



Order F26-19

MINISTRY OF ATTORNEY GENERAL

Rene Kimmett
Adjudicator

March 11, 2026

CanLII Cite: 2026 BCIPC 23
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 23

Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant asked the Ministry of Attorney General (Ministry) for records related to changes to the BC Prosecution Service's hate crimes policy. The Ministry withheld information under various sections of FIPPA. The adjudicator determined the Ministry was authorized to withhold some of the information in dispute under ss. 13(1) (advice or recommendations) and 16(1)(b) (harm to intergovernmental relations) as well as all the information in dispute under s. 14 (solicitor-client privilege). The adjudicator also found the Ministry was required to withhold the information in dispute under s. 22(1) (unreasonable invasion of third-party privacy). The adjudicator ordered the Ministry to give the applicant access to the information it was not authorized to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 13(1), 14, 16(1)(b), 22(1), 22(2), 22(3)(i), and 22(4).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant asked the Ministry of Attorney General (Ministry) for records related to changes to the BC Prosecution Service's (BCPS) hate crimes policy.

[2] The Ministry initially withheld the responsive records in their entirety under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), 15(1) (harm to law enforcement), 16(1) (harm to intergovernmental relations) and 22(1) (unreasonable invasion of third-party privacy).¹

¹ The Ministry also provided the applicant with access to 12 records but withheld some information in them under ss.15(1) and 22(1). However, the applicant is not disputing the severing applied to these 12 pages and, therefore, these records are not in dispute in this inquiry. See Investigator's Fact Report at para 6.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision to withhold information responsive to their access request. The OIPC engaged the parties in mediation, but it did not resolve all the issues, and the matter proceeded to this inquiry.

[4] Before the submission schedule began, the Ministry reconsidered its severing decision and provided the applicant with a revised records package, which disclosed some information contained in the records. At this point, the Ministry claimed that ss. 13(1), 14, 15(1)(a), 15(1)(g), 15(1)(l), 16(1)(b), 19(1) (harm to individual or public safety) and 22(1) applied to various parts of the records.

[5] At the Ministry's request, the applicant agreed to exclude the following categories of information from review in this inquiry: government identification numbers (IDIRs) and information about employees' leave (withheld under s. 22(1)), meeting links (withheld under s. 15(1)) and employee phone numbers (withheld under s. 19(1)). There is no other information in dispute under s. 19(1). Since s. 19(1) and these categories of information are not in dispute, I will not consider them in this inquiry.

[6] In its initial submission, the Ministry stated it is no longer relying on s. 15(1) to withhold any of the information in dispute and will be providing the applicant with access to this information.² For this reason, I find that s. 15(1) is no longer in dispute and, I will not consider it in this inquiry.

ISSUES AND BURDEN OF PROOF

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

1. Is the Ministry authorized to refuse access to the information in dispute under ss. 13, 14, or 16(1)(b)?
2. Is the Ministry required to refuse access to the information in dispute under s. 22(1)?

[8] The Ministry has the burden of proving that the applicant has no right of access to the information withheld under ss. 13(1), 14, and 16(1)(b).³ It also has the burden to prove that the information withheld under s. 22(1) is personal information.⁴

² Records package at pages 871, 956, 1004 and 1035.

³ FIPPA, s. 57(1).

⁴ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

[9] The applicant has the burden of proving that disclosure of the personal information withheld under s. 22(1) would not be an unreasonable invasion of third-party personal privacy.⁵

DISCUSSION

Background

[10] The BCPS is a branch within the Ministry. In 2022, the BCPS began reviewing its hate crimes policy (Policy). At the conclusion of the review in February 2024, the Ministry published a substantially revised Policy.

Records at issue

[11] The records package totals 1054 pages. The records consist of emails and email attachments sent between Ministry employees.

Advice or recommendations – s. 13

[12] Section 13(1) authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister.

[13] This exception to disclosure protects “a public body’s internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations.”⁶

[14] A public body is authorized to refuse access to information under s. 13(1) when the information itself directly reveals advice or recommendations or when its disclosure would permit accurate inferences about such advice or recommendations.⁷

[15] The word “recommendations” includes material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be express or inferred.⁸ The word “advice” has a distinct and broader meaning than “recommendations.”⁹ “Advice” includes an opinion that

⁵ FIPPA, s. 57(2).

⁶ Order 01-15, 2001 CanLII 21569 at para 22.

⁷ Order 02-38, 2002 CanLII 42472 at para 135. See also Order F17-19, 2017 BCIPC 20 (CanLII) at para 19.

⁸ *John Doe v. Ontario (Finance)*, 2014 SCC 36 at paras 23-24.

⁹ *Ibid* at para 24.

involves exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision.¹⁰

[16] The Ministry submits that it is clear on the face of the records that s. 13(1) applies to the information it has withheld on that basis.¹¹ It submits that the review of the Policy involved the collaborative work of many individuals and that the Policy was ultimately approved by the Attorney General, the Deputy Attorney General, and the Ministry's Assistant Deputy.¹² The Ministry also submits that the Policy went through many iterations and each draft version was edited as new ideas and feedback were provided. The Ministry submits previous OIPC orders that have found "public bodies can withhold editorial advice and recommendations regarding the content and wording of draft documents under s. 13(1)."¹³

[17] The applicant submits that the Ministry should be ordered to disclose any information that it cannot defend as being exempted under s. 13(1).¹⁴

Information that would not reveal advice or recommendations

[18] The Ministry has withheld speaking notes¹⁵ and a screenshot of a website¹⁶ in a power point presentation that was sent to staff as part of an information session about the Policy.¹⁷ The Ministry has also withheld versions of the Policy that have previously been publicly available¹⁸ and the final version of a "response to questions" document.¹⁹ I find that all of these materials represent the Ministry's settled position and are not part of a deliberative process. These records are the finalized versions of the Policy and instructions to staff on how to use, interpret, and respond to questions about the Policy. Their disclosure would not reveal, or allow accurate inferences to be made about, advice or recommendations developed by or for a public body.²⁰

¹⁰ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

¹¹ Ministry's initial submission at para 26.

¹² *Ibid* at para 28.

¹³ *Ibid* at para 27, citing Order F14-44, 2014 BCIPC 47 at para 32; Order F18-38, 2018 BCIPC 41 at para 18; and Order F15-26, 2015 BCIPC 28 at para 29.

¹⁴ Applicant's submission at para 10.

¹⁵ Records package at pages 942, 946, 990, 992, 994, 1021, 1023, and 1025.

¹⁶ *Ibid* at pages 875, 958, 1006, and 1037.

¹⁷ *Ibid* at page 928.

¹⁸ Email from Ministry dated February 24, 2026 in response to adjudicator's letter dated February 23, 2026.

¹⁹ Records package at page 1050.

²⁰ For similar conclusions, see Order F14-34, 2014 BCIPC 37 (CanLII) at para 18; Order F15-49, 2015 BCIPC 52 (CanLII) at para 46; Order F25-50, 2025 BCIPC 58 (CanLII) at paras 46 and 48; Order F26-06, 2026 BCIPC 8 (CanLII) at para 39.

[19] The Ministry has also withheld various versions of:

- the Policy,²¹
- a letter,²²
- an invitation to a “learning lunch”,²³
- a “Summary of Significant Changes” document,²⁴
- a media statement,²⁵
- a “Response to Questions” document,²⁶ and
- an internal memo to staff.²⁷

[20] I understand the Ministry has withheld parts of these documents that are different in the various versions. However, I find that disclosing this information would not reveal or allow accurate inferences to be made about any advice or recommendations developed by or for the public body. The changes could be the result of accepting or rejecting advice or recommendations or the author could have made the changes of their own accord without receiving advice or recommendations. The information reveals only that the author made an editorial decision. It does not reveal anything about the advice or recommendations that may or may not have informed that decision.²⁸

[21] The Ministry has also withheld the following other miscellaneous information:

- an email to staff seeking feedback about the Policy;²⁹
- a request for technical assistance;³⁰
- an email about whether the Policy had been reviewed;³¹

²¹ Records package at pages 2-8, 13-19, 162-165, 274-277, 303-309, 310-315, 324-329, 334-339, 350-355, 356-361, 390-395, 414-420, 421-426, 436-442, 448-455, 457-464, 466-473, 482-487, 490-495, 497-502, 503-508, 512-517, 520-525, 577-582, 590-595, 607-613, 617-622, 624-629, 632-637, 641-646, 675-680, 682-688, 696-701, 702-707, 709-715, 717-722, 725-730, 733-738, 749-754, 771-776, 897-902, 965-970, and 1042-1047.

²² *Ibid* at pages 289-290 and 907-909.

²³ *Ibid* at pages 615, 765, and 831.

²⁴ *Ibid* at pages 584-585, 586-587, 652-653, 660-661, 739-740, 755-756, and 777-778.

²⁵ *Ibid* at pages 838, 893, 914, 916, 918, 923, 961, and 963.

²⁶ *Ibid* at pages 921 and 1050.

²⁷ *Ibid* at pages 758 and 770.

²⁸ Order F25-67, 2025 BCIPC 77 (CanLII) at para 50.

²⁹ Records package at page 814.

³⁰ *Ibid* at page 638.

³¹ *Ibid* at page 20.

- an employee asking to be sent a Word version of a document and an explanation about why the document might be helpful;³²
- an employee’s comment about whether the policy team needs to prepare a comparison as part of a presentation package;³³
- a draft “Charge Assessment Workflow” graphic;³⁴
- draft social media posts about the Policy; and³⁵
- general comments about the purpose of the Policy.³⁶

[22] The Ministry has not explained how disclosure of this information would reveal or allow accurate inferences to be made about advice or recommendations. Having reviewed this information, I find, on a balance of probabilities, that disclosure of this information would not reveal, or allow accurate inferences to be made about, advice or recommendations.

[23] The Ministry has entirely withheld notes from a meeting³⁷ and a statement about what the Policy launch might include.³⁸ Some of the information in these records would reveal advice or recommendations about the Policy and its approval process. I discuss this information further below. However, other information is a to-do list and does not reveal advice or recommendations developed by or for a public body. The latter information cannot be withheld under s. 13(1).

Information that would reveal advice or recommendations

[24] The Ministry has withheld information from discussions that took place in the context of Ministry staff engaging in policymaking. This type of information falls squarely under s. 13(1). This information is advice and recommendations about:

- the content of the Policy and stakeholder feedback on the Policy.³⁹

³² *Ibid* at page 268.

³³ *Ibid* at pages 475-476 and 477-479.

³⁴ *Ibid* at page 890.

³⁵ *Ibid* at page 922.

³⁶ *Ibid* at page 974.

³⁷ *Ibid* at pages 569-571.

³⁸ *Ibid* at pages 528-529, 530-531, 532-533, 535, 536-537, 539-540, and 542-543.

³⁹ *Ibid* at pages 259, 267, 270, 281, 294-295, 316-317, 318-319, 320-321, 322-323, 330-331, 332-333, 340-341, 342-344, 345-346, 347-349, 362-365, 366-368, 369-373, 374-377, 378-380, 381-385, 386-389, 396-399, 400-405, 406-409, 410-413, 427-433, 434-435, 443-446, 496, 528-529, 530-531, 532-533, 535, 536-537, 539-540, 542-543, 546, 555, 557-558, 561-562, 569-571, 575, 583, 601, 689-691, 785-786, 791-792, 794-796, 798-804, 806-813, 815-823, 824-828, 839-843, 878-888, and 1054.

- regional implementation of the Policy and the role of administrative crown counsel.⁴⁰
- who should present at a webinar on the Policy.⁴¹
- the content of a letter.⁴²
- the content of an invitation to a “learning lunch”.⁴³

[25] Disclosing the substance of these discussions would reveal advice and recommendations developed for the Ministry to inform the process of updating the Policy. I find that the Ministry has appropriately applied s. 13(1) to this information.

[26] The Ministry has also withheld parts of the following documents that contain tracked changes and comments inserted by external organizations or BCPS employees:

- the Policy.⁴⁴
- a letter.⁴⁵
- a learning lunch invitation.⁴⁶
- a media release.⁴⁷
- responses to two questions the Ministry anticipated receiving about the Policy (the Speaking Points document);⁴⁸
- an internal memo to staff.⁴⁹
- comments embedded in a power point presentation.⁵⁰

[27] Previous OIPC orders have found that tracked changes and editorial comments fall under s.13(1).⁵¹ I follow this approach here and find that these changes and comments are suggested courses of action, made in the context of a deliberative process, that reveal recommendations developed for the Ministry.

⁴⁰ *Ibid* at pages 544-545.

⁴¹ *Ibid* at pages 588 and 601.

⁴² *Ibid* at pages 286-288.

⁴³ *Ibid* at pages 763, 764, and 767.

⁴⁴ *Ibid* at pages 2-8, 13-19, 303-309, 310-315, 324-329, 334-339, 350-355, 356-361, 390-395, 414-420, 421-426, 436-442, 448-455, 457-464, 466-473, 482-487, 490-495, 497-502, 503-508, 590-595, 607-613, 624-629, 675-680, 682-688, 702-707, 709-715, and 717-722.

⁴⁵ *Ibid* at pages 907-909.

⁴⁶ *Ibid* at page 765.

⁴⁷ *Ibid* at page 918.

⁴⁸ *Ibid* at page 921.

⁴⁹ *Ibid* at page 758.

⁵⁰ *Ibid* at pages 990, 992; 993, 1001, 1002, 1003, 1021, 1023, 1024, 1032, 1033, and 1034.

⁵¹ Order F18-38, 2018 BCIPC 41 (CanLII) at para 18.

[28] Having found that this information reveals advice and recommendations, I must now consider whether any of this information cannot be withheld because it falls under any of the categories listed under ss. 13(2) or 13(3).

[29] The applicant submits that I should consider whether any of this information is “factual material” (s. 13(2)(a)), “a final report on the performance or efficiency of a public body or on any of its policies or its programs or activities” (s.13(2)(g)), or “a plan or proposal to establish a new program or activity or to change a program or activity, if the plan or proposal has been approved or rejected by the head of the public body” (s. 13(2)(l)). The applicant does not explain, and I cannot see, how any of this information falls under these categories. I find that none of the categories under s. 13(2), including ss. 13(2)(a), (g), and (l), apply to the information in dispute.

[30] I also find that the information in dispute has not been in existence for 10 or more years and, therefore, s. 13(3) does not apply to this information.

Summary – s. 13

[31] Some of the information in dispute would not reveal, or allow accurate inferences to be made about, advice or recommendations. This information cannot be withheld under s. 13(1). Other information would reveal advice and recommendations developed for the Ministry and ss. 13(2) and 13(3) do not apply to this information; therefore, this information can be withheld under s. 13(1).

Intergovernmental relations – s. 16(1)(b)

[32] I have already found that the information related to the Policy provided by third parties can be withheld under s. 13(1). I will not consider whether s. 16(1)(b) also applies to this information. The Ministry has withheld other information under s. 16(1)(b) that I consider below.

[33] Under s. 16(1)(b), the head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal information received in confidence from the following entities or their agencies listed in s. 16(1)(a):

- (i) The government of Canada or a province of Canada;
- (ii) The council of a municipality or the board of a regional district;
- (iii) An Indigenous governing entity;
- (iv) The government of a foreign state;
- (v) An international organization of states.

[34] Deciding whether a public body may rely on s. 16(1)(b) to withhold information has two distinct steps. First, the public body must demonstrate that it received the information from one of the entities listed at (i) - (v), above, or an agency of one of those entities. Second, the public body must establish that it received the information “in confidence.”⁵²

Information from an Indigenous governing entity

[35] The Ministry submits it has applied s. 16(1)(b) to information it received in confidence from Métis Nation BC (MNBC) and BC First Nations Justice Council (BCFNJC). The Ministry submits these organizations are Indigenous governing entities for the purposes of FIPPA.

[36] FIPPA defines an “Indigenous governing entity” as an Indigenous entity that exercises governmental functions and includes but is not limited to an Indigenous governing body as defined in the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). DRIPA defines “Indigenous governing body” as an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by s. 35 of the *Constitution Act, 1982*.

[37] I am satisfied that both MNBC and BCFNJC are Indigenous entities that exercise governmental functions. MNBC is the government for Métis in BC and, therefore, is, clearly, an “Indigenous entity that exercises governmental functions”. BCFNJC is not an Indigenous government, but for the reasons that follow I am satisfied it exercises governmental functions on behalf of Indigenous individuals.

[38] BCFNJC was created, in 2015, by the BC Assembly of First Nations, the First Nations Summit, and the Union of BC Indian Chiefs who together form the First Nations Leadership Council. In 2017, BCFNJC and the Province of British Columbia signed a Memorandum of Understanding committing to the development and implementation of a joint justice strategy. Part of this justice strategy includes transferring Indigenous legal aid services to BCFNJC and this work has been underway since at least 2022.⁵³ BCFNJC operates 15 Indigenous Justice Centres across the province through which Indigenous people facing a criminal or child protection issue can access free legal services.⁵⁴ I am satisfied that the provision of legal aid services is a governmental function exercised by BCFNJC on behalf of Indigenous individuals.

⁵² See Order 02-19, 2002 CanLII 42444 (BC IPC) at para 18; Order F15-72, 2015 BCIPC 78 (CanLII) at para 48; Order F25-62, 2025 BCIPC 72 (CanLII) at paras 68-69.

⁵³ Transforming Indigenous Legal Aid Services - Progress, online: <https://trackingjustice.bcfnjc.com/strategy/transforming-indigenous-legal-aid-services/>.

⁵⁴ Indigenous Justice Centres - BC First Nations Justice Council, online: <https://bcfnjc.com/indigenous-justice-centres/>.

[39] The second step in the s. 16(1)(b) analysis is deciding whether disclosing the withheld information would reveal information provided in confidence by either of these Indigenous governing entities.

[40] In several places in the records, the Ministry has withheld references to the fact that it asked for or received feedback from MNBC and BCFNJC about the Policy. The Ministry has already disclosed these facts in its submissions and through inconsistent severing in the records. For this reason, I find that disclosing this information where it appears in the records themselves would not *reveal* any information because the information is already known to the applicant. The Ministry cannot withhold this information under s. 16(1)(b).

Other information withheld under s. 16(1)(b)

[41] The Ministry has withheld a sentence, which appears to reference a communication from a BC official to a federal minister.⁵⁵ The Ministry does not say, and I cannot see, why it has withheld this information under s. 16(1)(b). On its face, nothing in this sentence would reveal any information received by the Ministry from any entity or agency listed in s. 16(1)(a). I find the Ministry cannot withhold this information under s. 16(1)(b).

[42] Lastly, the Ministry has withheld information in meeting minutes.⁵⁶ While the Ministry has not made any submissions about this information, I find, based on the context provided by the records themselves, that this information was received in confidence by BCPS from a police department that is an agency of a municipal council. I find this information can be withheld under s. 16(1)(b).

Summary – s. 16(1)(b)

[43] I find the Ministry is authorized to withhold some but not all of the information in dispute under s. 16(1)(b).

Solicitor-client privilege – s. 14

[44] I have already found that some of the information the Ministry has applied s. 14 to can be withheld under s. 13(1) because it is advice and recommendations about the Policy.⁵⁷ I will not consider whether s. 14(1) also applies to this information.

[45] Section 14 of FIPPA allows a public body to refuse to disclose information that is subject to solicitor-client privilege.

⁵⁵ Records package at page 911.

⁵⁶ Records package at pages 570 and 576.

⁵⁷ This information is a paragraph in an email written by legal counsel in the records package at pages 786, 792, 810., 813, 816-817, 822, and 828.

Sufficiency of evidence to substantiate the s. 14 claim

[46] Other than one paragraph, which I already found can be withheld under s. 13(1), the Ministry did not provide the information it withheld under s. 14 for me to review. Instead, it provided affidavit evidence about the contents of these records from an Information and Privacy Crown Counsel (the Lawyer). The Lawyer has worked with the BCPS since 2024 and is responsible for providing legal advice to BCPS about whether records held by BCPS should be released in response to an access request.⁵⁸

[47] I am satisfied that the Lawyer reviewed all the records and, therefore, has direct knowledge of the content of the records in dispute. I also find that she has professional experience that would provide insight into the context in which the records were created, despite not being employed by the Ministry at the time. She is a practicing lawyer and an officer of the court with a professional duty to ensure that privilege is properly claimed. Her evidence includes a description of each of the records and an explanation of the grounds on which privilege is claimed.

[48] I find that I have sufficient evidence to decide whether the records withheld under s. 14 are subject to solicitor-client privilege without ordering production of the records for my review.⁵⁹

Solicitor-client privilege

[49] For information to be protected by solicitor-client privilege it must be:

- a communication between a solicitor and client (or their agent);
- made for the purpose of seeking or providing legal advice, opinion or analysis; and;
- intended by the solicitor and client to be confidential.⁶⁰

[50] Not every communication between a solicitor and their client is privileged, but if the above conditions are satisfied, then solicitor-client privilege applies to the communication.⁶¹

⁵⁸ Lawyer's affidavit #1 at paras 3 and 5.

⁵⁹ Section 44(1)(b) authorizes me, as the Commissioner's delegate, to order production of records to review during the inquiry. However, due to the importance of solicitor-client privilege to the proper functioning of the legal system, I would only do so when necessary to fairly decide the issue. 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.

⁶⁰ *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at 837.

⁶¹ *Ibid* at 829.

[51] Courts have found that solicitor-client privilege also applies to information that, if disclosed, would reveal, or allow an accurate inference to be made about, privileged information.⁶² Further, privilege extends beyond the actual requesting or giving of legal advice to the “continuum of communications” between a lawyer and client, which includes the necessary exchange of information for the purpose of providing legal advice.⁶³

[52] Under s. 14, the Ministry is withholding a Crown Counsel’s notes⁶⁴ and three Briefing Notes.⁶⁵

[53] The Lawyer deposes that the Crown Counsel’s notes are “legal advice to the policy team prepared by Crown Counsel [...] regarding the feedback received from third parties as part of the consultation process.”⁶⁶ She deposes that the Briefing Notes were prepared for Ministry executives and contain legal advice provided by BCPS.⁶⁷

[54] In *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, Justice Steeves made the following remarks:

the use of affidavits from lawyers (without the actual document being available) means that some weight has to be given to the judgement of counsel when the [OIPC] is adjudicating claims of solicitor-client privilege. Put another way, it is not open to the [OIPC] 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.⁶⁸

[55] With this in mind, I give weight to the Lawyer’s uncontradicted evidence and accept that the Crown Counsel’s notes are legal advice to the policy team. While the Ministry has not established this record is a communication between a solicitor and a client, I am satisfied that, if disclosed, this information would reveal, or allow an accurate inference to be made about, confidential legal advice developed for the Ministry’s policy team by Crown Counsel.

[56] Further, I accept the Lawyer’s evidence that the Briefing Notes contains legal advice. In the records I can see draft versions of the Briefing Note were

⁶² *Ibid* at 834.

⁶³ *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83 and *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 42.

⁶⁴ Records package at pages 278-280 (duplicated at pages 299-302) and 282-283 (duplicated at pages 296-297).

⁶⁵ *Ibid* at pages 597-600, 665-671, and 746-748.

⁶⁶ Lawyer’s affidavit at para 22.

⁶⁷ *Ibid* at para 23 and records package at page 745.

⁶⁸ *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII) at para 86.

prepared and discussed by BCPS lawyers before being finalized and sent to the Deputy Attorney General via the Assistant Deputy Attorney General.⁶⁹ The emails to which the Briefing Notes were attached suggest that the draft and final versions were communicated in confidence.

[57] The applicant says that some of the withheld information in these records could be severed and disclosed.⁷⁰ The courts have emphasized that severing information in the continuum of communications about legal advice can only occur when there is no risk of revealing legal advice provided by the lawyer to the client.⁷¹ In these circumstances, I am unable to conclude there is no risk of revealing such privileged information; therefore, I find severing these records is not appropriate.

Summary – s. 14

[58] The Ministry is authorized to withhold all the information in dispute under s. 14.

Harm to third-party personal privacy – s. 22(1)

[59] Section 22(1) requires a public body to refuse to disclose personal information, if its disclosure would unreasonably invade a third party's personal privacy. A third party is any person other than the applicant and a public body.⁷²

[60] The s. 22(1) analysis is well-established and has four steps. The first is to determine if the information in dispute is personal information. The second analysis is to determine if the personal information falls into any of the categories of information listed in s. 22(4). The third step is to determine whether any of the presumptions listed under s. 22(3) apply to the personal information in dispute. The last step is to consider all relevant circumstances, including those listed in s. 22(2), to determine whether the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy.

[61] The information at issue under s. 22(1) is a single sentence in an email which appears in three places in the records. This information is not contact information. I can see that this sentence was written by an identifiable individual and, therefore, I find it is that individual's personal information.⁷³

⁶⁹ Records package at pages 596, 664, and 745.

⁷⁰ Applicant's submission at para 17.

⁷¹ *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at para. 51, cited in *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII) at para 67.

⁷² FIPPA, Schedule 1.

⁷³ "Personal information" is defined in FIPPA as recorded information about an identifiable individual other than contact information. FIPPA, Schedule 1.

[62] I have considered whether this personal information falls into any of the categories listed in s. 22(4) and find it does not.

[63] The Ministry submits that s. 22(3)(i) applies to this information. Section 22(3)(i) says that it is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations. I find that the information is not specific enough to "indicate" the race, ethnic origin, sexual orientation, religion, or political affiliation of the third party. For that reason, I find that s. 22(3)(i) does not apply.

[64] I have considered all of the relevant circumstances, including those listed under s. 22(2). I accept the Ministry's description of this personal information as being about employee diversity and find that it is somewhat sensitive as it is about the third party's experience with this subject. This sensitivity weighs in favour of withholding this information. I find there are no other relevant circumstances, that weigh in favour of disclosure.

[65] I conclude that disclosure of the personal information in dispute would unreasonably invade the third party's personal privacy.

CONCLUSION

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

1. Subject to item #2 below, I confirm, in part, the Ministry's decision to refuse access to the information in dispute under ss. 13(1), 14, and 16(1)(b).
2. The Ministry is required to give the applicant access to the information I have determined it is not authorized to withhold under ss. 13(1) and 16(1)(b). As a courtesy, I have highlighted this information in pink in the records package that will be provided to the Ministry with this order.
3. The Ministry is required to withhold the information in dispute under s. 22(1).
4. The Ministry is required to copy the OIPC registrar of inquiries on the cover letter and records it sends to the applicant in compliance with this order.

[67] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by **April 24, 2026**.

March 11, 2026

ORIGINAL SIGNED BY

Rene Kimmett, Adjudicator

OIPC File No.: F24-97249