OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F26-26

MINISTRY OF HEALTH

Amy O'Connor
Adjudicator

April 7, 2026

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Summary: An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to communications about a specific order issued by the Public Health Officer. The Ministry withheld portions of the records under various sections of FIPPA. The adjudicator found the Ministry was authorized under ss. 13(1) and 14 to withhold some, but not all, of the information at issue. The adjudicator ordered the Ministry to disclose the information it was not authorized or required to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 13(1), 14.

INTRODUCTION

[1] An access applicant requested records from the Ministry of Health (Ministry) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant asked for communications in a specified timeframe between a named individual and the Ministry pertaining to an order issued by the Public Health Officer (PHO) on October 21, 2021, and all related correspondence between the Ministry, the PHO, the Provincial Health Services Authority (PHSA), BC Emergency Health Services (BCEHS), and the Health Employers Association of BC (HEABC).

[2] In response, the Ministry provided access to some of the records but withheld portions under various sections of FIPPA. The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision to withhold information from these records. Mediation did not resolve the issues, and the matter proceeded to this inquiry. The Ministry, the applicant, and HEABC provided written submissions in the inquiry. Additionally, PHSA provided affidavit evidence.

Preliminary Matters

Appropriate persons

[3] Section 54(b) of FIPPA allows for "appropriate persons" to be invited to participate in the inquiry process.[1] In this case, HEABC requested permission from the OIPC's Registrar of Inquiries (Registrar) to participate in this inquiry. The Ministry suggested that PHSA also be invited, given that some of the information in dispute concerned them. The OIPC determined HEABC and PHSA were appropriate persons to participate in this inquiry.[2]

Access exceptions no longer in dispute

[4] In its initial response to the applicant, the Ministry refused access to some information pursuant to ss. 13(1) [advice or recommendations], 14 [solicitor-client privilege], 15(1) [disclosure harmful to law enforcement], 17(1) [disclosure harmful to the financial or economic interests of a public body], 19(1) [disclosure harmful to individual or public safety], and 22(1) [unreasonable invasion of third-party personal privacy].

[5] Before the close of the submissions phase, the Ministry provided the applicant with a reconsidered version of the records. The Ministry is no longer relying on ss. 15(1), 17(1), or 19(1) to withhold any information. These sections are not at issue, therefore, and I will not consider them any further.

Additional application of section 21

[6] After HEABC was invited to participate in this inquiry, it requested permission to add s. 21 [harm to third party business interests] as an issue to the pages of records over which it claimed privilege. Although the request did not come from the public body, s. 21 is a mandatory exception to disclosure. This means the Ministry must withhold any information to which s. 21 applies. As such, the OIPC added s. 21 as an issue to this inquiry.

Inadvertent disclosure of privileged information

[7] Prior to this inquiry, the Ministry discovered that some solicitor-client privileged information had been inadvertently disclosed to the applicant in the initial responsive records package. The Ministry wrote to the applicant to request that he return the original records to the Ministry, refrain from retaining or disseminating the original records or their contents and ask any third parties with whom he shared the original records to destroy any copies in their possession.[3]

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[1] From this point forward, all section references are to FIPPA unless otherwise specified.
[2] Registrar's emails dated April 30, 2025.
[3] Ministry's initial submissions, para 6.

The applicant confirmed by email that he had deleted all copies of the original records on his personal devices and online accounts.[4]

Public Interest

[8] In his submissions, the applicant says it is in the public interest for the information at issue to be made public. Disclosure of records in the public interest is governed by s. 25; however, the applicant's request for records and request for review do no mention s. 25. There is no indication that s. 25 arose as an issue during mediation, and it is not listed as an issue in the notice for this inquiry or in the fact report.

[9] Past OIPC orders have consistently held that parties may only add new issues into the inquiry if permitted to do so by the OIPC.[5] The OIPC's notice of inquiry and its *Instructions for Written Inquiries* clearly explain the process for adding new issues to an inquiry. The applicant did not seek prior approval to add s. 25. I am not persuaded by the record before me that it would be fair to add this new issue or that there is any exceptional circumstance to warrant adding s. 25. Therefore, I decline to add, or consider, s. 25. I note, in any event, that s. 25 cannot override solicitor-client privilege in the manner the applicant has called for.[6]

ISSUES AND BURDEN OF PROOF

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

1. Is the Ministry authorized to refuse to disclose the information at issue under ss. 13(1) [advice or recommendations] and 14 [solicitor-client privilege] of FIPPA?

2. Is the Ministry required to refuse to disclose the information at issue under ss. 21(1) [harm to third party business interests] and 22(1) [unreasonable invasion of third-party personal privacy] of FIPPA?

[11] Section 57(1) places the burden on the Ministry to prove the applicant has no right of access to the information withheld under ss. 13(1), 14, and 21(1).

[12] Pursuant to s. 57(2), the applicant bears the burden of proving that the disclosure of information withheld under s. 22(1) would not be an unreasonable invasion of any third-party's personal privacy. The Ministry, however, bears the

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[4] Ministry's initial submissions, para 7.
[5] See, for example, Order F22-29, 2022 BCIPC 32, at para 12 and Order F12-07, 2012 BCIPC 10, at para 6.
[6] *British Columbia (Children and Family Development) v British Columbia (Information and Privacy Commissioner),* 2024 BCCA 190, at para 63.

initial burden of proving the information withheld under s. 22(1) falls within the definition of personal information.

DISCUSSION

Background

[13] The Ministry of Health is a provincial government ministry responsible for "all matters related to public health and government operated health insurance programs".[7] The Ministry has oversight of PHSA and the province's five regional health authorities, who together are responsible for delivering publicly funded health care to patients within the province.

[14] PHSA is a provincial society established under the *Societies Act*.[8] PHSA has mandated responsibilities including the provision of certain specialised health care and other supportive services on a province-wide basis and the provision of administrative and information technology systems and supports to the regional health authorities and the Ministry.

[15] HEABC is a public sector employers' association and the mandated bargaining agent and representative of health sector employers in British Columbia, vested with authority under the *Public Sector Employers Act*.[9] HEABC's role includes providing health sector employers, such as PHSA, with access to both legal representation and legal advice concerning their labour and employment-related obligations.

[16] The PHO is the senior public health official in British Columbia, appointed under the *Public Health Act*.[10] Although the Office of the PHO is within the Ministry, the PHO operates independently of the Ministry and provides advice on public health matters to government ministries, including the Minister of Health and other health sector officials.

[17] On October 21, 2021, the PHO issued an order requiring health care staff and regulated health professionals to be vaccinated against COVID-19 (PHO Order).

[18] The applicant requested access to communications between a named individual and the Ministry pertaining to the PHO Order, and all related correspondence between the Ministry, the PHO, PHSA, BCEHS, and HEABC. The access request was for records dated September 1, 2021 to October 21,

[7] *Ministry of Health Act*, RSBC 1996, c 301, s. 5.
[8] SBC 2015, c 18.
[9] RSBC 1996, c 384.
[10] SBC 2008, c 28.

2021.

Records and information at issue

[19] The records in dispute total 989 pages, and the information at issue in this inquiry is found on 678 of those pages. The Ministry is withholding 635 pages in their entirety along with some information on 43 pages.

[20] The Ministry provided the records at issue for my review, apart from the information it withheld under s. 14. The Ministry describes this information as consisting primarily of email correspondence and attachments exchanged between the Ministry, the Office of the PHO, and non-government entities, such as HEABC and PHSA. I note that all the information the Ministry has withheld under ss. 21(1) and 22, and much of the information it has withheld under s. 13, is contained on pages that the Ministry has also withheld under s. 14.

Solicitor-client privilege – s. 14

[21] Section 14 of FIPPA states that a public body may refuse to disclose information that is subject to solicitor-client privilege. It is well-established that s. 14 encompasses both legal advice privilege and litigation privilege.[11] In this case, the Ministry is claiming legal advice privilege over the information withheld under s. 14. HEABC and PHSA also claim legal advice privilege over portions of the records.

Legal advice privilege

[22] Legal advice privilege applies to confidential communications between a solicitor and client for the purposes of obtaining and giving legal advice, opinion, or analysis.[12] The Supreme Court of Canada has explained that "without the assurance of confidentiality, people cannot be expected to speak honestly and candidly with their lawyers, which compromises the quality of the legal advice they receive."[13] As such, the privilege has been recognized as a fundamental legal right, essential to the integrity of the legal system.[14] Given its importance, the Supreme Court of Canada has said the privilege "should only be set aside in the most unusual circumstances."[15]

[23] The test for legal advice privilege is well established. There must be: (1) a communication between a solicitor and client (or their agent); (2) that entails the

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[11] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*], at paras 24-26.

[12] *Ibid*, at para 31.

[13] *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 [*Calgary*], at para 34.

[14] *R v McClure*, 2001 SCC 14, at para 17.

[15] *Calgary, supra* note 13.

seeking or giving of legal advice; and, (3) that is intended by the parties to be confidential.[16]

[24] Regarding scope, it is not only the direct communication of advice between solicitor and client that may be privileged. Courts have found that legal advice privilege extends to the "continuum of communications" related to the advice that would reveal the substance of the advice.[17] This includes the necessary exchange of information for the purpose of obtaining legal advice, as well as communications at the other end of the continuum, such as internal client communications about legal advice and its implications.[18]

[25] Accordingly, past OIPC orders have held that legal advice privilege applies both to actual legal advice exchanged between a solicitor and client, and to information that, if disclosed, would reveal or allow an accurate inference to be made about privileged communications between a lawyer and their client.[19] As this relates to email attachments, an attachment may be privileged: (1) if it is an integral part of the communication to which it is attached, and it would reveal the communication protected by solicitor-client privilege either directly or by inference; or, (2) on its own, independent of being attached to another privileged record.[20]

Waiver

[26] Solicitor-client privilege belongs to the client, and it remains in place indefinitely unless waived.[21] Waiver of privilege is ordinarily established where it is shown that the privilege holder knows of the existence of the privilege and voluntarily shows an intention to waive that privilege.[22] There must be deliberate or intentional acts, rather than mere inadvertence.[23] Waiver may also occur in the absence of an intention to waive, where fairness and consistency so require.[24]

[27] While voluntary disclosure of privileged information to anyone outside of the solicitor-client relationship generally constitutes waiver, the law recognizes certain exceptions to waiver that, if applicable, permit the disclosure of privileged

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[16] *Solosky v The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821, at p 837.
[17] *British Columbia (Attorney General) v Lee*, 2017 BCCA 219, at paras 32-33.
[18] *Bilfinger Berger (Canada) Inc v Greater Vancouver Water District*, 2013 BCSC 1893, at paras 22-24.
[19] See, for example, Order F22-34, 2022 BCIPC 38, at para 41, Order F22-53, 2022 BCIPC 60, at para 13, and Order F23-07, 2023 BCIPC 8, at para 25.
[20] *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 [*Minister of Finance*], at paras 110-111.
[21] *S & K Processors Ltd v Campbell Avenue Herring Producers Ltd* (1983), 1983 CanLII 407 (BCSC) [*S & K*], at para 6.
[22] *Ibid*.
[23] *Sauve v ICBC*, 2010 BCSC 763 (CanLII), at para 21, citing *Hayes Heli-Log Services Ltd v Acro Aerospace Inc,* 2006 BCSC 61, at para 38.
[24] *S & K, supra* note 21, at para 6.

information to third parties without infringing the privilege.[25] This includes the common interest exception to the waiver of privilege, applicable where: (1) the privilege holder intended for the information to remain confidential; and, (2) the third party and the privilege holder share a common goal, seek a common outcome or have a selfsame interest.[26] Previous OIPC orders have held that it is sufficient for the common interest to be, for example, in having a uniform understanding of the state of the law on the particular point in issue, as well as a uniform approach to its administration.[27]

Section 14 records not provided

[28] The Ministry chose not to provide the disputed s. 14 records and information for my review. Instead, it provided affidavit evidence and two tables of records. HEABC and PHSA also provided affidavit evidence, with HEABC's containing another table of records. The Ministry submits that this is sufficient for me to determine whether s. 14 applies.

[29] Under s. 44(1)(b), the Commissioner or their delegate can order a public body to produce a record for the purposes of conducting an inquiry under s. 56, including records over which solicitor-client privilege is claimed.[28] The OIPC, however, exercises this authority cautiously and with restraint given the clear direction by the Courts that a reviewing body's decision to examine privileged documents must never be made lightly or as a matter of course.[29] Given the importance of solicitor-client privilege, and in order to minimally infringe on that privilege, the OIPC will only order production of records being withheld under s. 14 when it is absolutely necessary to decide the issues in dispute.[30]

[30] Moreover, when s. 14 is at issue, the OIPC makes an exception to its usual practice of requiring the public body to provide the OIPC with an unredacted copy of the records in dispute.[31] Where a public body declines to provide the information or records withheld under s. 14 to the OIPC for adjudication, it is expected to provide a description of the information or records in a manner that, without revealing privileged information, enables the other party and the adjudicator to assess the validity of the claim of privilege.[32] Where a public body relies on affidavit evidence to support its claim of privilege, the

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[25] *Malimon v Kwok*, 2019 BCSC 1972, at para 20.
[26] *Maximum Ventures Inc v De Graaf*, 2007 BCCA 510 [*Maximum Ventures*], at para 14.
[27] Order F15-61, 2015 BCIPC 67, at paras 64-66.
[28] Section 44(1)(b) of FIPPA states the Commissioner may order the production of a record, and s. 44(2.1) confirms that a production order may apply to a record that is subject to solicitor-client privilege.
[29] Order F19-21, 2019 BCIPC 23 (CanLII), at paras 44- 46, citing *GWL Properties Ltd v WR Grace & Co of Canada Ltd,* 1992 CanLII 182 (BCSC), at pp 11-12.
[30] Order F19-14, 2019 BCIPC 16 (CanLII) at para 10; *Calgary, supra* note 13, at para 68.
[31] Order F25-48, 2025 BCIPC 56 (CanLII), at para 40.
[32] *Minister of Finance, supra* note 20, at para 78.

evidence should specifically address the records subject to the privilege claim and should come from an affiant with direct knowledge of the disputed records.[33]

Sufficiency of evidence provided by the parties regarding s. 14

[31] The Ministry provides an affidavit from a Deputy Supervisor and Legal Counsel with the Legal Services Branch (LSB) of the Ministry of Attorney General (Deputy Supervisor). Although not personally involved in providing legal advice in relation to the PHO Order, the Deputy Supervisor's affidavit establishes that she has direct knowledge of the disputed records. She deposes that she assisted in the coordination of legal advice related to the COVID-19 pandemic, as LSB is the branch within the Ministry of Attorney General that provides legal advice on civil matters to the provincial government, including the Ministry. The Deputy Supervisor explains that she has reviewed the records at issue and was aware that another Ministry Lawyer was engaged by the Ministry to provide legal advice in relation to PHO orders issued in response to the COVID-19 pandemic (Ministry Lawyer).

[32] The Ministry also provides two tables of records describing the information it withheld under s. 14, originally comprising 668 pages. The first table provides detailed descriptions of the information withheld under s. 14 on 98 pages of the records along with the basis for the privilege. The Ministry's submissions and evidence are in relation to these 98 pages. The second table sets out a brief description of the information withheld under s. 14 on the remaining 570 pages. The Ministry says that these pages are relevant to HEABC and, because HEABC was invited to participate in this inquiry, HEABC will provide submissions and affidavit evidence in relation to those pages.

[33] HEABC provides two affidavits and a table of records in support of its submissions. The first affidavit is from a senior legal officer of HEABC (HEABC Lawyer). The HEABC Lawyer's affidavit establishes that he provided legal advice in relation to the PHO Order, and he was directly involved in the communications contained in the relevant portions of the records. The HEABC Lawyer's affidavit includes a table that provides detailed descriptions of the information withheld by the Ministry under s. 14 on 566 pages of the records, along with the basis for the privilege. The second affidavit is from a lawyer at a private law firm that represents HEABC (HEABC External Counsel). HEABC External Counsel's affidavit establishes that she was directly involved in some of the communications concerning HEABC and has direct knowledge of the remainder.

[34] PHSA provides an affidavit from a lawyer employed by PHSA (PHSA Lawyer) in support of the Ministry's application of s. 14 to 29 pages of the records that the Ministry identified as relevant to PHSA. The PHSA Lawyer's affidavit

[33] *Minister of Finance, supra* note 20, at para 91; Order F20-16, 2020 BCIPC 18 (CanLII), at para 10.

similarly establishes that she was directly involved in some of the communications concerning PHSA and has direct knowledge of the remainder.

[35] All four affiants are practising lawyers and officers of the court with a professional duty to ensure that privilege is properly claimed.

[36] I accept the sworn evidence provided by the parties in support of the s. 14 legal advice privilege claim. I am satisfied that the individuals providing the affidavit evidence have direct knowledge of the nature and content of the communications reflected in the records, as well a strong understanding of the scope and purpose of the s. 14 solicitor-client privilege exemption.

[37] Based on the information before me, I am satisfied I have sufficient evidence to decide if s. 14 applies. For that reason, I determined it was unnecessary to order production of the records for my review.

Four pages not addressed

[38] As noted above, the Ministry initially withheld information under s.14 on 668 pages of the records. The Ministry addresses 98 of those pages, while HEABC addresses 566 pages. The remaining four pages were withheld under ss. 13(1), 14 and 21(1), however, no evidence was provided by either the Ministry or HEABC in relation to the claim of privilege.[34]

[39] Given the importance of solicitor-client privilege, I offered the Ministry and HEABC an opportunity to provide additional evidence in support of the privilege claim over these four pages.[35] In response, the Ministry advised it did not intend to provide further evidence.[36] HEABC then said that none of the four pages contain information over which it asserts privilege.[37]

[40] In these circumstances, I asked the Ministry to confirm which sections it was relying on in relation to the remaining four pages.[38] The Ministry advised that, in light of HEABC's position, it was no longer relying on any sections of FIPPA to withhold information on pages 215 and 428 of the records, and it would continue to rely on s. 13(1) to withhold portions of pages 421 and 422.[39] The Ministry then provided all four pages for my review.

[41] As these four pages are no longer being withheld under s. 14, the Ministry is withholding information on 664 pages under s. 14.

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[34] Pages 215, 421, 422, and 428 of the records.
[35] Letter from the OIPC to the parties dated February 20, 2026.
[36] Email from the Ministry to the Registrar dated February 23, 2026.
[37] Email from HEABC to the Registrar dated February 27, 2026.
[38] Email from the Registrar to the parties dated March 5, 2026.
[39] Email from the Ministry to the Registrar dated March 17, 2026.

Parties' arguments about legal advice privilege

[42] The Ministry addresses the information withheld on 98 pages under s. 14, with PHSA jointly addressing 29 of those pages. HEABC addresses the remaining 566 pages.

[43] The Ministry submits that the client for the purposes of the solicitor-client privilege was the government of British Columbia, as represented by government representatives of the Ministry.

[44] The Ministry says that much of the information is the legal advice of the Ministry Lawyer or falls within the continuum of communications between the Ministry Lawyer and Ministry representatives, made for the purpose of seeking, formulating or giving legal advice. The Ministry and PHSA say that the information involving PHSA comprises: (1) an email chain in which the PHSA Lawyer shares legal advice provided to PHSA with the Ministry; and, (2) email correspondence exchanged among Ministry representatives, some of which is copied to PHSA representatives, wherein Ministry representatives discuss the legal advice provided to PHSA. The Ministry submits that the disclosure of any of this information would reveal legal advice provided to the Ministry or PHSA or allow accurate inferences to be made about the substance or subject matter of that legal advice.

[45] HEABC describes the s. 14 information it addresses as communications and draft documents exchanged between the HEABC Lawyer and representatives of the Ministry and the Office of the PHO. HEABC says the withheld information represents a continuum of communications between these parties that comprise or are based on legal advice and analysis developed by HEABC's internal and external legal counsel. HEABC submits that the information it addresses is subject to legal advice privilege, as its disclosure would either directly reveal legal advice obtained by HEABC or allow third parties to draw accurate inferences about the scope and nature of the legal advice.

[46] The Ministry, PHSA, and HEABC all rely on common interest privilege, the exception to the rule of waiver which applies when privileged communications are shared with parties with sufficient common interest in the same transactions. The Ministry and HEABC also say that privilege was not waived due to the inadvertent breach of privileged information.

[47] The applicant does not explicitly address s. 14. He says that legal advice to public bodies, paid for by the public, ought to be advice that serves the public interest. He says the advice is unlawful, not in the public interest, demands public scrutiny, and should remain in the public domain. The applicant's submissions are largely directed to the fact that HEABC legal advice was inadvertently disclosed by the Ministry in response to his access request.

Analysis and findings, s. 14

[48] To determine that the information at issue has been validly withheld under s. 14, I must be satisfied that:

1. a solicitor-client relationship has been established between the relevant parties;
2. where the information at issue consists of communications, they:
   a. are between the solicitor and client (or their agent) and entail the seeking or giving of legal advice; or
   b. are part of the continuum of communications related to the legal advice and would reveal the substance of the advice;
3. where the information at issue consists of attachments that are not independently privileged, disclosure would reveal or allow an accurate inference to be made about a privileged communication;
4. the information was intended to be confidential; and
5. the privilege was not waived.

[49] For the reasons that follow, I find that legal advice privilege applies to the information withheld by the Ministry under s. 14.

Was a solicitor-client relationship established?

[50] Prior OIPC orders have questioned and rejected the reasoning employed by the Ministry in asserting that the client for these purposes is the provincial government as a whole.[40] This is because a global assertion of privilege across government as a whole cannot support a claim of solicitor-client privilege over individual documents, and the party asserting privilege must provide some evidence to establish the provincial government as a whole was the client in the specific communications at issue.[41] As such, the OIPC has accepted that, in certain circumstances, multiple government entities can collectively be the client where the public body provides evidence that a lawyer advised a group of government ministries or entities who were working on a specific matter.[42]

[51] In my view, the legal advice contained in the records is properly characterized as provided by: (1) the Ministry Lawyer to the Ministry; (2) the PHSA Lawyer to PHSA; (3) the HEABC Lawyer to HEABC; or, (4) HEABC External Counsel to HEABC. The Ministry's evidence is that the Ministry Lawyer was engaged by the Ministry to draft and provide legal advice in relation to various orders of the PHO in the relevant timeframe. PHSA's evidence is that the PHSA Lawyer provided legal advice to PHSA on a confidential basis concerning

[40] See, for example, Order F23-51, 2023 BCIPC 59 at paras 27-28 and 41-45.
[41] *Minister of Finance, supra* note 20, at paras 132-134.
[42] Order F23-51, 2023 BCIPC 59, at paras 27-45; Order F23-19, 2023 BCIPC 22, at paras 44-48; Order F20-18, 2020 BCIPC 20, at paras 37-41.

a public health measure implemented by the Office of the PHO. HEABC's evidence is that the HEABC Lawyer and HEABC External Counsel were, on an ongoing basis, engaged in generating legal advice and opinions for HEABC related to pandemic-driven issues affecting health care workers.

[52] I understand the Ministry has identified the client as being the provincial government because a few of the communications include representatives of Government Communications and Public Engagement (GCPE) employees within the Ministry of Finance. While there is evidence of the necessity for cross-Ministry coordination of legal advice in relation to the provincial government's response to the COVID-19 pandemic, the Ministry has provided no evidence that the Ministry Lawyer provided legal advice to the Ministry of Finance, or GCPE employees specifically, on the PHO Order or more broadly on its response to the pandemic. Rather, where GCPE employees are included on communications, they are communications solely between Ministry representatives and GCPE employees.

[53] I find, therefore, that solicitor-client relationships were established between the Ministry Lawyer and the Ministry, the PHSA Lawyer and PHSA, the HEABC Lawyer and HEABC, and HEABC External Counsel and HEABC.

Does the information consist of applicable communications and attachments?

[54] From my review of the submissions and evidence before me, I find that the information withheld under s. 14 and addressed by the Ministry consists of: (1) email correspondence; (2) draft PHO orders; and, (3) a comparative document. I find that the information withheld under s. 14 and addressed by HEABC consists of: (1) email correspondence; (2) draft advisory documents; (3) a briefing note; and, (4) draft communications.

[55] As set out above, to find that this information consists of protected communications and attachments, I must be satisfied that the communications are between solicitor and client and entail the seeking or giving of legal advice or, alternatively, are part of the continuum of communications related to the advice that would reveal the substance of the advice. If attachments are not independently privileged, I must be satisfied that disclosure would reveal or allow an accurate inference to be made about a privileged communication.

Ministry Information

[56] The Ministry applies s. 14 to withhold the Ministry Lawyer's legal advice in email correspondence exchanged: (1) among Ministry staff; (2) between the Ministry GCPE; and, (3) between the PHSA Lawyer, PHSA, and the Ministry. The Ministry also applies s. 14 to withhold the PHSA Lawyer's legal advice in email

correspondence, both among Ministry representatives and between the PHSA Lawyer and representatives of the Ministry and the Office of the PHO.

[57] The evidence provided by the Ministry and PHSA establishes that the emails contain: summaries of legal advice provided by the Ministry Lawyer to the Ministry or the PSHA Lawyer to PHSA; discussions of the implications of that legal advice; discussions of matters closely related to that legal advice; and, references to an intention to seek legal advice, which was subsequently obtained.

[58] Regarding the draft PHO orders and the document comparing two versions of a draft order, the evidence confirms that each contains the Ministry Lawyer's legal advice.

[59] In each case, I am satisfied that the information withheld by the Ministry forms part of the continuum of communications related to legal advice and its disclosure would reveal the substance of the advice.

HEABC Information

[60] The communications involving HEABC are comprised of email correspondence exchanged between the HEABC Lawyer, the Ministry, the Office of the PHO, and a PHSA service provider. HEABC's evidence is that the emails comprise or would otherwise reveal legal advice provided to HEABC by the HEABC Lawyer and HEABC External Counsel. In relation to the attachments, the evidence establishes:

- the draft advisory documents were prepared by the HEABC Lawyer and HEABC External Counsel based on their legal advice;
- the briefing note was prepared, in part by the HEABC Lawyer, for the purpose of setting out legal advice generated for HEABC; and,
- the draft communications include tracked changes and embedded comments from the HEABC Lawyer and HEABC External Counsel.

[61] I am satisfied that all this information is comprised of communications and attachments which form part of the continuum of communications in giving or receiving legal advice, the disclosure of which would reveal or allow accurate inferences to be made about legal advice provided to HEABC.

Was the information intended to be confidential?

[62] The affidavit evidence supports the conclusion that the parties had an understanding that the information would be held in confidence. In many cases, the correspondence is marked "Privileged & Confidential". Additionally, each affiant who was directly involved in the provision of legal advice, being the PHSA

Lawyer, HEABC Lawyer, and HEABC External Counsel, confirmed that the communications were made on a strictly confidential basis.

Was privilege waived?

[63] I am also satisfied that, where privileged information was shared with third parties, there is insufficient evidence to establish a waiver of privilege or the common interest exception applies to maintain privilege.

Voluntary Disclosure

[64] The following privileged information was voluntarily shared with third parties: (1) the Ministry's legal advice was shared with GCPE employees and PHSA; (2) PHSA's legal advice was shared with the Ministry and the Office of the PHO; and, (3) HEABC's legal advice was shared with the Ministry, the Office of the PHO, and a PHSA service provider. Based on the evidence and submissions before me, I am satisfied that:

- the Ministry and PHSA had a common interest in understanding the legal basis of a proposed course of action to ensure the feasibility of an operational initiative related to the provincial government's response to the pandemic;
- PHSA and the Office of the PHO had a common interest because PHSA was working in coordination and cooperation with the PHO to support the implementation of a public health measure;
- HEABC, the Ministry, and the Office of the PHO had a common interest in understanding how the public health measures would be operationalized by healthcare employers; and,
- all parties expected the information would remain confidential.

[65] In short, the parties were working in coordination to support the implementation of the PHO Order and to otherwise respond to the COVID-19 pandemic in a manner that was clear, consistent, legally compliant, and supported their overarching objectives and responsibilities related to the province's healthcare system. This engaged HEABC's responsibilities over human resources and labour and employment, the Ministry's responsibilities in relation to healthcare and public health, and the PHO's responsibilities for managing the public health response to the pandemic.

[66] The Ministry did not submit that a common interest existed between it and the GCPE employees. As noted above, however, the Ministry considered the provincial government as a whole to be the client in receipt of legal advice. It follows, therefore, that it did not intend to waive privilege when it shared the relevant information with the GCPE employees. Given the importance of the solicitor-client privilege to the functioning of the legal system, evidence justifying

a finding of waiver must be clear and unambiguous.[43] That kind of evidence is simply not present in this case, and I am not satisfied that the Ministry waived privilege by sharing information with the GCPE employees.

[67] Lastly, I find that privilege was not waived when HEABC included the PHSA service provider on correspondence containing privileged information. The evidence shows that this individual was an information technology specialist who was providing technical support services to the Ministry in relation to matters that were the subject of the correspondence. Again, there is no evidence of an intent to waive privilege. Rather, PHSA's evidence is that the provision of administrative, technical, and other supports to the Ministry falls within PHSA's role and responsibilities, and HEABC's evidence is that the communications were made on a strictly confidential basis.

Inadvertent Disclosure

[68] As noted above, the applicant's submissions focus largely on the inadvertent disclosure of some of the legal advice. He asserts that the privileged material was leaked on purpose, and it should therefore remain in the public domain.

[69] The inadvertent disclosure was in relation to portions of the records containing information that I found above to be HEABC's privileged information, shared with the Ministry on a confidential basis pursuant to the common interest exception to waiver.

[70] I am satisfied that the disclosure was inadvertent and there was no intent to waive privilege. Notably, it was the Ministry that released the information to the applicant, rather than HEABC, the holder of the privilege. HEABC's evidence is that it did not authorize or consent to the disclosure, and it intended for the information to remain privileged. The Ministry's evidence is that the privileged information was released in error, and steps were taken to correct the error as soon as it was discovered. While the applicant asserts that the information was released on purpose, he provides no evidence in support of that claim.

[71] In these circumstances, I also find that fairness and consistency do not require disclosure. While it is clear the applicant takes issue with the content of the PHO Order and questions the legitimacy of the legal advice upon which it was founded, I am not persuaded that the disclosure of privileged information is required as a result.

[43] *Maximum Ventures, supra* note 26, at para 40.

Conclusion, s. 14

[72] In conclusion, all of the information at issue under s. 14 was properly withheld on the basis that it is subject to solicitor-client privilege. The Ministry is therefore authorized to refuse to disclose this information under s. 14.

Advice or recommendations – s. 13(1)

[73] It is unnecessary for me to consider whether s. 13(1) applies to the information that I determined may be withheld under s. 14, so the following analysis will apply solely to the information that was not also withheld under s. 14. This information appears on 14 pages of the records.[44]

[74] Section 13 says that the head of a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister. 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.[45] Section 13 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".[46] Section 13 applies not only where the information directly reveals advice or recommendations, but also where knowledge of the information would permit an accurate inference about the advice or recommendations.[47]

Analysis and findings, s. 13

[75] The analysis under s. 13 has two steps. The first step is to determine whether disclosing the withheld information would reveal advice or recommendations developed by or for the Ministry. If so, the second step is to determine whether any of the categories or circumstances listed in s. 13(2) apply to that information, as well as determining whether the record has been in existence for more than 10 years in accordance with s. 13(3). If either ss. 13(2) or 13(3) apply, then the Ministry cannot withhold the information under s. 13(1).

Would disclosure reveal advice or recommendations?

[76] The term "recommendations" includes material relating to a suggested course of action that the one being advised will ultimately accept or reject.[48] The

[44] This includes pages 421 and 422 of the records, discussed above.
[45] *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 (CanLII), at para 52.
[46] Order 01-15, 2001 CanLII 21569 (BCIPC), at para 22.
[47] Order 02-38, 2002 CanLII 42472 (BC IPC), at para 135; Order F16-28, 2016 BCIPC 30, at para 22.
[48] *John Doe v Ontario (Finance),* 2014 SCC 36 (CanLII), at para 23.

term "advice" has a broader meaning than "recommendations".[49] It includes providing relevant considerations, options, analyses, and opinions, including expert opinions on matters of fact.[50] Advice can be an opinion about an existing set of circumstances and does not have to be a communication about a future action.[51]

[77] The Ministry says that the information withheld under s. 13(1) was created in the context of the Ministry's real-time response to the unprecedented COVID-19 pandemic. It submits that, if disclosed, the information would directly or indirectly disclose the content of advice and recommendations prepared both by and for the Ministry, including: (1) editorial advice contained in tracked changes in draft documents; (2) suggested wording for a response to a media request; (3) recommendations on a suggested course of action that will ultimately be accepted or rejected by the person receiving them; (4) advice on policy considerations; (5) opinions on proposed courses of action that involve exercising judgement and skill to weigh the significance of matters of fact; and, (6) a belief about an existing set of circumstances. The Ministry cross references each of these categories to the information it has withheld under s. 13(1). The applicant did not discuss s. 13(1) in his submission.

[78] I have reviewed the information withheld by the Ministry under s. 13 and, with two exceptions, I find that disclosure of the information would reveal advice or recommendations developed by or for the Ministry.

[79] The first exception is an email contained in a thread between Ministry employees and representatives.[52] In the last email of the thread, the Deputy PHO advises that he has added comments to an earlier email in the thread. The Ministry applies s. 13(1) to that earlier email, along with the Deputy PHO's added comments. While I am satisfied that disclosure of the Deputy PHO's added comments would reveal advice or recommendations developed by and for the Ministry, I find that disclosure of the duplicated content of the earlier email would not. This is because the earlier email has been released in its entirety elsewhere in the records.[53]

[80] The second exception is the second page of a draft document which contains only the date and a draft watermark.[54] I do not see, and the Ministry does not explain, how disclosure of this page would reveal advice or recommendations developed by or for the public body. I find, therefore, it would

[49] *Ibid*, at para 24.
[50] *College*, *supra* note 11, at para 113.
[51] *College*, *supra* note 11, at para 103.
[52] Pages 636-637 of the records.
[53] Page 583 of the records.
[54] Page 835 of the records.

not.

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

[81] Next, I must consider whether any of the circumstances under s. 13(2) apply to the information that I found would reveal advice or recommendations developed by or for the Ministry. Subsection 13(2) identifies certain types of records and information that may not be withheld under s. 13(1).

[82] I have considered whether any of the circumstances set out in s. 13(2) apply to the information that I determined are advice or recommendations and I find that none of those circumstances apply.

Does the exception in s. 13(3) apply?

[83] Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. In this case, the records were created in 2021. Consequently, I find that s. 13(3) does not apply to any of the disputed information withheld under s. 13(1).

Conclusion, s. 13

[84] I find that, apart from the two exceptions discussed above, the information withheld under s. 13(1) constitutes advice or recommendations developed by or for the Ministry, and ss. 13(2) and (3) do not apply. The Ministry may withhold that information under s. 13(1).

Sections 21(1) and 22

[85] As noted above, ss. 21(1) and 22 applied solely to pages that were also withheld under s. 14. As I have found that those pages were properly withheld under s. 14, there is no need to decide if ss. 21(1) and 22 also apply.

CONCLUSION

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

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

2. I confirm, in part, the Ministry's decision to refuse the applicant access to information under s. 13(1).

3. The Ministry is required to give the applicant access to the information that I have determined it is not authorized to withhold under s. 13(1), being pages 636 and 835 of the records and portions of page 637. I have highlighted this

information on page 637 of the copy of the records that will be provided to the Ministry with this order.

4. The Ministry is required to give the applicant access to the information it is no longer withholding on pages 215, 421, 422 and 428 of the records.

5. The Ministry must concurrently copy the Registrar on its cover letter to the applicant, together with a copy of the pages described at items #3 and #4 above.

Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by May 20, 2026.

April 7, 2026

ORIGINAL SIGNED BY

Amy O'Connor, Adjudicator

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