Order F26-95

PROVINCIAL HEALTH SERVICES AUTHORITY

D. Hans Hwang
Adjudicator

October 30, 2026

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) asked the Provincial Health Services Authority (PHSA) for access to records related to a provincial public health order. PHSA withheld records under various sections of FIPPA. The adjudicator found PHSA was authorized to withhold all of the information it withheld under s. 14 (solicitor client privilege) and some of the information it withheld under s. 13(1) (advice or recommendations). The adjudicator ordered PHSA to provide the information it was not authorized to withhold to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss 13(1), 13(2)(a), 13(2)(m), 13(3) and 14.

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA) an individual (applicant) asked the Provincial Health Services Authority (PHSA) for access to records related to a public health order issued by the Provincial Public Health Officer (Health Officer).

[2] PHSA gave the applicant access to responsive records but withheld some information under ss. 13(1) (advice and recommendations), 14 (solicitor-client privilege) and 19(1) (harm to individual or public safety) of FIPPA.[1]

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review PHSA's decision to withhold information from the responsive records. The OIPC's mediation did not resolve the issues in dispute, and the matter proceeded to this inquiry.

[1] All section references are to FIPPA unless otherwise stated.

[4] Because the responsive records include communications between PHSA and the Health Employers Association of BC (HEABC), HEABC was invited to provide its position on disclosure of the records.[2] PHSA, the applicant and HEABC provided written submissions.

[5] In its inquiry submission PHSA says s. 19(1) is not disputed by the applicant,[3] and the applicant confirms that this section is not at issue in this inquiry.[4] Therefore, I will not further consider s. 19(1) in this order.

ISSUES AND BURDEN OF PROOF

[6] The issues I must decide in this inquiry are whether:

1. PHSA is authorized to refuse to disclose the information at issue under s. 13(1); and

2. PHSA is authorized to refuse to disclose the information at issue under s. 14.

[7] Under s. 57(1), PHSA has the burden to prove the applicant has no right of access to the information withheld under ss. 13(1) or 14.

DISCUSSION

Background

[8] PHSA is a provincial health authority responsible for coordinating and delivering specialized health care service on a province-wide basis and related services supporting the delivery of health care by other health authorities and organizations in British Columbia.

[9] 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*.[5] HEABC's role includes providing health sector employers with access to legal representation and legal advice concerning their labour and employment-related obligations.

[10] In 2021, the Health Officer issued an order requiring health care staff and regulated health professionals to be vaccinated against COVID-19 and prohibiting workers who were not vaccinated or medically exempted from working (Health Officer Order).

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[2] HEABC participated in the inquiry as an "appropriate person" pursuant to ss. 54(b) and 56(3).
[3] PHSA's Initial submission – Table of Records, Document 19.
[4] Applicant's response submission at paras 4 and 34.
[5] RSBC 1996, c 384.

[11] The applicant is a health care worker and asked PHSA for access to communications between PHSA and the office of the Health Officer regarding the Health Officer Order.

Records and Information at issue

[12] There are 265 pages of records responsive to the access request. They comprise emails and email attachments.[6] PHSA provided the disputed records it withheld solely under s. 13(1) for my review but it did not provide the records to which it applied s. 14.

Solicitor client privilege, s. 14

[13] 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.[7] In this case, the PHSA and HEABC are claiming legal advice privilege over the information withheld under s. 14.

Sufficiency of evidence in the absence of disputed records

[14] As noted above, PHSA did not provide the information it withheld under s. 14 for my review.

[15] Although s. 44(1) of FIPPA gives me the power to order PHSA to produce the disputed records for my review, I would only order production of records that are claimed to be privileged if absolutely necessary to decide the issues in dispute. This cautious approach recognizes that the confidentiality of solicitor client communications is essential to the proper functioning of the legal system and should only be set aside in the most unusual circumstances.[8] 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.[9] Even the courts will decline to review solicitor client documents when adjudicating claims of privilege unless there is evidence of the necessity to do so in order to fairly decide the case.[10]

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[6] The disputed records are described in the affidavits and tables PHSA and HEABC provided.
[7] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*], at paras 24-26.
[8] *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 [*Calgary*], at paras 34 and 40; *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 (CanLII) at para 9; *R v Fox*, 2026 SCC 4 (CanLII) [*Fox*] at para 40.
[9] *R v. McClure*, 2001 SCC 14 (CanLII), at para 2; *Fox* at para 40.
[10] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII) [*Minister of Finance*] at para 51.

[16] The applicant submits that I must review the records at issue to decide whether disclosure of them would reveal legal advice.[11]

[17] PHSA provides affidavits from two lawyers (Lawyer A and Lawyer B, collectively PHSA Lawyers) and a Manager, Information and Access (Manager). Also, HEABC provides affidavits from four lawyers (Lawyer 1, Lawyer 2, Lawyer 3 and Lawyer 4, collectively HEABC Lawyers).

[18] I have reviewed the affidavit evidence. I am satisfied that all affiants have reviewed the records in dispute and have insights into the context in which the records were created, and that as practicing lawyers, the PHSA Lawyers and the HEABC Lawyers are officers of the court with a duty to ensure that the privilege is properly claimed.[12] One of the HEABC Lawyers' evidence includes a table of communications (Table) which provides a description of each record and an explanation of the grounds on which privilege is claimed.[13]

[19] Based on the above, I find I have sufficient evidence to decide whether the records withheld under s. 14 are subject to solicitor-client privilege without ordering production of the records for my review.

Legal advice privilege

[20] Legal advice privilege applies to confidential communications between a solicitor and client for the purposes of obtaining and giving legal advice, opinion, or analysis.[14] 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."[15] As such, the privilege has been recognized as a fundamental legal right, essential to the integrity of the legal system.[16] Given its importance, the Supreme Court of Canada has said the privilege "should only be set aside in the most unusual circumstances."[17]

[21] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion or analysis.[18] Therefore, in order for information to be protected by legal advice privilege it must be:

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[11] Applicant's response submission at para 11.
[12] *Minister of Finance* at supra note 10 at para 51.
[13] Exhibit A – Table of HEABC Communications, Lawyer 2's affidavit #1.
[14] *College* at supra note 7 at para 26.
[15] *Calgary,* at supra note 8 at para 34.
[16] *R v McClure,* 2001 SCC 14, at para 17.
[17] *Calgary* at supra note 8 at para 34*,* citing *Pritchard v. Ontario (Human Rights Commission*, 2004 SCC 31 (CanLII) at para 17.
[18] *College*, at supra note 7 at para 31.

- a communication between solicitor and client (or their agent);
- that entails the seeking or providing of legal advice; and
- that is intended by the solicitor and client to be confidential.[19]

[22] 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.[20] 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.[21]

[23] 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.[22] 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.[23]

[24] The records PHSA has withheld under s. 14 are:

- Emails between HEABC lawyers and health authorities;
- Emails between PHSA Lawyers and PHSA staff; and
- Emails between PHSA staff, some of which have attachments.

[25] I discuss whether solicitor-client privilege applies to these records under the subheadings below.

Emails between HEABC lawyers and health authorities

[26] PHSA is withholding emails between HEABC Lawyers and health authorities. HEABC Lawyers depose that as legal counsel for HEABC, they provide legal advice to health sector employers such as provincial health authorities, including PHSA, and health organizations (collectively Health

[19] *Solosky v. The Queen*, [1980] 1 SCR 821 [*Solosky*] at p. 837; *R. v. B.*, 1995 CanLII 2007 (BC SC) at para 22.
[20] *British Columbia (Attorney General) v Lee*, 2017 BCCA 219, at paras 32-33.
[21] *Bilfinger Berger (Canada) Inc v Greater Vancouver Water District*, 2013 BCSC 1893, at paras 22-24.
[22] 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.
[23] *Minister of Finance* at supra note 10 at paras 110-111.

Authorities).[24] PHSA submits the Table supports that each record contains confidential commutations between solicitor and client for the purpose of providing legal advice.[25]

[27] The applicant submits that HEABC's evidence does not clearly state whether the role of its lawyers was to provide legal services or to act as an employer-association representative, negotiator, labour relations or policy coordinator.[26] The applicant also submits that PHSA and HEABC shared some of the communications they claim are privileged with several provincial health authorities, so privilege does not apply to these communications.[27]

[28] I find there was a solicitor-client relationship between HEABC Lawyers and PHSA. I am not persuaded by the applicant's argument that the role of the HEABC Lawyers was not clear. Based on my review of the affidavit evidence and the Table, it is clear to me that HEABC Lawyers were responsible for providing legal advice to PHSA at the material time. There is no evidence to suggest otherwise.

[29] I find that the emails from HEABC lawyers to the Health Authorities are privileged. I accept HEABC's evidence that HEABC Lawyers provided confidential legal advice in the emails to the Health Authorities including PHSA.[28] After considering the submissions and evidence, I find the Health Authorities and PHSA were joint clients of the HEABC Lawyers and legal advice that was provided to these clients is privileged. Also, there is no evidence to suggest that any of the Health Authorities, including the PHSA, waived privilege.

[30] In summary, I find these records contain confidential communications between a lawyer and their clients which entail the seeking or providing of legal advice. I find this information is subject to solicitor-client privilege and may be withheld under s. 14.[29]

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[24] Lawyer 1's affidavit #1 at para 3. Theses health sector employers include PHSA, Vancouver Coastal Health Authority, Fraser Health Authority, Interior Health Authority, Northern Health Authority, Vancouver Island, and Health Authority and Providence Health Care Society; Lawyer 2's affidavit #1 at para 5.
[25] Exhibit A to the affidavit of Lawyer 2.
[26] Applicant's submission at para 20.
[27] Applicant's submission at para 21.
[28] Lawyer 1's affidavit #1 at para 3; Lawyer 2's affidavit #1 at para 2; Lawyer 3's affidavit #1 at para 3; Lawyer 4's affidavit #1 at para 2. The HEABC members consist of PHSA, Vancouver Coastal Health Authority, Fraser Health Authority, Interior Health Authority, Northern Health Authority, Vancouver Island, and Health Authority and Providence Health Care Society.
[29] Pages 1-3 and 243-265 of the records

Emails between PHSA Lawyers and PHSA staff

[31] PHSA Lawyers depose that they provided legal advice to PHSA in connection with the Health Officer Order and their emails with PHSA staff contain this legal advice.[30]

[32] Based on PHSA Lawyers' evidence, I find that there was a solicitor-client relationship between PHSA Lawyers and the emails at issue are communications between PHSA Lawyers and PHSA. The Table supports that each email contains confidential communications between solicitor and client which entail the seeking or providing of legal advice and these emails were intended to be confidential.[31] I find all of these emails[32] are subject to solicitor-client privilege and may be withheld under s. 14.

Emails between PHSA staff and attachments

[33] PHSA also claims legal advice privilege over several emails between PHSA staff, some of which have attachments. For the reasons that follow, I find s. 14 applies to these records.

[34] As set out above, the scope of legal advice privilege extends beyond the actual requesting or giving of legal advice and includes the "continuum of communications" related to the legal advice,[33] and the continuum of communications includes internal client communications about legal advice and its implications.[34]

[35] The Manager deposes that in the emails amongst PHSA staff, they shared and discussed legal advice received from HEABC Lawyers and PHSA Lawyers[35] and PHSA had no intention of waiving privilege over these communications.[36] I accept this evidence and find that these records are internal client communications that, if disclosed, would reveal privileged information.

[36] Some of these emails contain attachments provided by the lawyers.[37] The applicant argues that an attachment is not automatically privileged simply because it was attached to a privileged communication.[38] The applicant is correct. However, in this case, Lawyer 1 deposes he prepared a memorandum

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[30] Lawyer A's affidavit 1 at paras 4 and 6; Lawyer B's affidavit 1 at paras 5-6.
[31] Exhibit A to the affidavit of Lawyer 2.
[32] Pages 92-98, 99-113, 137-148, 224-225 and 226-234 of the records.
[33] *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority,* 2011 BCSC 88 at paras 42-47.
[34] Order F21-52, 2021 BCIPC 60 (CanLII) at paras 24-30.
[35] Manager's affidavit #1 at para 8.
[36] Manager's affidavit #1 at para 11.
[37] Pages 9-19, 47-60 and 61-66 of the records.
[38] Applicant's submission at para 22.

that outlines legal advice to the Health Authorities, and that memorandum was attached to some of the PHSA internal emails.[39] I find the HEABC's evidence sufficiently demonstrates that the attachments comprise HEABC Lawyers' legal advice to PHSA, and disclosure would directly reveal or allow third parties to infer the nature of the legal advice.[40]

[37] I am satisfied that the internal emails of PHSA staff and attachments to those emails contain confidential communications between a lawyer and their client that entail the seeking or providing of legal advice.[41] I find this information is subject to solicitor-client privilege and may be withheld under s. 14.

Reasonable severing of privileged records, s. 4(2)

[38] Section 4(2) provides that if excepted information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

[39] The applicant argues that PHSA must disclose any reasonably severable information that is not protected by s. 14.[42] PHSA and HEABC submit that all of the disputed records comprise privileged communications, and there are no non-privileged materials that can be severed and disclosed without disclosing or creating a risk of disclosing privileged information.[43]

[40] In *College of Physicians of BC v British Columbia (Information and Privacy Commissione*r) (*College*), the BC Court of Appeal said that where part of a record is privileged and a separate part is not privileged, s. 4(2) may be applied to sever the privileged information and release the remainder.[44] However, the Court said this in the context of a document that had two discrete parts that it found were not intertwined: 1) a summary of information and opinions provided by a third party expert, and 2) a lawyer's comments concerning that information. Further, the courts have subsequently urged caution and said that severance of records containing privileged information under s. 4(2) should only be considered when it can be accomplished without any risk that the privileged legal advice will be revealed or be capable of being ascertained.[45]

[41] In this case, based on PHSA and HEABC's evidence about the nature, content, and context of the records, I do not think the records can reasonably be severed under s. 4(2) in order to disclose parts of them to the applicant. It is not

[39] Pages 62-66, 165-169 and 265 of the records. Lawyer 1's affidavit #1 at paras 5-7.
[40] Exhibit A – Table of Communication, Lawyer 2's affidavit #1.
[41] Pages 9-19, 20-23, 24-46, 47-60, 61-66, 67-74, 111-113, 114-117 and 164-169 of the records.
[42] Applicant's submission at paras 10 and 14.
[43] PHSA's reply at para 14; HEABC's reply at para 14, and the court cases cited there.
[44] *College* at supra note 7 at paras 60- 68. Ultimately, the BCCA found s. 14 applied to only one part of the records.
[45] *British Colombia (Attorney General) v. Lee*, 2017 BCCA 219 at para 40.

clear to me that any of the records contain discrete parts that are not intertwined, as was the case in *College*. In my view, there is a real risk that even if only parts of the records are disclosed, it could reveal information that is subject to solicitor client privilege by allowing the applicant to infer the nature and extent of the legal advice provided to PHSA. Further, the Supreme Court of Canada has said that once established, solicitor client privilege is "considerably broad and all-encompassing"[46] and it applies "to all communications made within the framework of the solicitor-client relationship".[47] Having considered those principles, I am not satisfied any part of the disputed records can be disclosed without a real risk of revealing information that is subject to solicitor client privilege.

Summary, s. 14

[42] In summary, I find that the emails and attachments withheld under s. 14 are protected by legal advice privilege because they are confidential communications between solicitor and client that entail the seeking or providing of legal advice. I also find that the privileged information in the records cannot be reasonably severed under s. 4(2).

[43] PHSA also applies s. 13(1) to information that I found protected under solicitor-client privilege. Given I have found s. 14 applies to this information, it is unnecessary for me to consider whether s. 13(1) also applies to the same information, and I decline to do so.

[44] PHSA applies s. 13(1) to information that was not claimed to be authorized to withhold under s. 14. I will consider whether s. 13(1) applies to this information below.

Advice or recommendations, s. 13

[45] Section 13 allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body. The purpose of s. 13 is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.[48] The relevant parts of that section read as follows:

> 13 (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

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[46] *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para 16.
[47] *Descoteaux et al. v. Mierzwinski*, 1982 CanLII 22 (SCC) at p. 893; cited with approval in *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 (CanLII) at para 32.
[48] *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at para 52.

> (2) The head of a public body must not refuse to disclose under subsection (1)
>
> (a) any factual material,
>
> ...
>
> (m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or
>
> ...
>
> (3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

[46] Previous OIPC orders recognize that s. 13(1) 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."[49]

[47] The analysis under s. 13(1) involves two stages. To determine whether s. 13(1) applies, I must first decide if disclosure of the withheld information would reveal advice or recommendations developed by or for a public body or minister. If so, then the next step is to determine whether any of the categories or circumstances listed in ss. 13(2) or 13(3) apply to that information.

[48] Subsections 13(2) and 13(3) identify certain types of records and information that may not be withheld under s. 13(1), such as factual material under s. 13(2)(a) and information in a record that has been in existence for 10 or more years under s. 13(3). If the information falls under a s. 13(2) category or s. 13(3) applies, then the public body must not refuse to disclose that information under s. 13(1).

Would disclosure reveal advice of recommendations?

[49] As noted, to determine whether s. 13(1) applies, I must first decide if disclosure of the information at issue would reveal advice or recommendations developed by or for a public body or minister.

[50] The term "recommendations" includes material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be express or inferred.[50] The term "advice", however, has a distinct and broader meaning than the term "recommendations."[51] "Advice" usually involves a communication, by an individual whose advice has been sought, to the recipient of the advice, as to which courses of action are preferred

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[49] For example, Order 01-15, 2001 CanLII 21569 at para 22.
[50] *John Doe v. Ontario (Finance)*, 2014 SCC 36 at paras 23-24
[51] *Ibid* at para 24.

or desirable.[52] The BC Court of Appeal has also found that the term "advice" under s. 13(1) includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision for future action.[53]

Parties' submission

[51] PHSA describes the information that it withheld under s. 13(1) as policy advice and recommendations developed by PHSA in responding to the Health Officer Order and related laws. PHSA submits that the advice and recommendations include identification of issues, interpretations of the Health Officer Order, recommendation of actions to be taken and draft documents and editorial comments making suggestions.[54]

[52] HEABC submits that the information at issue includes its advice to PHSA on the interpretation and requirements of the Health Officer Order and advice and recommendations concerning various issues involving the Health Officer Order.[55]

[53] The applicant submits PHSA inappropriately applied s. 13(1) to the records at issue. The applicant concedes that PHSA may be authorized to withhold some guidance and interpretations about the Health Officer Order but says PHSA has not demonstrated that such information cannot reasonably be severed so the factual, neutral, or operative information can be disclosed.[56] The applicant also submits that draft documents may not be automatically withheld.[57]

Analysis and findings on advice or recommendations

[54] For the reasons that follow, I find that disclosing some of the information withheld under s. 13(1) would reveal advice or recommendations developed by and for PHSA.

[55] The records PHSA is withholding under s. 13(1) are:

- Emails between PHSA staff; and
- Documents attached to the emails.

[56] I find that a small amount of the information withheld from the emails consists of advice prepared by PHSA staff about what PHSA must consider in

[52] Order 01-15, 2001 CanLII 21569 at para 22.
[53] *College* at supra note 7 at para 113.
[54] PHSA's initial submission at para 51.
[55] HEABC's initial submission at paras 53-54.
[56] Applicant's submission at paras 9-10 and 26.
[57] Applicant's submission at para 28.

interpreting the Health Officer Order and what PHSA's notice to employees must state.[58] I find that the disclosure of this information would reveal advice prepared for PHSA.[59]

[57] However, I find that the disclosure of the rest of the information withheld in the emails would not reveal any advice or recommendations. For example, PHSA withheld portions of the emails which only state the description of attachments.[60] It also withheld entire emails which state what steps had been taken, the next steps to take and exchange of greetings, and the email header and the signature block of the email sender.[61] I cannot see, and PHSA and HEABC do not adequately explain, how this information would reveal advice or recommendations. Therefore, I find s. 13(1) does not apply to this information.

[58] Turning to the documents attached to the emails, I find there are two types of attachments. They are six sets of draft letter templates[62] and two sets of information updates prepared by HEABC (Information Updates).[63]

[59] The draft letter templates were attached to emails between PHSA staff. I find that these letters outline the required next step for employees who have not been fully vaccinated and managers who have unvaccinated employees in their teams.

[60] I find that, in some cases, there are comments in the margins about possible changes to the draft. I find that these comments consist of a reviewer's editorial advice and recommendations about what to consider and draft wording suggestions. I am satisfied that disclosure of this information would directly reveal advice and recommendations made by and for PHSA staff while they were preparing the letters.[64]

[61] However, it is not apparent to me that disclosing the remaining information withheld in the letter templates would reveal advice and recommendations. For instance, I cannot see how the conditions to be followed by healthcare workers according to the Health Officer Order and the required actions for the managers would reveal, or allow for accurate inference about, advice or recommendations. I find that the letter templates are written in a very neutral, instructional or factual manner. There is no accompanying analysis, weighing of the facts, or suggestions for the decision maker to follow. I find the information discussed in

[58] Pages 75, 152-153 of the records.
[59] Pages 149-150, 151-153, 213-214 and 235 of the records.
[60] Page 81 of the records.
[61] Pages 149-150 and 151-153 of the records.
[62] Pages 155-161 and 237-242 of the records.
[63] Pages 83-84, 120-136 (duplicate on pages 171-187), 197 (portions of the contents of October 4, 2021 Information Update, discussed in an email), 201-208 (duplicate on pages 216-223) of the records.
[64] Pages 155, 158 and 159 of the records.

the letter templates could be released without revealing advice or recommendations.

[62] I also find that the information withheld in the Information Updates does not consist of advice or recommendations. PHSA is withholding two sets of the Information Update and each of them was distinct from another.[65] I find that HEABC prepared the Information Updates and distributed them to the Health Authorities for the purpose of providing direction or instruction concerning the Health Officer Order and the COVID-19 vaccination requirements.

[63] Past OIPC orders have established that for something to be advice or recommendations under s. 13(1), a decision maker must be free not to follow the advice and recommendations created to inform their decision-making.[66] As well, past OIPC orders have found that s. 13(1) does not apply to directions or instructions because they do not relate to a public body's deliberative decision-making or policy-making processes but instead communicate a public body's settled policy or position about how to approach an issue or make a decision.[67] I find that same reasoning applies here and the information withheld in the Information Updates does not reveal advice and recommendations.

[64] In conclusion, I find that only some of the information withheld in the emails and attachments reveals advice or recommendations within the meaning of s. 13(1). PHSA is not authorized under s. 13(1) to withhold any of the information that I found above would not reveal advice or recommendations if disclosed.

Do any of the exceptions in 13(2) and 13(3) apply?

[65] Based on the foregoing, I will now move on to consider whether any of the subsections of ss. 13(2) and 13(3) apply to the information I found above would reveal advice or recommendations.

[66] PHSA and HEABC say none of the information PHSA withheld under s. 13(1) comes within any of the categories set out in ss. 13(2) and 13(3). The applicant says that the withheld information contains factual material, final or operative policy, an instruction, or information cited as the basis for a decision, which raises ss. 13(2)(a) and 13(2)(m).

[67] Section 13(2)(a) provides that the head of a public body must not refuse to disclose any "factual material" under s. 13(1).

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[65] Two documents were issued on October 4, 2021 and October 15, 2021 respectively, and each has a different document number.
[66] For example, Order F15-49, 2015 BCIPC 52 (CanLII) at para 43
[67] For example, Order F26-06, 2026 BCIPC 8 (CanLII) at para. 36 and Order F15-49, 2015 BCIPC 52 (CanLII) at paras 45-46.

[68] The term "factual material" in s. 13(2)(a) is distinct from factual information. Factual material has an independent prior existence. In contrast, if factual information is compiled from source materials by experts, which then becomes integral to the analysis or views expressed in the record, it is not factual material within the meaning of s. 13(2)(a).[68] Thus, for s. 13(2)(a) to apply, the information must be purely factual material that is not intertwined with the advice or recommendations.[69] In this case, I find that the information which I found would reveal advice is not factual material. To the extent that information contains facts, the facts are intermingled with and an integral part of the analysis, opinion, and advice and cannot be separated out. Therefore, I find that s. 13(2)(a) does not apply.

[69] Section 13(2)(m) says that the head of a public body must not refuse to disclose under s. 13(1) "information that the head of the public body has cited publicly as the reason for making a decision or formulating a policy."

[70] I have reviewed the information withheld under s. 13(1) and I see no evidence that the withheld information has been cited publicly as the basis for any decision or policy. For these reasons, I find that s. 13(2)(m) does not apply.

[71] Here, neither party argues that any of the records containing information the public body has withheld under s. 13(1) has been in existence for 10 or more years and after reviewing those records I agree. Therefore, I find that s. 13(3) does not apply to any of the information in dispute under s. 13(1).

Conclusion, s. 13(1)

[72] I found that the disclosure of some, but not all, of the information PHSA has withheld under s. 13(1) would reveal advice or recommendations developed by or for PHSA. I also found that ss. 13(2) and 13(3) do not apply to any of that information. Taking all of this together, I find that the PHSA is authorized under s. 13(1) to withhold the information I found would reveal advice or recommendations if disclosed.

CONCLUSION

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

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[68] Order F18-41, 2018 BCIPC 44 (CanLII) at para 34 citing *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at paras 93-94 and *Insurance Corporation of British Columbia v Automotive Retailers Association,* 2013 BCSC 2025 at para 52.

[69] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at paras 91-94.

1. I confirm PHSA's decision to refuse the applicant access to all of the information in the disputed records under s. 14 of FIPPA.

2. I confirm that PHSA is authorized by s. 13(1) to withhold the information I have highlighted in blue on pages 75, 149-153, 155, 158, 159, 196, 198, 213, 214 and 235 in a copy of the records delivered to the PHSA alongside this order. PHSA is required to disclose the rest of the information it withheld under s. 13(1) to the applicant.

3. I require PHSA to copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the information it disclosed to the applicant in compliance with item 2 above.

[74] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by December 14, 2026.

October 30, 2026

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F23-93994