OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F26-88

MINISTRY OF HEALTH

Alexander R. Lonergan
Adjudicator

October 21, 2026

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Summary: An applicant asked the Ministry of Health (the Ministry), under the *Freedom of Information and Protection of Privacy Act* (FIPPA), for access to records related to amending the *Family Compensation Act*. In this inquiry, the adjudicator considered the Ministry's decision to withhold some information in the responsive records under ss. 12(1) (cabinet confidences), 13(1) (advice or recommendations), and 14 (solicitor-client privilege). The adjudicator determined that the Ministry was authorized to withhold all of the information in dispute under either ss. 12(1) or 14.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 12(1), 12(2), 14.

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (the applicant) asked the Ministry of Health (the Ministry) to provide him with access to all information in a variety of records about the work, if any, that was being done to "modernize" the *Family Compensation Act*[1] (the FCA). The applicant also requested access to the names of all individuals assigned to work on modernizing the FCA.

[2] Initially, the Ministry did not respond to the applicant's access request by the deadline required under s. 7 of FIPPA.[2] However, the Ministry eventually responded to the applicant's access request.[3] The Ministry withheld the entirety of the responsive records under the exceptions to disclosure set out at ss. 12(1) (cabinet confidences), 13(1) (advice or recommendations), 14 (solicitor-client privilege), 16(1) (harm to intergovernmental relations or negotiations), and 17(1)

[1] *Family Compensation Act*, RSBC 1996, c 126.
[2] All sectional references refer to FIPPA unless otherwise indicated.
[3] The Ministry's initial non-response was the subject of a separate OIPC complaint, F25-00186.

(harm to the financial or economic interests of a public body). The applicant subsequently asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's severing decisions. OIPC-led mediation did not resolve the issues in dispute and the matter proceeded to inquiry.

[3] At inquiry, the Ministry identified additional pages of responsive records, reconsidered its severing decisions, withdrew its reliance on ss. 16(1) and 17(1), and released some information and records to the applicant.[4] Consequently, the Ministry relies on ss. 12(1), 13(1), and 14 to withhold information from 248 pages of responsive records.

[4] Both parties provided written submissions for this inquiry. The Ministry requested permission to provide some of its submission material *in camera*, which a delegate of the Commissioner approved in part.

DISCUSSION

Background[5]

[5] The applicant is the current president of The BC Wrongful Death Law Reform Society (Society). The Society is an organization which advocates for legislative change in BC to address the lack of compensation under the FCA for non-financial harms.

[6] The FCA provides that surviving family members of deceased persons can seek compensation from the person who wrongfully caused the death. Under the FCA, surviving family members may pursue compensation for funeral and medical expenses of the deceased as well as financial losses directly caused by the deceased's death. However, neither the FCA nor the common law currently allow surviving family members to claim any compensation for harm of a non-financial nature, such as compensation for grief or loss of companionship.

[7] The Ministry explains that the Ministry of Attorney General (MAG) is the provincial ministry that is responsible for the FCA. Within the MAG, the Justice Services Branch (JSB) is the branch which would lead a legislative initiative to amend the FCA. The Ministry explains that given wrongful deaths typically occur in the healthcare or motor vehicle settings, there was a legislative initiative to amend the FCA. That initiative involved MAG consulting with the Ministry and the Ministry of Public Safety and Solicitor General.

[8] Under this context, the applicant asks the Ministry to provide him with access to the following information and records:

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[4] Ministry's initial submission at para 5.

[5] The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.

> All Contents of files, memos, correspondence, third party submissions, drafts, planning documentation, notes, and documentation pertaining to work (if any) being done to modernize the Family Compensation Act. Further, I require the full legal names of ALL Ministry of Health staff, as well as any other staff from other Ministries, Crown Corporations, Corporations, or sub-contractors who have been assigned to work, or consult on this file as per the outlined date ranges associated with this submission. (Date Range for Record Search: From 12/31/2016 To 11/21/2023).

Records and Information at Issue

[9] The responsive records consist of 248 pages, of which 246 have at least some information withheld under ss. 12(1), 13(1), or 14. The records consist of letters, discussion papers, presentation slides, briefing notes, written submissions, meeting agendas, written plans, and draft versions of same.

Issues and Burden of Proof

[10] In this inquiry, I must decide the following issues:

1. Whether Ministry is required under s. 12(1) to withhold any of the information it withholds under that provision; and

2. Whether the Ministry is authorized under ss. 13(1) or 14 to refuse to disclose any of the information it withholds under those provisions.

[11] Section 57(1) places the burden on the Ministry, which is a public body, to prove that it is authorized or required to refuse access to the information and records withheld under ss. 12(1), 13(1), or 14.

Preliminary Issue – Reliability of Ministry's Evidence

[12] The applicant says that I should give less weight to the Ministry's evidence because the Ministry mischaracterized the timing and extent of its compliance with mandatory FIPPA deadlines when it responded to his access request, and because the Ministry did not provide the OIPC with a copy of the records at an earlier stage of this review. The applicant also says that the Ministry makes inaccurate statements about the Society.[6]

[13] In reply, the Ministry says that it accurately described when it provided records to the applicant but that some information was omitted because its description was intended to be read alongside the Fact Report which explains the nature of its response. In addition, the Ministry says that it initially did not provide a redline copy of the records to the OIPC because the Ministry applied s. 14 to

[6] Applicant's submission at paras 4-10.

information in the records, which may be withheld from the OIPC unless disclosure is absolutely necessary.[7]

[14] While the Ministry's initial submission was clearly drafted to not draw attention to the length of time that passed from when it received the applicant's request and when it produced records, I do not see anything that indicates the Ministry or its affiants intentionally misrepresented any of the information they present. Furthermore, the Ministry's submissions do not contain anything that, in my view, calls into question the credibility of the affiants who provided the evidence on which the Ministry relies.

[15] Finally, the applicant does not persuasively explain how his concerns about the Ministry's compliance with FIPPA deadlines prior to this inquiry and the accuracy of its description of the Society are meaningfully relevant to any of the issues in this inquiry. I find that those matters are not at all relevant to the reliability of the Ministry's evidence regarding the issues currently in dispute.

[16] Having considered the applicant's concerns and the circumstances discussed above, I decline to draw an adverse inference against the Ministry's evidence.

Section 14 – Solicitor Client Privilege

[17] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege.

[18] There are two categories of solicitor-client privilege, being legal advice privilege and litigation privilege.[8] In this matter, the Ministry argues that legal advice privilege applies.[9]

Evidentiary Basis for Determination of Solicitor-Client Privilege

[19] The Ministry applied s. 14 to specific paragraphs of information in a document entitled "Cabinet Submission".[10] The Ministry did not provide a copy of this information for me to review. Instead, the Ministry provides affidavit evidence which it argues is sufficient to adjudicate the s. 14 issue in this inquiry.[11]

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[7] Ministry's reply submission at paras 4-8.
[8] *College of Physicians of B.C. v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 26.
[9] Ministry's initial submission at para 149.
[10] The records, at pp 30, 35, 141, 146, 238 (in part). The title "Cabinet Submission" and nature of these records as a document prepared for Cabinet's consideration, is not information that the Ministry withheld under any provision of FIPPA.
[11] Ministry's initial submission at paras 143-148.

[20] The applicant asks that I review the s. 14 material to confirm that what has been withheld is genuinely confined to the substance of legal advice.[12]

[21] Section 44(1)(b) empowers me to order production of records for the purposes of conducting an inquiry, including records subject to a claim of solicitor-client privilege.[13] Given the importance of solicitor-client privilege and in order to minimally infringe on that privilege, I will follow the approach taken in past orders by ordering production only if it is absolutely necessary to fairly decide the issues in dispute.[14]

[22] Where a lawyer provides sworn evidence asserting a claim of privilege, it is up to the lawyer to determine how much information will be provided to justify the claim of privilege without revealing the privileged information. In those instances, the adjudicator owes some deference to the lawyer claiming the privilege.[15]

[23] I have reviewed the Ministry's arguments and evidence. This material provides a reasonable description of the information withheld under s. 14 and addresses that information directly, which enables me to assess the validity of the Ministry's claim of privilege.[16] Moreover, some of the affidavit evidence is from a lawyer who directly addresses the information that is withheld under s. 14. Therefore, find that I do not need to order the Ministry to produce the records for my review and I will proceed with my s. 14 analysis on the basis of the parties' submissions.

Legal Advice Privilege

[24] Legal advice privilege applies to confidential communications that are part of the continuum of information exchanged between a solicitor and their client for the purpose of seeking or giving of legal advice. This includes information the client gives to the lawyer that relates to the advice sought, including purely factual information, and internal client communications about the legal advice and its implications.[17]

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[12] Applicant's submission at paras 21-23.
[13] 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.
[14] Order F19-14, 2019 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 (CanLII) at para 68.
[15] *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266, [*Minister of Finance*], at paras 79 and 86.
[16] For further discussion of the evidentiary requirements of this approach, see: *Minister of Finance*, *ibid* at paras 77-78, 87, and 91.
[17] *Bilfinger Berger (Canada) Inc. v Greater Vancouver Water District*, 2013 BCSC 1893 (CanLII), at paras 22-24 [*Bilfinger*].

[25] Legal advice privilege does not protect all communications between a client and their lawyer but the privilege will apply if the following conditions are met:

1. There is a communication between a solicitor and their client;
2. The communication entails the seeking or giving of legal advice; and
3. The parties intend the communication to be confidential.[18]

[26] Legal advice privilege, once established, belongs to the client and remains in place indefinitely unless the client waives it.[19]

Parties' Positions, Legal Advice Privilege

[27] The Ministry says that the information it withholds under s. 14 is a summary of legal advice that the MAG's Legal Services Branch (LSB) provided to the JSB. The Ministry says that disclosure would directly reveal the substance of that legal advice because the information is itself a summary of the advice received.[20]

[28] The Ministry acknowledges that the document containing the summary of advice is not a communication that directly involved legal counsel. However, the Ministry argues that the information remains privileged because that document is a confidential internal communication which fits within the continuum of communications between a solicitor and its client.[21]

[29] The applicant responds by pointing to the Ministry's description of the s. 14 material as "a summary of [LSB's] legal advice." The applicant argues that a summary of legal advice received, if prepared by the client or subsequent official, is privileged only to the extent that disclosing it would reveal the substance of the legal advice.[22]

[30] In reply, the Ministry argues that solicitor-client privilege is broader than what the applicant suggests. The Ministry argues that the privilege protects the entire continuum of communications between solicitor and client once the solicitor-client relationship is established, including the initial request for legal advice and any subsequent communications within that continuum.[23]

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[18] *Pritchard v Ontario (Human Rights Commissio*n), 2004 SCC 31 (CanLII), at para 15, citing *Solosky v The Queen*, 1979 CanLII 9 (SCC), at p. 837; Order F24-58, 2024 BCIPC 68 (CanLII) at para 16.
[19] *Blank v Canada (Minister of Justice)*, 2006 SCC 39 at para 37.
[20] Ministry's initial submission at paras 156 and 158.
[21] Ministry's initial submission at paras 159-160.
[22] Applicant's submission at para 22, with reference to para 160 of the Ministry's initial submission.
[23] Ministry's reply submission at paras 28-39.

Analysis and Findings, Legal Advice Privilege

[31] For the reasons, that follow, I find that the information withheld under s. 14 is subject to legal advice privilege.

[32] The LSB lawyer attests to having personally reviewed the information withheld under s. 14 and confirms that it is a summary of the advice he provided. The LSB lawyer also explains that the information cannot be further severed without disclosing or enabling accurate inferences of the legal advice.[24] After carefully considering this material, I am satisfied that there was a confidential communication between a solicitor and their client which entailed the seeking and giving of legal advice. Specifically, a LSB lawyer provided legal advice to their client about the FCA.

[33] However, I must still determine which entity was the client that received the LSB lawyer's advice. This is relevant because the s. 14 information appears in a "Cabinet Submission" which was prepared for Cabinet by Ministry and JSB employees rather than the LSB lawyer. Identifying the client will determine whether ministerial staff took the information outside the continuum of solicitor-client communications when they summarized and transmitted it to Cabinet in the "Cabinet Submission".

[34] The Ministry's evidence includes a detailed explanation of how Cabinet and ministerial employees consider, prepare and decide legislative initiatives like the FCA reforms at issue in this case,[25] including the conditions and circumstances under which LSB provides legal advice to JSB employees and Cabinet.[26] This evidence clarifies that a Cabinet minister participates throughout a legislative initiative's lifecycle, including the initial sponsoring of an initiative and ultimately deciding whether to act on any advice received. Importantly, this evidence also establishes that the relevant ministerial staff began their work on amending the FCA at the direction of Cabinet and understood that that "all of [their] work from the outset was undertaken for the purpose of informing a Cabinet Submission."[27]

[35] I accept the extensive affidavit evidence submitted by the Ministry and find the LSB lawyer's legal advice was fundamentally sought and acted upon by Cabinet with the JSB and the Ministry providing the practical, organizational support that Cabinet required to obtain, consider, and implement the legal advice. Consequently, I conclude that Cabinet was the client for whom the LSB

[24] Affidavit #1 of LSB Lawyer, at paras 5-9.
[25] Affidavit #1 of Executive Director, Civil and Criminal Policy and Legislation Division, JSB, at paras 67-77.
[26] Affidavit #1 of Executive Director, Civil and Criminal Policy and Legislation Division, JSB, at paras 40, 44.c., 51; Affidavit #1 of LSB Lawyer, at paras 6-7.
[27] Affidavit #1 of Executive Director, Civil and Criminal Policy and Legislation Division, JSB, at paras 28-32.

lawyer's advice was intended, and the ministerial staff's summary of it in the "Cabinet Submission" is, in effect, an internal communication about the advice.

[36] Past decisions have confirmed that internal memoranda of a client related to the legal advice received and the implications of it are communications that fall within the continuum of solicitor-client communications.[28] I make the same finding here.

Conclusion, s. 14

[37] Having met the requirements of legal advice privilege, I find that all of the information withheld under s. 14 is subject to solicitor-client privilege. Therefore, I confirm the Ministry's decision to withhold this information under s. 14.

[38] The Ministry simultaneously withholds the same s. 14 information under ss. 12(1) and 13(1). It is unnecessary for me to consider whether those provisions also require or permit the Ministry to withhold this information and I decline to do so; therefore, my analyses under ss. 12 and 13(1) below will not consider the information that the Ministry is authorized to withhold under s. 14.

Section 12(1) – Cabinet Confidences

[39] The Ministry argues that s. 12(1) requires it to withhold a variety of information from the disputed records. The Ministry applied s. 12(1) to all of the information that it withholds under s. 13(1), therefore, I will first determine whether s. 12(1) applies before turning to s. 13(1).

[40] Section 12(1) says that a public body must refuse to disclose to an applicant any information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

[41] The purpose of s. 12(1) is to widely protect the confidence of Cabinet communications,[29] because, "[t]hose charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny".[30]

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[28] *Bilfinger,* supra note #17 at para 24; *Huang v Silvercorp Metals Inc*., 2017 BCSC 795 (CanLII), at para 83.
[29] *Aquasource Ltd. v. British Columbia (Freedom of Information and Protection of Privacy Commissioner)*, 1998 CanLII 6444 (BC CA), [*Aquasource*] at para 41.
[30] *Babcock v Canada (Attorney General)*, 2002 SCC 57 at para 18.

[42] The Supreme Court of Canada provided the following clarifying comments with respect to Cabinet confidences:[31]

> In approaching assertions of Cabinet confidentiality, administrative decision makers such as the OIPC must pay attention not only to the vital importance of public access to government-held information but also to Cabinet secrecy's core purpose of enabling effective government, and its underlying rationales of efficiency, candour, and solidarity. They must also be attentive to the dynamic and fluid nature of executive decision making, the function of Cabinet itself and its individual members, the role of the Premier, and Cabinet's prerogative to determine when and how to announce its decisions.

[43] Past OIPC orders have established a two-stage approach to s. 12(1) that I will apply in this order. The first question is whether the information in dispute would reveal the substance of deliberations of Cabinet or any of its committees. If the answer is yes, then the second question is whether the information in dispute falls into any of the exceptions set out in s. 12(2).[32]

[44] In the context of s. 12(1), the term "substance of deliberations" refers to the body of information that Cabinet or any of its committees considered in making a decision, or that it would consider in the case of submissions not yet presented. To determine whether information reveals the substance of deliberations, the appropriate question is whether the information at issue forms the basis for Cabinet deliberations. Furthermore, the class of materials that would reveal the substance of deliberations extends to include material that enables accurate inferences about those deliberations.[33]

Parties' Positions, s. 12(1)

[45] The Ministry explains that the existence of the records has already revealed that Cabinet engaged in deliberations about changes to the FCA. However, the Ministry says that s. 12(1) nonetheless requires it to withhold the information that would, either directly or indirectly, reveal the substance of those deliberations.[34]

[46] Regarding the possible changes to the FCA, the Ministry provides a detailed summary of the many deliberative steps it took alongside the MAG and

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[31] *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 (CanLII), at para 61.
[32] Order F18-43, 2018 BCIPC 46 (CanLII) at paras 13-16; Order F24-73, 2024 BCIPC 83 (CanLII) at para 46.
[33] *Aquasource,* supra note #29 at paras 39 and 48; *British Columbia (Minister of Public Safety) v British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 345 (CanLII) at paras 69 and 70.
[34] Ministry's initial submission at para 93.

the relevant Cabinet Committees. It says this work generated the records from which information has been severed and which I am considering in this inquiry.

[47] In response, the applicant states that the Ministry has not shown that all of the withheld information satisfies the requirements of s. 12(1) and that the Ministry improperly applied the exceptions under s. 12(2). Specifically, the applicant points to the age of records and questions the Ministry's authority to withhold background explanations assembled to inform Cabinet as opposed to material that forms the substance of Cabinet's deliberations, options, and recommendations. The applicant asks that I review the withheld information with this distinction in mind.[35]

Analysis and Findings, s. 12(1)

[48] For the reasons that follow, I find that all of the information I am considering under s. 12(1) would, if disclosed, reveal the substance of Cabinet's deliberations.

[49] Beginning with the disputed records, I can see that the Ministry has severed any information that would reveal a proposed policy relating to the FCA and its possible amendment. Generally, this information raises, explains, discusses and outlines steps for implementing the proposed policy. Therefore, in order to determine whether s. 12(1) requires the Ministry to withhold the disputed information, I must consider whether this proposed policy and the procedural decisions required for its implementation form the substance of Cabinet's deliberations.

[50] The content of the disputed records satisfies me that the substance of Cabinet's deliberations was not limited to deciding whether to simply amend the FCA. Instead, the records show that Cabinet deliberated on the specific policy to be implemented by amending the FCA and the steps required to achieve that implementation. For example, the records contain information establishing Cabinet's direct involvement in proposing the policy and that Cabinet made procedural decisions to advance that policy towards adoption.

[51] The Ministry's affidavit evidence further supports the Ministry's position. In particular, the affidavit evidence of the Executive Director establishes that Cabinet deliberated about the viability and practical implementation of the proposed policy from the beginning of the legislative initiative process.[36] In addition, the Records Management Officer's affidavit evidence establishes that

[35] Applicant's submission at paras 11-14.
[36] Affidavit #1 of Executive Director, Civil and Criminal Policy and Legislation Division, JSB, MAG, at paras 28-49.

certain Cabinet Committees received and considered some of the disputed information for the purpose of their deliberations.[37]

[52] After carefully reviewing the Ministry's severing decisions, I confirm that the Ministry has only severed information that reveals the proposed policy that Cabinet deliberated upon. For instance, the Ministry withheld some questions from a draft survey which would enable accurate inferences about the proposed policy while the Ministry released other questions from the same survey which do not reveal that kind of information.[38]

[53] Taking the parties' submissions, evidence, and the principles discussed above into consideration, I conclude that disclosing any of the information I am considering under s. 12(1) would reveal the substance of Cabinet's deliberations.

Section 12(2) - Exceptions

[54] Having determined that all of the information withheld under s. 12(1) would reveal the substance of Cabinet deliberations if disclosed, I must now determine whether that information falls into any of the exceptions set out in s. 12(2). If so, then the Ministry is not required to withhold it under s. 12(1).

[55] Section 12(2) provides as follows:

> (2) Subsection (1) does not apply to
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> (a) information in a record that has been in existence for 15 or more years,
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> (b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or
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> (c) information in a record the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if
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> (i) the decision has been made public,
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> (ii) the decision has been implemented, or
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> (iii) 5 or more years have passed since the decision was made or considered.

[56] The Ministry says that none of the exceptions apply, whereas the applicant argues that the Ministry has not properly applied the exceptions under s. 12(2).[39]

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[37] Affidavit #1 of Records Management Officer, Cabinet Operations, Office of the Premier, at paras 9 and 10.
[38] The records, at pp 118 and 119.
[39] Ministry's initial submission at paras 80-91; Applicant's submission at paras 11 and 13.

[57] The records are dated and in some cases their contents enable me to determine when they were created. Based on my review of these indicia, I can see that none of the disputed records have been in existence for more than 15 years as of the date I am deciding this inquiry, therefore, I find that s. 12(2)(a) does not apply. I also have considered the nature of the disputed records and agree with the Ministry's position that none of them constitute a record of a decision made by Cabinet or its committees on an appeal under an Act, therefore, I find that s. 12(2)(b) does not apply.

[58] Turning to s. 12(2)(c), The Ministry acknowledges that the disputed information includes some background explanations or analyses. The Ministry says it provided this information to Cabinet Ministers who were unfamiliar with the FCA.[40]

[59] Additionally, the Ministry argues that due to the structure of s. 12, "background explanations and analysis" presumptively form part of or would disclose the substance of Cabinet's deliberations, unless the conditions of s. 12(2)(c) are met.[41] In this case, the Ministry says that it is unreasonable to sever the background explanations and analysis because they are interwoven with the substance of deliberations, therefore, disclosure would risk disclosing that substance and defeat the purpose of Cabinet confidentiality.[42]

[60] In response, the applicant argues that factual and analytical background material is outside the scope of s. 12(1) if it is severable from information about Cabinet's deliberations. The applicant submits that any withheld information of this nature must be assessed on a line-by-line basis rather than being withheld simply because it appears in the same record that contains advice to Cabinet.[43]

[61] As determined by past orders and court decisions, the term "background explanations" includes, at least, everything factual that Cabinet used to make a decision. "Analysis" includes discussion about the background explanations but not an analysis of policy options presented to Cabinet. However, "background explanations or analysis" under s. 12(2)(c) does not include any information of a factual nature that is interwoven with advice, recommendations or policy considerations.[44]

[62] Based on my own review of the records, I can see that a substantial amount of the background explanations and analysis withheld under s. 12(1) is

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[40] Ministry's initial submission at paras 96-116.
[41] Ministry's initial submission at paras 82-84.
[42] Ministry's initial submission at paras 87-91.
[43] Applicant's submission at paras 11-13, 19, 20, 24(a), and 24(b). The applicant argues that background facts and analyses are entirely excluded from the application of ss. 12(1) and s. 13(1). However, I determined that disclosing any of this information would reveal the substance of Cabinet's deliberations, therefore, I have also considered these arguments under s. 12(2)(c).
[44] Order F18-43, 2018 BCIPC 46 (CanLII), at para 16; *Aquasource*, *supra* note #29 at para 11.

closely interwoven with advice, policy options, and discrete recommendations to Cabinet. Therefore, for the purpose of s. 12(2)(c) analysis, I find that this information is not considered "background information or analysis" and it remains subject to s. 12(1).

[63] On the other hand, some of the withheld information includes facts and an analysis of those facts that is not interwoven with policy options or advice. This information is clearly intended to provide Cabinet with a basic understanding of the structure of the FCA, its history, and its significance to interested parties. The purpose of this information is also apparent from its content, being to support a particular Cabinet committee in considering making a decision. I find that this information falls within the meaning of "background explanations or analysis . . . for [Cabinet's] consideration in making a decision" for the purpose of s. 12(2)(c). Consequently, whether this information falls within the s. 12(2)(c) exception depends on whether any of the conditions under s. 12(2)(c) are met.

[64] The Ministry says that Cabinet made a decision about the matter the records deal with on October 26, 2022. Additionally, the Ministry states that there has been no public announcement of Cabinet's decision and the decision was never implemented.[45] I understand this to be an argument that the s. 12(2)(c)(i), (ii) and (ii) requirements are not met.

[65] The Ministry's *in-camera* affidavit evidence provides strong support for its position that conditions set out in s. 12(2)(c)(i), (ii) and (ii) conditions are not met.[46] Without revealing what Cabinet decided or the options it considered, I confirm that Cabinet did make a decision after considering the background explanations and analyses placed before it. I can also see that this decision was made on October 26, 2022, which is fewer than five years before the date I am deciding this inquiry. Finally, consistent with what the Ministry says, there is nothing in the material before me to establish that this decision was ever made public or implemented.

[66] For these reasons, I find that the conditions set out at ss. 12(2)(c)(i), (ii), and (iii) are all unmet so s. 12(2)(c) does not apply to the background explanations and analyses I am considering.

[67] I conclude that none of the exceptions under s. 12(2) apply to any of the information that I found would reveal the substance of Cabinet's deliberations. As a result, the Ministry must continue to withhold this information under s. 12(1).

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[45] Ministry's initial submission at para 108; Affidavit #1 Executive Director, Civil and Criminal Policy and Legislation Division, JSB, MAG, at paras 57-58.
[46] Affidavit #1 of Records Management Officer, Cabinet Operations, Office of the Premier, at paras 9 and 10, and Exhibit "A" (Exhibit "A" was received *in camera*).

Conclusion, s. 12(1)

[68] I determined that all the information I considered under s. 12(1) would, if disclosed, reveal the substance of deliberations by Cabinet and its committees. Furthermore, I determined that none of that information falls within the exceptions set out at s. 12(2). Consequently, I find that s. 12(1) applies and the Ministry must withhold that information under that provision.

Reasonable severing, s. 4(2)

[69] Under s. 4(2), the applicant's right of access to a record does not extend to information that is excepted from disclosure. However, if that information can reasonably be severed from a record, then the applicant has a right of access to the remainder of the record.

[70] The term "reasonably be severed" means that after the excepted information is removed from a record, the remaining information is both intelligible and responsive to the request. If the remainder of a severed record consists of disconnected words or snippets of sentences that cannot reasonably be considered intelligible, then the excepted information is not reasonable to sever under s. 4(2).[47]

[71] Based on my review of the records, I can see that the Ministry has severed on a line-by-line basis where possible. Where the Ministry has withheld entire pages under s. 12(1), it is apparent to me that any intelligible and responsive information on those pages would, if disclosed, either directly reveal the substance of Cabinet's deliberations or permit highly accurate inferences about it. Therefore, I find that the Ministry has reasonably severed the disputed information under s. 12(1).

Section 13 – Advice or Recommendations

[72] 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. 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.[48]

[73] The Ministry applies s. 13(1) to most of the information that I determined must be withheld under s. 12(1). However, the Ministry does not withhold any information under s. 13(1) alone.

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[47] Order 03-16, 2003 CanLII 49186, at paras 53 and 54; Order F24-40, 2024 BCIPC 48 (CanLII), at para 58.
[48] Order 01-15, 2001 CanLII 21569 at para 22.

[74] It is a fundamental principle governing the administration of justice that unnecessary orders will not be made.[49] I have already found that the Ministry is required under s. 12(1) or authorized under s. 14, to withhold all the information it is withholding under s. 13(1). It is unnecessary for me to determine whether s. 13(1) also applies to this information and for this reason I decline to do so.

CONCLUSION

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

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

2. I require the Ministry under s. 12(1), to withhold all of the information it withholds under s. 12(1) that the Ministry does not simultaneously withhold under s. 14.

October 21, 2026

ORIGINAL SIGNED BY

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Alexander R. Lonergan, Adjudicator

OIPC File No.: F25-00604

[49] *Clearview AI Inc. v Information and Privacy Commissioner for British Columbia*, 2024 BCSC 2311 (CanLII), at para 261.