to refuse to disclose most, but not all of the s. 13(1) information.

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

[98] 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.

[99] 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.¹¹⁸ The Supreme Court of Canada has described this standard

¹¹⁶ *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [PHSA] at para 94.

¹¹⁷ PHSA at paras 91-94.

¹¹⁸ Order F13-06, 2013 BCIPC 6 at para 24.

as “a reasonable expectation of probable harm” which falls in “a middle ground between that which is probable and that which is merely possible.”¹¹⁹

[100] There must be a clear and direct connection between disclosure of the withheld information and the anticipated harm.¹²⁰ General speculative or subjective evidence will not suffice.¹²¹ 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.”¹²²

[101] The PSA withheld IDIR¹²³ usernames under s. 15(1)(l).¹²⁴ I do not need to decide whether s. 15(1)(l) applies to the IDIR usernames because of my findings under s. 22(1) below.

[102] The PSA also withheld email pathway information under s. 15(1)(l).¹²⁵ This information contains a name, an active directory identifier, and combinations of letters and numbers that are incomprehensible on the face of the records.

[103] The PSA says disclosing email pathway information could reasonably be expected to harm the security of the government’s computer systems. It also says disclosure of this information publicly is unnecessary oversharing outside of the context of the email.¹²⁶

[104] I am satisfied that the government’s computer systems are “systems” for the purposes of s. 15(1)(l).¹²⁷ However, in my view, the PSA does not provide sufficient evidence or information to support its broad assertion. I cannot see, and the PSA does not sufficiently explain, how disclosing any of the specific components of email pathway information could reasonably be expected to harm the security of the Government’s computer systems. Also, in my view, the PSA’s argument that disclosure is “unnecessary oversharing” is not the question under s. 15(1)(l), and the PSA does not explain why it is relevant to the analysis.

¹¹⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

¹²⁰ Order 02-50, 2002 CanLII 42486 (BC IPC) at para 137; Order F13-06, 2013 BCIPC 6 (CanLII) at para 24.

¹²¹ Order F08-03, 2008 CanLII 13321 (BC IPC) at para 27.

¹²² *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.

¹²³ The Government uses a computer program called the Internal Directory Account service (commonly known as “IDIR”), to authenticate users’ identities when they log into the computer systems to ensure their access is legitimate.

¹²⁴ Pages 105-106, 547, 1441, 1442, 1474, 1476, 1485 and 1491 of the records.

¹²⁵ Pages 539, 642-643, 1441, 1442, 1474, 1476, 1485 and 1491 of the records.

¹²⁶ Agency’s initial submission at paras 233-235.

¹²⁷ Order F15-72, 2015 BCIPC 78 (CanLII) at para 18.

[105] Absent sufficient explanation about why s. 15(1)(l) is engaged, I find the PSA has not established the required “clear and direct connection” between the disclosure of the disputed information and the alleged harm.¹²⁸ The PSA is not authorized to refuse access to email pathway information under s. 15(1)(l).

Unreasonable invasion of third-party personal privacy, s. 22

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

[107] The analytical approach to s. 22(1) is well established and I will apply it below.¹²⁹

Personal information

[108] The first step in the s. 22(1) analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.”¹³⁰ 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.¹³¹

[109] Contact information is defined 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.”¹³² Whether information is “contact information” depends on the context in which it appears.¹³³

[110] The PSA says that most of the information withheld under s. 22 is personal information of identifiable individuals who provided evidence in the investigations.¹³⁴ However, the PSA did not identify what specific information in the records is the personal information of these individuals, or what information in the records would allow accurate inferences to be made about their identities.

[111] Based on review of the information the PSA withheld under s. 22, I find that the following information is not about identifiable individuals:

¹²⁸ Order F08-03, 2008 CanLII 13321 at para 27.

¹²⁹ See, for example, Order F15-03, 2015 BCIPC 3 at para 58.

¹³⁰ FIPPA, Schedule 1.

¹³¹ Order F05-30, 2005 CanLII 32547 (BC IPC) at para 35.

¹³² FIPPA, Schedule 1.

¹³³ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

¹³⁴ Agency’s initial submission at para 249.

- An exemption to training standard form;¹³⁵
- The Ministry policy summary;¹³⁶ and
- Information about a conference, and the identity of the business that organized it.¹³⁷

[112] This information does not contain information about identifiable individuals other than contact information.

[113] I find that the remaining information withheld under s. 22(1) is personal information because it is about identifiable individuals, and it is not contact information. While names and email addresses of employee would generally be considered as contact information, in this matter, I find this information is not contact information because it was provided in the context of a workplace investigation.¹³⁸

[114] I find that some of the information is solely the applicant's personal information.¹³⁹ This information was withheld in a certificate issued to the applicant, and is not personal information of a third party.

[115] The rest of the information is personal information of third parties. This information includes:

- Names of witnesses and complainants;
- When and where third parties were interviewed;
- The PSA employees' IDIR usernames and email pathway information;
- Witness statements;
- The Investigators' comments about third parties; and
- 11 audio recordings that contain eight witnesses' names, occupations, work locations, and statements.

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

[116] The second step 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 information falls into one of the enumerated circumstances, s. 22(1) does not apply and the public body cannot withhold the information on that basis.

[117] The PSA says s. 22(4) does not apply.¹⁴⁰ As part of her submissions about s. 22, the applicant requests the OIPC direct the PSA to contact individuals

¹³⁵ Pages 99-100 of the records.

¹³⁶ Page 101 of the records.

¹³⁷ Pages 132-133 of the records.

¹³⁸ For example, pages 40, 44, 45, 46, 47, 48 and 135-138.

¹³⁹ Page 131 of the records.

¹⁴⁰ Agency's initial submission at para 255.

to determine whether they are willing to consent to the release of their personal information.¹⁴¹ She appears to be referring to s. 22(4)(a).

Consent to disclose, s. 22(4)(a)

[118] Section 22(4)(a) says that if a third party consents to disclosure in writing, then disclosure is not an unreasonable invasion of the third party's personal privacy. I cannot see any third party, in writing, consenting to the release of their personal information to the applicant. I find therefore s. 22(4)(a) does not apply.

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

[119] 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. This 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.¹⁴²

[120] The PSA says that personal information of witnesses collected during workplace investigations is more personal in nature, and reflects employees' actions as individuals.¹⁴³ It also says that this information includes individuals' home address, personal cell phone numbers, and information about their family members' health and wellness;¹⁴⁴ therefore s. 22(4)(e) does not apply.

[121] The PSA withheld email pathway information in an email that forwards a voice mail from a PSA employee.¹⁴⁵ This information was automatically created when an email is sent.¹⁴⁶ Similar pathway information also appears when a PSA employee sent an email to another PSA employee¹⁴⁷ and a union representative.¹⁴⁸

[122] I find that s. 22(4)(e) applies to this information. It is not disputed that the executive director and the PSA staff are public body employees within the meaning of s. 22(4)(e). I can see on the face of the records that they sent these emails in the normal course of discharging their job duties, and none of this information reveals anything about individuals except their official functions. All the pathway information reveals about a Ministry executive director and a PSA employee is that they sent or received an email in the normal course of

¹⁴¹ Applicant's response submission at para 157.

¹⁴² Order 01-53, 2001 CanLII 21697 (BC IPC) at para 40.

¹⁴³ Agency's initial submission at para 257.

¹⁴⁴ Agency's initial submission at para 261.

¹⁴⁵ Page 539 of the records.

¹⁴⁶ Agency's initial submission at para 193.

¹⁴⁷ Page 1442 of the records.

¹⁴⁸ Page 1491 of the records.

discharging their job duties.¹⁴⁹ Therefore, I conclude s. 22(4)(e) applies to this information, and disclosing this information is not an unreasonable invasion of a third party's personal privacy.¹⁵⁰

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

[123] 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.

[124] The PSA says that ss. 22(3)(a), (d) and (g) applies.¹⁵¹ The applicant says that she has no interest in information withheld under ss. 22(3)(a), (b), (c), (d), (e), (f), (i) and (j). She also says that she cannot make submissions about information withheld under ss. 22(3)(g) or (h) without reviewing this information.¹⁵²

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

[125] 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.

[126] The PSA says s. 22(3)(a) applies to information that relates to a third party's medical history.¹⁵³

[127] I find that this information is about a third party's medical condition. Therefore, s. 22(3)(a) applies to this information, and disclosure of that information is presumed to be an unreasonable invasion of the third-party's personal privacy.¹⁵⁴

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

[128] Section 22(3)(d) says that a 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, occupational or educational history.

¹⁴⁹ For similar reasoning see Order F25-67, 2025 BCIPC 77 (CanLII), at para 113.

¹⁵⁰ Pages 539, 1442 and 1491 of the records.

¹⁵¹ Agency's initial submission at paras 264, 266 and 290.

¹⁵² Applicant's response submission at paras 152-153.

¹⁵³ Agency's initial submission at paras 263-264; pages 5, 386, 392, 474, 484, 511 and 518 of the records.

¹⁵⁴ For example, pages 5, 386, 392, 474, 484, 511 and 518 of the records.

[129] The PSA says that s. 22(3)(d) applies to IDIR usernames and information about investigations.¹⁵⁵

[130] I find that s. 22(3)(d) applies to the IDIR usernames.¹⁵⁶ Previous OIPC orders have found 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.¹⁵⁷ I take the same approach here, and find disclosing IDIR usernames is presumed to be an unreasonable invasion of these users' personal privacy.

[131] With respect to the information about investigations, the PSA says that a past order has held that information about an individual's participation in a workplace complaint or investigation process falls within the scope of this provision. It says s. 22(3)(d) applies to witnesses' statements and investigators' views and observations.¹⁵⁸

[132] However, past orders have consistently held that an investigation into a workplace matter is the employment history of the person being investigated. Third parties' descriptions, comments or opinions provided in a workplace investigation where those third parties were not the subject of the investigation have been held not to be those third parties' employment history.¹⁵⁹ It is only where witness statements reveal information such as the effect that the matter under investigation has had on their own work performance, or details about their work history, would the witness statements be the witness' employment history.¹⁶⁰

[133] In addition, past orders have found that that "employment history" includes qualitative information about a third party's workplace behaviour such as complaints, investigations or discipline relating to a third party's workplace conduct;¹⁶¹ and s. 22(3)(d) applies to information taken from a leave time bank, such as sick leave, because it can reveal an employee's personal circumstances and, therefore, is related to their employment history.¹⁶²

¹⁵⁵ Agency's initial submission at para 266.

¹⁵⁶ Pages 105-106, 547, 1442, 1485, and 1491 of the records.

¹⁵⁷ Order F24-93, 2024 BCIPC 106 (CanLII) at para 94; Order F24-36, 2024 BCIPC 44 (CanLII) at para 89; and Order F21-35, 2021 BCIPC 43 (CanLII) at para 189.

¹⁵⁸ Agency's initial submission at para 271, citing Order 01-53, 2001 CanLII 21607 (BC IPC) paras 32-36.

¹⁵⁹ Order F20-13, 2020 BCIPC 15 (CanLII) at para 55. See also Order 01-51, 2001 CanLII 21607 (BCIPC) at para 41.

¹⁶⁰ Order F23-56, 2023 BCIPC 65 (CanLII) at para 61.

¹⁶¹ Order F23-56, 2023 BCIPC 65 (CanLII) at paras 70-71; Order 01-53, 2001 CanLII 21607 (BC IPC) at paras 32-38.

¹⁶² Order F15-17, 2015 BCIPC 18 at para 36; Order F21-61, 2021 BCIPC 71 (CanLII) at paras 22-25.

[134] I find s. 22(3)(d) applies to qualitative information about a third party's workplace behaviour. This information is about a third party's concerns and complaints expressed in the context of a workplace investigation and work conditions causing emotional distress, and information that reveals the applicant's allegations about the workplace behaviour of other employees.¹⁶³ I also find that s. 22(3)(d) applies to information about employees' work leave and employment status,¹⁶⁴ and information about an employee taking a work-related training program,¹⁶⁵ which relates to the employment and educational history of an identifiable individual.

[135] I conclude disclosing this information is presumed to be an unreasonable invasion of that third parties' personal privacy under s. 22(3)(d).

Recommendations, evaluations, or references, s. 22(3)(g)

[136] Section 22(3)(g) creates a presumption that it is an unreasonable invasion of a third party's personal privacy to disclose personal recommendations or evaluations, character references or personnel evaluations about the third party.

[137] Previous OIPC orders say that s. 22(3)(g) applies to formal evaluations of a third party such as a formal performance review, job reference, or an investigator's findings about an employee's behaviour in the context of a workplace investigation.¹⁶⁶

[138] I already found that s. 22(3)(d) applies to the information that would reveal individuals' complaints and concerns, and the information that would reveal the applicant's allegations about the workplace behaviour of other individuals. Accordingly, I find it is not necessary to consider whether s. 22(3)(g) also applies to that information.

[139] The PSA says s. 22(3)(g) applies to the Investigators' analysis of witness credibility and statements, and their recommendations.¹⁶⁷ I can see that this information constitutes the Investigators' evaluation of third parties' behaviour in the workplace.¹⁶⁸ Accordingly, consistent with previous orders, this information falls under s. 22(3)(g).

[140] Therefore, I find that disclosure of this information is presumed to be an unreasonable invasion of the third parties' personal privacy under s. 22(3)(g).

¹⁶³ For example, pages 7, 9, 371, 372, 395, 396, 478, 488, 495, 497, 525 of the records.

¹⁶⁴ For example, pages 26, 208, 210, 260, 273, 323, 346, 347 and 732 of the records.

¹⁶⁵ Pages 26 of the records.

¹⁶⁶ For example: Order F21-08, 2021 BCIPC 12 (CanLII) at para 138.

¹⁶⁷ Agency's initial submission at para 290.

¹⁶⁸ For example, pages 518, 520, 521, 785, 778-786 of the records.

Identity of supplier, s. 22(3)(h)

[141] Section 22(3)(h) says that disclosure is presumed to be an unreasonable invasion of third-party personal privacy where the applicant could reasonably be expected to know the identity of a third party who provided a personal recommendation or evaluation, character reference or a personnel evaluation in confidence. The purpose of s. 22(3)(h) is to protect the identity of a third party who has provided evaluative or similar material, in confidence, about an individual.

[142] Past orders have interpreted “personal recommendations or evaluations, character references or personnel evaluations” as referring to formal performance reviews, to job or academic references, or to comments and views of investigators about an individual’s workplace performance and behaviour in the context of a complaint investigation.¹⁶⁹

[143] I find that the Investigators’ analysis which I found in paragraph 139 above constitute evaluations about witnesses, and this analysis was supplied in confidence during the investigation. Therefore, I find that disclosure of this information is presumed to be an unreasonable invasion of the Investigators’ personal privacy under s. 22(3)(h).

Relevant circumstances, s. 22(2)

[144] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step that the applicant may rebut the presumptions created under ss. 22(3)(d), 22(3)(g) and 22(3)(h).

[145] The PSA says ss. 22(2)(c), (e) and (f) and several circumstances not enumerated in s. 22(2) weigh against disclosure.¹⁷⁰ The applicant says ss. 22(2)(a) and (c) favour disclosure.¹⁷¹

Subjecting a public body’s activities to public scrutiny, s. 22(2)(a)

[146] Section 22(2)(a) requires a public body to consider whether disclosing the personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Where

¹⁶⁹ Order 01-53, 2001 CanLII 21607 (BC IPC) at paras 44-45; Order F05-30, 2005 CanLII 32547 (BC IPC), at paras 41-42; and Order F23-36, 2023 BCIPC 43 (CanLII) at paras 61-63.

¹⁷⁰ Agency’s initial submission at para 292.

¹⁷¹ Applicant’s response submission at paras 140 and 144.

disclosure would foster the accountability of a public body, this may be a relevant circumstance that weighs in favour of disclosing the information at issue.¹⁷²

[147] The applicant submits disclosure of the personal information in dispute is in public interest. She says:

I believe it is necessary shed light on the B.C. Government that:

- (a.) Allows managers to misusing [*sic*] their authority,
- (b.) Allows managers to waste taxpayer money pursuing dubious investigations,
- (c.) Allows managers to unjustly punish employees,
- (d.) Fails to acknowledge manager misconduct and
- (e.) wastes taxpayer money continuing the unnecessary adversarial process of arbitration once discovering an employee was wrongfully disciplined in order to avoid disclosing abuse of authority
- (f.) fails to address the financial harm, psychological injury, and injury to reputation caused by manager misconduct.¹⁷³

[148] The PSA says that disclosing personal information about witnesses and Government employees would not subject the PSA to public scrutiny under s. 22(2)(a).¹⁷⁴

[149] Past OIPC orders have found that one of the purposes of s. 22(2)(a) is to make public bodies more accountable.¹⁷⁵ Therefore, for s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting a public body's activities to public scrutiny, as opposed to subjecting an individual third party's activities to public or private scrutiny.¹⁷⁶

[150] The applicant appears to be concerned with subjecting the activities of several managers who evaluated and commented about her to scrutiny.

[151] In my view, disclosing the third-party personal information is not desirable for the purpose of subjecting the PSA's activities to public scrutiny. This case is clearly about the applicant's grievance and arbitration, which is about employees of the Ministry. I find the third parties' personal information here is very specific to them. Therefore, this information is more directly related to the conduct and accountability of the applicant and several third parties rather than the conduct and accountability of the PSA.

[152] I am not persuaded that disclosing the Investigators' analysis and evaluation of the applicant or the third parties is desirable for the purpose of

¹⁷² Order F05-18, 2005 CanLII 24734 at para 49.

¹⁷³ Applicant's response submission at paras 140 and 143.

¹⁷⁴ Agency's reply submission at paras 45-46.

¹⁷⁵ Order F18-47, 2018 BCIPC 50 (CanLII) at para 32.

¹⁷⁶ Order F16-14, 2016 BCIPC 16 (CanLII) at para 40.

subjecting PSA's workplace investigation and arbitration process to public scrutiny.

[153] As a result, I conclude s. 22(2)(a) is not a circumstance that favours disclosing the personal information.

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

[154] Section 22(2)(c) requires a public body to consider whether the personal information in dispute is relevant to a fair determination of the applicant's rights. If yes, this is a circumstance that may weigh in favour of disclosure.

[155] Previous OIPC orders have said that all four parts of the following test must be met in order for s. 22(2)(c) to apply:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.¹⁷⁷

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

[157] The applicant says that her legal right to grieve the suspensions comes from the BCGEU collective agreement,¹⁷⁸ and an arbitration of the grievance is still underway.¹⁷⁹ The PSA does not dispute these parts of the test.¹⁸⁰

[158] I accept that the applicant's legal rights under the collective agreement are engaged here, and that the arbitration is underway. Therefore, I am satisfied that the first and second part of the s. 22(2)(c) test is met.

[159] The third part of the s. 22(2)(c) test requires that the personal information sought by the applicant have some bearing on, or significance for, a determination of the legal right in question. In other words, the applicant must

¹⁷⁷ Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 at para 24.

¹⁷⁸ Applicant's response submission at para 146.1.

¹⁷⁹ Applicant's response submission at para 146.2.

¹⁸⁰ Agency's initial submission at para 299.

prove there is a “demonstrable nexus” or connection between the withheld information and the legal right.¹⁸¹

[160] The applicant says the personal information in dispute has a direct bearing on, or significance for, the determinization of her rights.¹⁸²

[161] The PSA says all the personal information that is relevant to the applicant’s dispute was already provided through the arbitration pre-hearing disclosure process, and there is no reason for the applicant to receive the personal information at issue again through a FIPPA request.¹⁸³

[162] I am not persuaded by the applicant’s assertion that the personal information at issue is “necessary” to prepare for an arbitration processing, or ensure a fair hearing. I cannot see, and she does not adequately explain, how there is a demonstrable nexus between the personal information and the arbitration. In the absence of further information, I am not satisfied that such connection exists. Therefore, I find that the third part of the test is not met, and I do not need to proceed to the fourth part of the test.

[163] I find s. 22(2)(c) does not apply, so it is not, as the applicant claims, a circumstance that weighs in favour of disclosure.

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

[164] Section 22(2)(e) requires a public body to consider whether disclosure of a third party’s personal information will unfairly expose the third party to financial or other harm. Previous OIPC orders have established that “other harm” includes “serious mental distress or anguish or harassment.”¹⁸⁴ Such harm must, however, exceed “embarrassment, upset or a negative reaction to someone’s behaviour.”¹⁸⁵

[165] The PSA says disclosure of the sensitive personal information in the investigation materials, would cause third parties to fear of their safety beyond experiencing embarrassment, being upset, or having a negative reaction.¹⁸⁶

[166] Here, the personal information in dispute relates to statements about the applicant which several witnesses provided in workplace investigations. I can see some of the statements are about negative interactions between the applicant and these witnesses. However, I cannot see, and the PSA did not provide

¹⁸¹ Order F16-36, 2016 BCIPC 40 (CanLII) at paras 52 and 62.

¹⁸² Applicant’s response submission at para 146.3.

¹⁸³ Agency’s reply submission at paras 49-51.

¹⁸⁴ Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42.

¹⁸⁵ Order 01-15, 2001 CanLII 21569 (BC IPC), at paras 49-50; and Order F20-37, 2020 BCIPC 43 (CanLII), at para 120.

¹⁸⁶ Agency’s initial submission at para 305.

sufficient evidence, how disclosure of this information may have the impact on the witnesses that the PSA says it will. I am not satisfied that disclosing these statements could cause the type of serious mental distress or anguish that past orders have said is harm under s. 22(2)(e).

[167] Consequently, I find that s. 22(2)(e) is not a circumstance which favours disclosing the personal information.

Information supplied in confidence, s. 22(2)(f)

[168] Section 22(2)(f) asks whether the personal information was supplied in confidence. If so, this will weigh against disclosure. Section 22(2)(f) requires evidence that an individual has an objectively reasonable expectation of confidentiality at the time they supplied the information.¹⁸⁷

[169] The PSA says that the personal information at issue includes information of witnesses who supplied their interview statements in confidential investigations (the Interviewees).¹⁸⁸

[170] I find all of the personal information withheld in the investigation materials¹⁸⁹ was supplied in confidence. These materials include 11 interview audio recordings, investigation reports, investigative summaries and the Investigators' emails.

[171] With respect to the audio recordings, I find that the Interviewees were advised at several points that the interview was confidential. I can see that they were encouraged to speak openly and honestly to the Investigators on the basis that their information is kept confidential. Therefore, I find the Interviewees supplied the personal information in confidence.¹⁹⁰

[172] The personal information withheld in the investigation reports, investigative summary, and emails includes information that the Interviewees provided to the Investigators during the interviews. This information consists of when and where the Interviewees were interviewed, the Interviewees'

¹⁸⁷ Order F23-66, 2023 BCIPC 77 (CanLII) at para 69 citing Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing Order 01-36, 2001 CanLII 21590 (BCIPC) at paras 23-26.

¹⁸⁸ Agency's initial submission at para 310.

¹⁸⁹ Names of witnesses and complaints; dates, times, and locations of interviews attended by third parties; investigators' comments about third parties; and 11 audio files recorded in witness interview.

¹⁹⁰ This information was included and summarized in draft investigation reports, investigative summaries, and emails between investigators. For example, pages 51, 67-68, 71-76, 83-86, 88, 91, 92, 102, 109, 111, 112, 143-152, 258, 270, 319, 334, 337, 354-357, 362, 363, 366, 369-378, 383-386, 391-403, 409-444 (HW note), 460-472, 474-478, 481, 482, 484-488, 491-502, 508-511, 515-525, 679, 682, 684, 715-724, 733-742, 757-763, 777-780, 785-786, 789-790 of the records.

statements, and the Investigators' analysis and evaluation of the Interviewees. The Interviewees are identified by name and voice.

[173] I accept Specialist's affidavit evidence that the PSA always treats information provided by third parties in workplace investigations or disciplinary matters as supplied in confidence,¹⁹¹ and the personal information in dispute was supplied in confidence.

[174] Given the nature of the personal information and the circumstances under which it was supplied, consistent with previous OIPC decisions¹⁹², I find it is reasonable to conclude that the Interviewees expected their personal information and the personal information that they provided about others to be treated confidentially.

[175] For the reasons above, I find that s. 22(2)(f) applies to the personal information in dispute, and this factor favours withholding the information.

Unfair damage to reputation, s. 22(2)(h)

[176] Section 22(2)(h) says unfairly exposing any party referred to in the record to reputational harm is a relevant circumstance to consider. Two requirements must be met to engage s. 22(2)(h). First, the information must damage an individual's reputation. Second, that damage must be unfair.¹⁹³

[177] The PSA argues that disclosing the disputed information would result in unfair reputational harm to third parties. The PSA's concern is that the severed information contains allegations made by the applicant against third parties during the investigations but does not expressly make findings about these allegations.¹⁹⁴

[178] In the context of investigating allegations of wrongdoing, past orders have found s. 22(2)(h) to apply if disclosure would reveal incomplete information,¹⁹⁵ or if allegations are repeated in the information without including a conclusive finding about whether the allegations were substantiated.¹⁹⁶

¹⁹¹ Specialist's affidavit at para 37.

¹⁹² See, for example, Order F22-62, 2022 BCIPC 70 (CanLII) at para 47 in which it was held that in order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.

¹⁹³ Order F19-02, 2019 BCIPC 2 (CanLII), at para 69.

¹⁹⁴ Agency's initial submission at para 319.

¹⁹⁵ See for example, Order F23-58, 2023 BCIPC 68 (CanLII) at para 90; and Order F23-48, 2023 BCIPC 56 (CanLII) at para 52.

¹⁹⁶ Order F23-48, 2023 BCIPC 56 (CanLII).

[179] I find that what the applicant said in the investigation about third parties has the potential to unfairly damage the reputation of those individuals.¹⁹⁷ That is because it paints a negative and one-sided picture of her interaction with these individuals. However, I find that disclosing this information would not unfairly damage their reputations. What the applicant says can best be described as commenting a negative impression of co-workers. Many people may consider some of the language used to be unprofessional, so in that sense disclosure could reflect negatively on their work reputations. However, I do not think, and the Agency does not sufficiently explain with supporting evidence, how disclosing this information would unfairly damage the reputation of these individuals. Accordingly, I find that s. 22(2)(h) does not favour withholding this information.

Applicant's existing knowledge

[180] While not enumerated in s. 22(2), previous orders have found that a relevant circumstance under s. 22(2) is the fact that an applicant knows or is aware of the personal information in issue. It may or may not favour disclosure, depending on the case.¹⁹⁸

[181] The PSA submits that even if the applicant already knows some of the personal information in dispute either through disclosure from the PSA during the arbitration proceedings or through her own experiences with the third parties, the applicant's existing knowledge does not weigh in favour of disclosure.¹⁹⁹ The PSA provides evidence that some of the disputed information²⁰⁰ was provided to the applicant under the implied undertaking which requires parties not to use information received through pre-hearing disclosure procedure for any purpose other than in relation to that arbitration.²⁰¹

[182] As I understand the applicant, she already knows some of the disputed information. For example, she refers to names and titles of several third parties whose personal information is at issue, and she also mentions their interactions, some of which were with her.²⁰² Also, there is information withheld from an investigation report at pages 513-526 of the responsive records that were provided to the applicant in arbitration proceedings.²⁰³ This information includes a list of interviewees, summary of evidence, and an investigator's analysis of

¹⁹⁷ For example, pages 8, 371, 395 and 496 of the records.

¹⁹⁸ See, for example, Order 03-24, 2005 CanLII 11964 (BC IPC); Order F10-41, 2010 BCIPC No. 61.

¹⁹⁹ Agency's reply submission at para 53.

²⁰⁰ Information on pages 513-526 and 855-911 of the records.

²⁰¹ Lawyer DH's affidavit #1 at paras 35 and 38.

²⁰² Applicant's response submission at para 40-60.

²⁰³ Lawyer DH's affidavit #1 at para 38.

evidence.²⁰⁴ Therefore, the applicant's pre-existing knowledge is a factor that may weigh in favour of disclosing that information.

[183] However, I consider Lawyer DH's evidence that the information of the responsive records was disclosed to the applicant through pre-hearing procedures in an arbitration and is, therefore, subject to an implied undertaking of confidentiality.²⁰⁵ The implied undertaking regarding the disputed information by which the applicant is bound is, in my view, a relevant circumstance.

[184] As a result, I find the applicant's prior knowledge is a factor that carries less weight in this case.²⁰⁶

Applicant's personal information

[185] 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.²⁰⁷

[186] The PSA says this factor does not weigh in favour of disclosure because none of the information is solely the applicant's personal information.²⁰⁸

[187] I find most of the information withheld in the investigative materials²⁰⁹ is simultaneously about the applicant and other individuals. This information is about the Interviewees' interaction with the applicant. I find this information is inextricably intertwined with the applicant's personal information.²¹⁰ Consequently, I give this factor less weight.

Sensitivity

[188] Past orders have said that where information is sensitive, it is a circumstance weighing in favour of withholding the information. Conversely, where information is not sensitive, this weighs in favour of disclosure.²¹¹

²⁰⁴ Same information can be found in the draft versions at pages 1-21, 364-387, 388-408, 478-488 and 489-512 of the records.

²⁰⁵ Lawyer DH's affidavit #1 at paras 35-40.

²⁰⁶ For similar reasoning, Order F20-12, 2020 BCIPC 14 (CanLII) at paras 48-51.

²⁰⁷ 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.

²⁰⁸ Agency's initial submission at para 325.

²⁰⁹ Investigation reports, investigative summaries and notes, and audio recordings.

²¹⁰ See, for example, pages 5-15, 369-378, 383-386, 393-402, 409-444, 474-478, 484-489, 494-503, 507-512, 519-525, 733-742, 755-763, 777-786, 789-790 of the records; and 15 audio recordings.

²¹¹ Order F19-15, 2019 BCIPC 17 at para 99; Order F16-52, 2016 BCIPC 58 at para 91.

[189] The PSA says that the personal information in dispute is sensitive on its face because it was generated and collected in the context of a workplace investigation. It says this factor weighs against disclosure.²¹²

[190] I find the personal information withheld in the investigation materials is about allegations of workplace discrimination and harassment against third parties.²¹³ In my view, an individual's experience of being accused of workplace misconduct is very personal and sensitive in nature. This factor weighs in favour of withholding that information.

Conclusion on s. 22

[191] I determined that most of the disputed information the PSA withheld under s. 22 is the personal information of identifiable individuals. I found some information is not about an identifiable individual, or that it is contact information, which the PSA may not withhold under s. 22.

[192] I found that disclosing the email pathway information is not an unreasonable invasion of third parties' personal privacy under s. 22(4)(e) because this information is about these third parties' position as an employee of a public body.

[193] I found that the disclosure of the information about an individual's medical history and condition is presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3)(a). I found the disclosure of qualitative information about a third party's workplace behaviour, the Investigators' comments about third parties' credibility, IDIR username, and information about employees' training and employment status is presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3)(d).

[194] I found that s. 22(3)(g) applies to most of the investigative materials and the Investigators' analysis and findings. I also found that disclosing personal information about the Investigators is presumed to be an unreasonable invasion of their personal privacy under s. 22(3)(h).

[195] I determined that ss. 22(2)(a), 22(2)(c), and 22(2)(e) are circumstances that do not favour disclosure. I found s. 22(2)(f) is a circumstance that weighs against disclosure because the personal information at issue has been supplied in confidence. I found s. 22(2)(h) does not favor withholding the personal information.

²¹² Agency's initial submission at para 327.

²¹³ Pages of 393-402, 409-444, 474-478, 484-489, 494-503, 507-512, 519-525, 733-742, 755-763, 777-786, 789-790 of the records; and 15 audio recordings.

[196] I found that the sensitive nature of the personal information withheld in the investigation reports weighs against disclosure. The fact that the applicant's personal information is interwoven with third-party personal information weighs against disclosing that information. Lastly, the applicant's prior knowledge of some of the information in dispute carries less weight in this case because that the applicant is bound by an implied undertaking of confidentiality.

[197] After weighing all of the above, I find that disclosing all of the personal information at issue would be an unreasonable invasion of third parties' personal privacy under s. 22(1).

Summary of personal information supplied in confidence about the applicant, s. 22(5)

[198] Section 22(5)(a) says that if a public body refuses to disclose personal information supplied in confidence about an applicant, the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

[199] Neither party addressed whether the PSA could prepare such a summary under s. 22(5).

[200] While some of the information in dispute was supplied in confidence about the applicant, in my view, the personal information in dispute that was supplied in confidence to the PSA cannot be meaningfully summarized without disclosing the identities of third parties. Therefore, the PSA is not required to provide a summary of that information under s. 22(5).

CONCLUSION

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

1. I confirm, subject to item 2 below, the PSA's decision to refuse the applicant access to the information withheld under ss. 13(1), 14, 15(1) and 22(1).
2. The PSA is required to give the applicant access to the information that I have determined it is not required or authorized to withhold under ss. 13(1), 14, 15(1) and/or 22(1). I have highlighted this information in green on pages 99, 100, 101, 131, 132, 133, 234, 243, 527, 528, 534, 539, 571, 650, 651, 660, 672, 805, 847, 1442, 1485, 1486 and 1491 in the copy of the records provided to the PSA with this order.

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3. The PSA must provide the OIPC registrar of inquiries with a copy of its cover letter and the accompanying information sent to the applicant in compliance with items 1 and 2 above.

[202] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **March 27, 2026**.

February 12, 2026

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F23-93801