



Order F26-63

MINISTRY OF AGRICULTURE AND FOOD

David S. Adams
Adjudicator

July 14, 2026

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Summary: An applicant requested records related to the management of her employment from her employer, the Ministry of Agriculture and Food (the Ministry). The Ministry disclosed some responsive records but withheld information from them under various provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that the Ministry was authorized to withhold a small amount of information under s. 14 (solicitor-client privilege), but was not authorized to withhold any information under s. 13(1) (advice or recommendations). The adjudicator ordered the Ministry to disclose to the applicant 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) and 14.

INTRODUCTION

[1] The applicant, an employee of the Ministry of Agriculture and Food (the Ministry), made two access requests to the Ministry under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The requests were for Ministry communications related to i) her placement on leave without pay, and ii) her request for an exemption to the provincial government's COVID-19 vaccination requirement for employees.

[2] The Ministry gave the applicant access to the responsive records, but withheld information in them under ss. 13(1) (advice or recommendations), 15(1) (harm to law enforcement), 17(1) (harm to the financial or economic interests of a public body), and 22(1) (unreasonable invasion of third-party privacy) of FIPPA.

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision to withhold information. Mediation by the OIPC did not resolve all the outstanding issues and the matter proceeded to inquiry.

[4] During mediation, the OIPC investigator assigned to the applicant's file exercised their discretion and declined to advance consideration of the Ministry's s. 22(1) severing to the inquiry stage because it was plain and obvious that public disclosure of the information the Ministry withheld under s. 22(1) would be an unreasonable invasion of third-party personal privacy.¹

[5] During the inquiry, the Ministry reconsidered many of its severing decisions. As a result of that reconsideration, the Ministry no longer relies on ss. 15(1) or 17(1) to withhold any information from the disputed records. Therefore, ss. 15(1) and 17(1) are no longer in dispute and I will not consider them below. In addition, the Ministry requested and received the OIPC's permission to add s. 14 (solicitor-client privilege) to the inquiry with respect to a small amount of information, so I will consider what the parties say about the Ministry's application of that section.

Preliminary matter - Ministry's shifting of reliance from s. 13 to s. 22

[6] As mentioned above, during the course of the inquiry the Ministry reconsidered its severing decisions and released additional information to the applicant. In some cases, the Ministry released information that it had originally withheld under s. 13(1). However, when reviewing this information for release to the applicant, the Ministry determined that it should also have applied s. 22(1) to withhold certain specific portions of it.² Therefore, some of the information the Ministry has withheld under s. 22(1) was not indicated as being withheld under that section at the time the OIPC investigator made their determination not to advance the Ministry's s. 22(1) severing for consideration at inquiry.

[7] The applicant takes the position that this shift from withholding information under s. 13(1) to withholding portions of that same information under s. 22(1) was improper and has had the effect of shielding the Ministry's decisions from the Commissioner's review because it occurred after s. 22(1) had already been excluded from consideration at inquiry.³ The Ministry concedes that its shift in reliance resulted in the application of s. 22(1) where it had not previously been

¹ During the inquiry, the applicant requested that the s. 22(1) issue be added for the adjudicator's consideration. The OIPC's registrar of inquiries declined to add the issue. While I have read and considered everything the applicant says about the matter, I am not persuaded that I should revisit these decisions of the Commissioner's delegates to decline to add the issue.

² At pages 81, 82, 84, and 238 of the Ministry's records package.

³ Applicant's response submission at paras 17-21.

applied, but submits that the nature of the information does not necessitate the addition of s. 22(1) to this inquiry.⁴

[8] Examining the information for which the Ministry's reliance has shifted, I can say that it consists of a very small amount of information relating to the accommodation of employees other than the applicant. It is also very similar in nature to the information already considered by the OIPC's investigator. If I were to add and consider the application of s. 22(1) to this information, I would require additional submissions from the parties, adding further expense and delay to this inquiry. Given that the applicant's access requests were for information about *her own* placement on leave and vaccine policy exemption (not those of other employees),⁵ I do not think this would be a wise use of the OIPC's resources. In these circumstances, and recognizing that this result will be disappointing for the applicant, I am not persuaded that it is appropriate to add the issue of s. 22(1) in order to consider this very limited amount of information. As a result, any information that has been withheld in the records under s. 22(1) is not information in dispute to be adjudicated in this inquiry, and I will not consider it any further.

ISSUES AND BURDEN OF PROOF

[9] The issues I must decide in this inquiry are whether the Ministry is authorized to refuse to disclose information it has withheld under ss. 13(1) and 14 of FIPPA.

[10] Under s. 57(1), the Ministry bears the burden of proving that the applicant has no right of access to the information in dispute.

DISCUSSION

Background

[11] The Ministry is responsible for BC's Liquor Distribution Branch (LDB), which operates retail liquor and cannabis stores.

[12] The Public Service Agency (PSA) is a division of the Ministry of Finance which provides advice to the Ministry about, among other things, employment grievances and workplace accommodations.

[13] In response to the COVID-19 pandemic, the BC government required all government employees (including those of the Ministry) to be fully vaccinated against COVID-19. The policy setting out this requirement was known as HR Policy 25 and was implemented on November 1, 2021 and later rescinded. While

⁴ Ministry's reply submission at paras 16-19.

⁵ Applicant's access requests dated February 14, 2024.

it was in force, HR Policy 25 included a provision that allowed an employee to request an exemption from the policy on the basis of a ground protected by BC's *Human Rights Code*, such as religious objection. LDB management sought advice from the PSA on issues related to the implementation of HR Policy 25 and other human resources matters.

[14] The applicant was an employee of the Ministry. She requested an exemption from the government's vaccination requirement under HR Policy 25, which was initially granted but later denied. She was moved to a temporary alternative work assignment and later placed on leave without pay. The applicant filed a grievance through her union, which was later settled.

Information at issue

[15] The information remaining at issue in this inquiry consists of a one-page document withheld in its entirety⁶ and a portion of one email.⁷

Advice or recommendations – s. 13(1)

[16] Section 13(1) 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(1) is to prevent the harm that would occur if a public body's deliberative process were exposed to public scrutiny, so that the free and frank flow of advice and recommendations can take place.⁸

[17] The analysis under s. 13 involves two stages. First, I must decide whether disclosure of the withheld information would reveal advice or recommendations developed by or for a public body. If it would, the next step is to determine whether any of the circumstances set out in ss. 13(2) or (3) apply to any of that information. If one or more of these circumstances apply, the public body cannot rely on s.13(1) to withhold the information.

Advice or recommendations

[18] BC's courts and previous OIPC orders have established the following principles for interpreting the words "advice" and "recommendations", which I will paraphrase and adopt here:

- The requirement that disclosure must *reveal* advice or recommendations means that s. 13(1) does not apply to information that has already been disclosed.

⁶ At page 270 of the Ministry's records package.

⁷ At page 170.

⁸ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at paras 52 and 65.

- The term “advice” is broader than the term “recommendations”, and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact. Advice can be an opinion about an existing set of circumstances and does not have to be a communication about future action.
- “Advice” also includes factual information compiled and selected by an expert using their expertise, judgment, and skill for the purpose of providing explanations necessary to the deliberative process of a public body. This compilation of factual information and weighing of the significance of matters of fact is an integral component of an expert’s advice and informs the decision-making process.
- “Recommendations” include material relating to a suggested course of action that will ultimately be accepted or rejected by a decision-maker.
- Section 13(1) applies not only to advice or recommendations themselves, but also to information that would allow an informed observer to accurately infer advice or recommendations.⁹

[19] The Ministry withheld a document entitled “HR Policy 25: LWOP [leave without pay] – Accommodation and Exception Request Approved Process” (the LWOP Document)¹⁰ under s. 13(1).

Parties’ submissions on advice or recommendations

[20] The Ministry says the withheld information contains advice and recommendations developed for the LDB by the PSA, and demonstrates “close collaboration” between those bodies in human resources matters.

[21] The Ministry provided an affidavit from a director of employee relations and investigations in the LDB’s human resources department (the HR Director). The HR Director deposes that the LWOP Document was created by the LDB using advice and recommendations from the PSA.¹¹

[22] The applicant says s. 13(1) should not apply to “operational directives that result in the direct violation of statutory law”. She says disclosure of the information withheld under s. 13(1) will aid transparency and accountability.

Analysis and conclusions on advice or recommendations

[23] I will first consider the LWOP Document. Previous orders have consistently held that the content of manuals and guidance documents that employees are expected to follow is not itself advice or recommendations for the

⁹ Order F24-33, 2024 BCIPC 40 (CanLII) and the orders and court decisions cited therein.

¹⁰ At page 270. The title of this document, along with the body, is withheld, but the Ministry disclosed the title in its initial submission.

¹¹ Affidavit of HR Director at para 10.

purposes of s. 13(1).¹² Here, I find that the LWOP Document outlines a set of steps and considerations for LDB management when an accommodation has been approved. There is no indication that decision-makers can accept or reject any of these steps or considerations.

[24] The Ministry says there is no indication that the information in the LWOP Document reflects its “settled position or policies”, but provides no explanation on this point.¹³ In my view, nothing about the information in the LWOP Document reflects anything about the LDB’s deliberative process. The fact that a document may have been created *using* advice or recommendations from the PSA does not assist in the determination of whether its disclosure would reveal advice or recommendations. In the absence of any explanation from the Ministry, I am unable to find that it would reveal advice or recommendations if disclosed.

Information that may not be withheld under s. 13(1) – ss. 13(2) and (3)

[25] Since I have found that none of the information in the LWOP Document would reveal advice or recommendations if disclosed, it is unnecessary to consider whether any of the provisions of ss. 13(2) or (3) apply.

Conclusion on s. 13(1)

[26] I find that the Ministry has not met its burden of establishing that any of the information in the LWOP Document would reveal advice or recommendations developed by or for a public body. The Ministry may not withhold it on this basis.¹⁴

Solicitor-client privilege – s. 14

[27] Section 14 allows a public body to refuse to disclose information that is subject to solicitor-client privilege. The section encompasses two kinds of privilege drawn from the common law: legal advice privilege and litigation privilege.¹⁵ The Ministry relies on legal advice privilege to withhold a small amount of information from one email in the records.¹⁶

¹² See, e.g., Order F14-34, 2014 BCIPC 37 (CanLII) at paras 18-33; Order F23-67, 2023 BCIPC 78 (CanLII) at para 18.

¹³ Ministry’s initial submission at paras 21-22.

¹⁴ The Ministry withheld the information on page 257 under both ss. 13(1) and 22(1). Since, as discussed above, s. 22(1) is not at issue in this inquiry, I will not consider the Ministry’s application of that section.

¹⁵ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 26.

¹⁶ At page 170 of the records package.

Information not provided for review

[28] The Ministry did not provide the information it withheld under s. 14 for my review. Instead, as I noted above, it provided an affidavit from the HR Director. There is no indication that the HR Director is a practicing lawyer. Neither party addressed the sufficiency of the Ministry's evidence on the application of s. 14.

[29] While FIPPA gives me the power, under s. 44(1)(b), to order the production of records over which a public body claims privilege, I would do so only if production were absolutely necessary to decide the question of privilege.¹⁷ As I will explain below, I find that the Ministry's submissions and evidence are sufficient for me to decide the question of privilege in this case. Therefore, I have not found it necessary to order the Ministry to produce the information it has withheld under s. 14 for my review.

Parties' positions

[30] The Ministry withheld some information from an email between LDB employees and an employee of the Public Service Agency (PSA) under s. 14.¹⁸ The HR Director deposes that LDB sought and received legal advice regarding the impact of HR Policy 25 from the Legal Services Branch (LSB), its legal counsel. In addition, the HR Director says she has reviewed the paragraph withheld under s. 14 and states her opinion that it "recites" some of the legal advice the LDB received in confidence from LSB. She says the topic of the advice was the legal status of employees who had not been at work due to the application of HR Policy 25.¹⁹

[31] The applicant says she has doubts about the identity of the client and the legal advisor involved in the communication. She says the email from which the information is withheld is dated almost two months after HR Policy 25 was rescinded. She says s. 14 is not designed to protect wrongdoing, and that not having access to the information withheld under that section compromises her right to hold the Ministry to account for its actions. She says further that the Ministry applied HR Policy 25 inconsistently, harming employees and the public.

Analysis and conclusion on s. 14

[32] Legal advice privilege applies to confidential communications between a solicitor and client for the purposes of obtaining and giving legal advice.²⁰ Not

¹⁷ *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 at para 17.

¹⁸ At page 170 of the records package.

¹⁹ Affidavit of HR Director at para 12.

²⁰ *College*, *supra* note 16 at para 26 and 31-32; *R v. B*, 1995 CanLII 2007 (BC SC) [*R v. B*] at para 22.

every communication between a lawyer and client is privileged, but if these criteria are satisfied, legal advice privilege applies.²¹

[33] Legal advice privilege also attaches to the continuum of communications made within the framework of the solicitor-client relationship, including internal client communications that comment on the legal advice received and its implications.²² The privilege also attaches to information that would reveal, or allow accurate inferences about, the contents of privileged communications.²³

[34] The withheld information is contained in an email from an LDB employee to another LDB employee and an employee of the PSA. It is sent in response to the PSA employee's request for the LDB's HR Policy 25 spreadsheet and a question about which LDB employees "were put back on pay only".

[35] I accept, based on the HR Director's evidence, that a solicitor-client relationship existed between the Ministry and LSB at the relevant time. I also accept, based on that same evidence, that LSB provided legal advice to the Ministry regarding HR Policy 25 within that relationship.

[36] While no party raised this point, I observe that the email containing the withheld information was sent to a PSA employee – that is, it was disclosed outside the Ministry. However, previous orders have accepted that multiple government entities may collectively be considered to be a lawyer's client when they share a single goal with respect to a legal issue and are working together to resolve the issue.²⁴ In this case, the HR Director deposes, and I accept, that the PSA provides guidance and assistance to the LDB regarding the management of accommodation requests from employees, and that the LDB worked closely with the PSA in developing HR Policy 25.²⁵ I therefore am satisfied that they obtained advice on the application of HR Policy 25 either as joint clients, or as parts of a single client, of LSB.

[37] When it comes to the question of whether the withheld information would reveal privileged legal advice, I have some concerns with the HR Director's evidence. There is no indication that she is a lawyer and she does not say how she knows the withheld information is legal advice; rather, she merely asserts that it is. Moreover, she does not have a lawyer's professional obligation to ensure that privilege is properly claimed. In cases such as this one, where

²¹ *R v. B*, *ibid* at para 25.

²² *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at para 24 and the cases cited therein.

²³ Order F22-16, 2022 BCIPC 18 (CanLII) at para 31; Order F20-19, 2020 BCIPC (CanLII) at paras 24-27; Order F26-58, 2026 BCIPC 71 (CanLII) at paras 46-47.

²⁴ Order F25-77, 2025 BCIPC 90 (CanLII) at para 33; Order F23-19, 2023 BCIPC 22 (CanLII) at paras 44-48; Order F23-51, 2023 BCIPC 59 (CanLII) at paras 27-45; Order F22-26, 2022 BCIPC 28 (CanLII) at para 39.

²⁵ Affidavit of HR Director at paras 7-9.

a public body asserts privilege over information which the Commissioner's delegate cannot see, it is generally helpful, though not required in every case, to have affidavit evidence from a lawyer.²⁶

[38] On the other hand, I accept that the HR Director has experience in “overseeing a team that manages grievances, conducts investigations, and oversees all labour and employment matters”. On this basis, I conclude that she would likely be in a position to recognize legal advice on those topics, including the application of HR Policy 25. On the whole, while I do not give her opinion the same degree of deference I might give to the professional opinion of a practicing lawyer, I give moderate weight to her evidence that the withheld information recites legal advice the LDB sought and received from LSB on a confidential basis.

[39] In addition to this rather slender evidentiary basis, the context of the email in which the withheld information appears is also relevant. The scope of the matters on which the Ministry says the LDB sought advice is narrow: the application of one policy to some employees. It is not difficult to imagine that the LDB sought advice about the matter, and that an LDB employee commented about the advice in response to a PSA employee's question about the application of the policy. Moreover, I can see that the spreadsheet attached to the email relates to the application of HR Policy 25 to individual employees (including the applicant, in the portion of the spreadsheet that has already been disclosed).

[40] Finally, I do not think whether the information was emailed after HR Policy 25 was rescinded has anything to do with the privileged character of the communication referred to in the email. Legal advice privilege does not expire.²⁷

[41] While the email that contains the withheld information is not a communication between solicitor and client, I am satisfied on a balance of probabilities that it comments on, and would reveal, legal advice confidentially provided by LSB to the LDB. It is therefore within the protected continuum of communications and legal advice privilege applies to it. The Ministry may rely on s. 14 to withhold the information.

CONCLUSION

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

²⁶ See, e.g., Order F22-04, 2022 BCIPC 4 (CanLII) at paras 50-59; Order F26-25, 2026 BCIPC 31 (CanLII) at paras 86-91; *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at paras 83-87.

²⁷ See, e.g., Order F21-61, 2021 BCIPC 70 (CanLII) at para 61.

1. I confirm the Ministry's decision to refuse to disclose information under s. 14.
2. The Ministry is not authorized under s. 13(1) to refuse to disclose the information on page 270 of its records package. It must disclose that information to the applicant.
3. The Ministry must provide the OIPC's registrar of inquiries with a copy of its cover letter and the records it provides to the applicant in compliance with item 2 above.

[43] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **August 26, 2026**.

July 14, 2026

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File No.: F24-98360