Order F19-48

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCES AND RURAL DEVELOPMENT

Lisa Siew
Adjudicator

December 19, 2019

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Summary: The applicant requested access to records related to the Water Management Branch of the Ministry of Forests, Lands, Natural Resources and Rural Development (Ministry). The Ministry disclosed some information to the applicant, but it withheld information relying on several exceptions to disclosure under the *Freedom of Information and Protection of Privacy Act*. The adjudicator confirmed the Ministry's decision to withhold information under s. 14 (solicitor client privilege). The adjudicator also determined the Ministry was authorized or required to withhold some information under ss. 13(1) (advice or recommendations) and 22(1) (unreasonable invasion of third party personal privacy), but ordered the Ministry to disclose the remaining information withheld under these sections to the applicant. Lastly, the adjudicator ordered the Ministry to reconsider its decision to withhold information under s. 13(1) because it provided no evidence that it had properly exercised its discretion under s. 13(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13, 14 and 22. *Water Utility Act*, RSBC 1996, c 485, s. 1.

INTRODUCTION

[1] The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for access to certain Ministry of Forests, Land, Natural Resources and Rural Development (Ministry) records. The applicant specifically requested a number of records related to the Ministry's Water Management Branch, including communications involving the Deputy Comptroller of Water Rights (Comptroller), a named company (the Company) and several named Branch employees.

[2] The Ministry disclosed some information to the applicant, but it withheld information under ss. 13 (advice and recommendations), 14 (solicitor client privilege), 15 (harm to law enforcement) and 22 (unreasonable invasion of third

party privacy) of FIPPA. The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. During mediation, an individual third party consented to the release of her personal information; therefore, the Ministry disclosed additional information to the applicant. Mediation failed to resolve the remaining issues in dispute and the applicant requested that the matters proceed to inquiry.

[3] During the inquiry, the Ministry withdrew its reliance on s. 15 and provided those records to the applicant. However, the Ministry continued to withhold information under ss. 13, 14 and 22.[1]

PRELIMINARY MATTERS

Section 3

[4] As part of its submission, the Ministry provided a table that lists all the records responsive to the applicant's access request and the FIPPA exception applied to withhold all or part of a record. The table indicates that the Ministry relied on s. 3 to withhold a one-page record.[2] I also note that s. 3 is marked on the record itself. Section 3 was not identified in the OIPC fact report or the notice of inquiry as an issue for this inquiry. The Ministry's submissions and evidence also do not address s. 3.

[5] The applicant submits that the Ministry should not be allowed to rely on s. 3 to withhold any records because the Ministry's "initial submission is completely silent with respect to s. 3."[3]

[6] Section 3(1) of FIPPA identifies several categories of records that are excluded from the scope of FIPPA. Section 3(1) provides that FIPPA applies to all records in the custody or under the control of a public body other than the classes of records described in ss. 3(1)(a) to (k). A public body bears the burden of establishing that the records are excluded from the scope of FIPPA.[4]

[7] The Ministry provided no evidence or argument to support its s. 3(1) claim nor does it address the applicant's arguments. The Ministry also does not identify what specific provision under s. 3(1) it believes applies here. Based on my own review of the disputed record, it is not obvious that this record qualifies as a section 3(1) record that should be excluded from the scope of FIPPA. The

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[1] The Ministry initially withheld some information under both ss. 13 and 14; however, during the inquiry, it informed the applicant that it would no longer be relying on s. 13 where it also applied s. 14.
[2] Located on page 402 of the records.
[3] Applicant's submission at p. 5.
[4] Order F13-23, 2013 BCIPC 30 at para. 10.

Ministry did not apply any FIPPA exclusions to this record. Therefore, I conclude the Ministry may not withhold this record from the applicant.

Applicant's request to add other issues

[8] During the inquiry process, the applicant requested the following matters be added to this inquiry: the adequacy of the Ministry's search for records and the fee assessment for her access request. The OIPC's registrar of inquiries declined to add these two matters into this inquiry and informed the applicant that these matters would be handled as a separate OIPC complaint file. Therefore, I will not consider these two matters as part of this inquiry.

ISSUES

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

1. Is the Ministry authorized to withhold the information in dispute under ss. 13 or 14?

2. Is the Ministry required to withhold the information in dispute under s. 22?

[10] Under s. 57(1), the burden is on the Ministry to prove the applicant has no right of access to all or part of the records in dispute under ss. 13 or 14.

[11] Based on the parties' submissions, there appears to be some confusion about the burden of proof under s. 22. To be clear, at an inquiry, where access to personal information about a third party has been refused under s. 22, section 57(2) places the burden on the applicant to prove that disclosure of the information would not be an unreasonable invasion of a third party's personal privacy. However, a public body has the initial burden of proving that the information at issue is personal information under s. 22.[5]

DISCUSSION

Background

[12] The Office of the Comptroller of Water Rights is part of the Water Management Branch (the Branch). With the assistance of the Branch's Utility Regulation Section, the Comptroller is responsible for the regulation of privately owned water utilities in BC. A water utility is defined under the *Water Utility Act* as a person or business who owns or operates equipment or facilities in BC for the delivery of domestic water service to five or more persons or to a corporation for compensation.[6]

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[5] Order 03-41, 2003 CanLII 49220 at paras. 9–11.
[6] Section 1 of *Water Utility Act*, RSBC 1996, c 485.

[13] The Comptroller's duties include considering applications by a proposed utility to operate a water system. If the application is successful, the Comptroller issues a "Certificate of Public Convenience and Necessity" (Certificate) that authorizes a utility to construct, operate and provide water service to customers within a specified area.[7] The Comptroller also has the power to exempt a water utility from all or some of the provisions of the *Water Utility Act* and the *Utilities Commission Act*.[8]

[14] The Company applied to the Comptroller for approval to operate a water system that would serve a number of strata lots.[9] Normally, a Certificate is needed prior to the construction and occupancy of any residential units. However, the water system had already been built and was operating and providing domestic water for a number of years before the company's application.[10] During this time, some residents expressed concerns to the Comptroller and other Ministry employees about the quality of the system's construction, the operation of the water system and the inadequate supply of water.[11]

[15] After a series of events and disputes spanning several years, the Comptroller was asked to determine the following matters: (1) whether or not the Company was a water utility; (2) if so, whether the Company should be exempted and under what conditions; and (3) the disconnection of water service to two residential customers.

[16] The Comptroller determined that the Company was a water utility as defined in the *Water Utility Act*.[12] He also decided that the Company should be exempted from part 3 of the *Utilities Commission Act* provided certain conditions were met. The Comptroller requested further information from the Company to fully determine the remaining matters. The Comptroller then issued a subsequent decision regarding the remaining matters. He also refused a request to reconsider his earlier decision.[13]

[17] Through her access request, the applicant seeks to understand what materials the Comptroller relied on to make his decisions, including the denial of the reconsideration request.

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[7] Page 3 of Exhibit "I" in applicant's submission.
[8] *Ibid* at p. 4.
[9] The company changed its name a number of times over the years, but for the purposes of this inquiry, I will refer to the company as "the company."
[10] Page 3 of Exhibit "I" in applicant's submission.
[11] *Ibid*.
[12] A copy of the Comptroller's decision was provided in the secretary to the Comptroller's affidavit at Exhibit "A."
[13] The Comptroller's reconsideration decision is found at pp. 4-7 of the records.

Records in dispute

[18] The Ministry is withholding information from approximately 280 out of 630 pages of records. The records at issue consist of emails, along with some attachments, and other documents such as letters and the Company's billing records for a specific period of time.

Section 13 - Advice or Recommendations

[19] Section 13(1) authorizes a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister. 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."[14]

[20] 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. Numerous orders and court decisions have considered the interpretation and meaning of "advice" and "recommendations" under s. 13(1) and similar exceptions in the freedom of information legislation of other Canadian jurisdictions.[15]

[21] I adopt the principles identified in those cases for the purposes of this inquiry and have considered them in determining whether s. 13(1) applies to the information at issue. I note, in particular, the following principles from some of those decisions:

- A public body is authorized to refuse access to information under s. 13(1), not only when the information itself directly reveals advice or recommendations, but also when disclosure of the information would enable an individual to draw accurate inferences about any advice or recommendations.[16]

- Recommendations include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be expressed or inferred.[17]

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[14] Order 01-15, 2001 CanLII 21569 at para. 22.
[15] For example: *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665; Order 02-38, 2002 CanLII 42472; Order F17-19, 2017 BCIPC 20; Review Report 18-02, 2018 NSOIPC 2 at para. 14.
[16] Order 02-38, 2002 CanLII 42472 at para. 135; Order F17-19, 2017 BCIPC 20 at para. 19.
[17] *John Doe v. Ontario (Finance)*, 2014 SCC 36 at paras. 23-24.

- "Advice" has a distinct and broader meaning than the term "recommendations."[18] Advice can consist of an opinion that involves exercising judgement and skill to weigh the significance of matters of fact, including expert opinion on matters of fact on which a public body must make a decision for future action.[19]

- Section 13(1) extends to factual or background information that is a necessary and integrated part of the advice.[20] This includes factual information compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.[21]

[22] If I find s. 13(1) applies, I will then consider whether the information falls into any of the categories listed in ss. 13(2) or (3). Sections 13(2) and (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).

The parties' position on s. 13

[23] The Ministry is relying on s. 13(1) to withhold information from two individual emails located on pages 336 and 490 of the records. Both emails are from the same Ministry employee to the Comptroller. The Ministry submits that, "based on the purpose and function of s. 13," it is authorized to withhold the information at issue "in order to support free and frank discussion, advice and deliberation by government officials."[22] The Ministry also claims that none of the exceptions under ss. 13(2) and (3) apply to the withheld information.

[24] The applicant claims the Ministry failed to provide evidence as to how the withheld information fits under s. 13(1) as policy advice or recommendations. However, in the event s. 13(1) is found to apply, the applicant alleges the Ministry failed to properly exercise its discretion under s. 13(1) by not taking into account all relevant considerations.

Analysis and findings on s. 13(1)

[25] I agree with the applicant that the Ministry does not explain how the information at issue qualifies as advice or recommendations under s. 13(1). The

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[18] *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 24.
[19] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 at para. 113.
[20] *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at paras. 52-53.
[21] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para. 94.
[22] Ministry's initial submission at para. 26.

Ministry cites a number of orders and court decisions that speak generally about the purpose and application of s. 13. The Ministry does not explain how those decisions relate to the specific information at issue and why it qualifies as advice or recommendations under s. 13(1).

[26] However, based on my review of the information in dispute under s. 13(1), I find that all of the information withheld from the email located on page 336 and the last sentence of the email located on page 490 of the records is advice or recommendations from a Ministry employee to the Comptroller about some matters. I have also considered s. 13(2) and find that none of the exceptions in s. 13(2) apply to this information.

[27] The remaining information withheld in the email on page 490 is a Ministry employee's thoughts about a matter and a reporting of some factual information to the Comptroller. I do not see how this information would reveal any advice or recommendations and the Ministry provided no affidavit evidence that explains how this information qualifies as advice or recommendations. Therefore, given the insufficiency of the Ministry's argument and evidence, I am not satisfied that the disclosure of the remaining information withheld in this email would reveal advice or recommendations developed by or for a public body.

Exercise of discretion under s. 13(1)

[28] Having found s. 13(1) applies to some of the withheld information, I will now address the applicant's submission that the Ministry failed to properly exercise its discretion when it decided to refuse her access to this information.

[29] Section 13 is a discretionary exclusion to access under FIPPA and a public body must exercise that discretion in deciding whether to refuse access to information, and upon proper considerations.[23] The public body must establish that they have considered, in all the circumstances, whether information should be released even though the discretionary exception applies.[24] Previous OIPC orders have stated that when exercising discretion to refuse access under s. 13(1), a public body typically should consider relevant factors such as the age of the record, its past practice in releasing similar records and the nature and sensitivity of the record.[25]

[30] If a public body has failed to exercise discretion, the Commissioner can require it to do so. The Commissioner can also order the public body to reconsider the exercise of discretion where "the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant

[23] Order 02-50, 2002 CanLII 42486 (BC IPC) at para. 144.
[24] Order No. 325-1999, October 12, 1999, [1999] BCIPCD No. 38 at p. 4.
[25] For example, see Order F07-17, 2007 CanLII 35478 at paras. 41-43, and Order F14-17, 2014 BCIPC 20 (CanLII) at para. 52.

considerations; or, the decision failed to take into account relevant considerations."[26]

The parties' position on exercise of discretion

[31] The applicant alleges the Ministry failed to properly exercise its discretion under s. 13(1). She says the Ministry does not identify what factors it considered in exercising its discretion to deny access or provide evidence that it did not consider any irrelevant considerations and took into account all relevant considerations. For a number of reasons, the applicant alleges the Ministry was biased against her in processing the access request, which she says would be an irrelevant consideration. She also claims the Ministry should have, but did not take into account the purpose of FIPPA which is to make public bodies more accountable.

[32] The Ministry did not discuss or provide any submissions on its exercise of discretion under s. 13(1). During the inquiry process, I gave the Ministry a further opportunity to provide a submission on this issue. The Ministry responded by essentially arguing that it was not required to explain or provide reasons for why it applied s. 13(1) to the records because it is clear from the records that s. 13(1) applies. It said "the very content of the records demonstrate why the Ministry would apply s. 13(1) and sever the content excluded."[27] It also said, "The purpose for the severing of the records under s. 13(1) relates directly to advice and recommendations of the public body, and have been severed for the reasons that relate to the purpose of the s. 13(1) exception."[28]

Analysis and findings on exercise of discretion under s. 13(1)

[33] The Ministry did not explain if it exercised its discretion once it determined that s. 13(1) applied, much less what factors it may have considered when exercising that discretion.[29] Based on what it does say in its submissions, I am not satisfied that the Ministry even turned its mind to consider that it had discretion under s. 13(1). Therefore, I find the Ministry has not established that it properly exercised its discretion when making its decision to withhold information from the applicant under s. 13(1).

[34] As noted, the Commissioner may return the matter to the public body for reconsideration where the public body has failed to exercise its discretion or there is no evidence that the public body took into account relevant

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[26] *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 52; Also Order 02-50, 2002 CanLII 42486 (BC IPC) at para. 144 and Order 02-38, 2002 CanLII 42472 (BCIPC) at para. 147.
[27] Ministry's letter dated November 29, 2019 at p. 2.
[28] Ministry's letter dated November 29, 2019.
[29] See Order 02-38, 2002 CanLII 42472 at para. 149, for a full list of non-exhaustive factors that a public body may consider in exercising its discretion.

considerations. In the absence of any such evidence, it is appropriate in this case for me to order the Ministry's head to reconsider his or her decision to refuse to disclose the information covered by s. 13(1) on pages 336 and 490 of the records.[30]

Section 14 – solicitor client privilege

[35] Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor client privilege. The courts have determined that s. 14 encompasses legal advice privilege and litigation privilege.[31] The Ministry claims legal advice privilege over the information it has withheld in the disputed records.

[36] Legal advice privilege applies to confidential communications between solicitor and client for the purposes of obtaining and giving legal advice.[32] The courts and previous OIPC orders accept the following test for determining whether legal advice privilege applies:

1. there must be a communication, whether oral or written;
2. the communication must be of a confidential character;
3. the communication must be between a client (or his agent) and a legal advisor; and
4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

If these four conditions are satisfied then the communications (and papers relating to it) are privileged.[33]

[37] The Ministry also affirmed and applied this test in its submissions and evidence.[34]

Ministry's position on s. 14

[38] The Ministry submits that all of the records withheld under s. 14 contain confidential communications between the Ministry and a solicitor who provides

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[30] For a similar conclusion, see Order 04-37, 2004 CanLII 49200 at para. 23 and Order F05-13, 2005 CanLII 11964 at para. 28.
[31] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para. 26
[32] *College* at paras. 26-31.
[33] *R v. B*, 1995 CanLII 2007 (BC SC) at para. 22 and *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 838. See also *Festing v. Canada (Attorney General)*, 2001 BCCA 612 at para. 92 and Order F17-43, 2017 BCIPC 47 at paras. 38-39.
[34] Ministry's initial submission at paras. 38-42.

legal services to the Water Management Branch. It says these communications, some of which include attachments, "all are with respect to [the Company] and relate to the purpose of seeking, formulating or giving legal advice."[35]

[39] The Ministry chose not to provide the information that is in dispute under s. 14 for my review. Instead, it provided an affidavit from a Ministry of Attorney General, Legal Services Branch (LSB) lawyer. The lawyer's affidavit includes a table which provides a brief description of the records withheld under s. 14, including the dates and names of the people involved in the email communications. The Ministry says the information and records withheld under s. 14 were reviewed by the LSB lawyer and she was the one who provided the legal advice.

[40] The lawyer deposes that she has personal knowledge of the s. 14 records in her capacity as legal counsel for the Resource, Environmental and Land Law Group. She confirms that she has reviewed all the records withheld under s. 14 and they contain confidential communications between Ministry employees and her. She says these emails are about the company named in the applicant's access request and relate to the seeking, formulating or giving of legal advice to Ministry employees. She notes that some of the emails includes attachments that are part of confidential communications related to the seeking, formulating or giving of legal advice.

Applicant's position on s. 14

[41] The applicant claims the Ministry's description of the records in the records table fails to satisfy the test for legal advice privilege. The applicant says the Ministry has not demonstrated that the communications were clearly of a confidential character as none of the descriptions refer to confidentiality and there was no evidence of that fact included with the Ministry's initial submission.[36] In particular, the applicant disagrees with the Ministry's application of s. 14 to records the Ministry says were between a "former employee" and a lawyer. The applicant questions how a former employee can be a "client".

[42] The applicant also questions the reliability of the Ministry's s. 14 claim. The applicant notes that, in its original access decision, the Ministry applied both s. 13(1) and 14 to the same information, but then later withdrew its reliance on s. 13(1). The applicant relies on this change to suggest that the Ministry may have mistakenly claimed s. 14 when the information at issue is actually policy advice and not legal advice.

[35] Ministry's initial submission at para. 40.
[36] Applicant's submission at p. 9.

Ministry's response on s. 14

[43] The Ministry says it provided sufficient detail to establish privilege in the form of the lawyer's affidavit. It says the lawyer's affidavit sets out a description of the records and establishes that the information contained in the records was confidentially provided by her to named employees of the client ministry and was related to the seeking, formulating or giving of legal advice.[37] The Ministry quotes Order F17-43 for the principle that affidavit evidence is reliable and probative when provided by individuals who have direct knowledge of the file.

[44] In response to the applicant's concerns over the involvement of a "former employee," the Ministry explains that this individual was a Ministry employee when the legal advice was sought and given. It says "solicitor client privilege does not expire, in general, and certainly not in the event of the departure of an employee who was involved in seeking or receiving legal advice."[38]

The records withheld under s. 14

[45] In the records table, the Ministry describes the majority of records as emails between the lawyer and one or more Ministry employees for the purpose of seeking or providing legal advice.[39] Some of these emails include attachments described as background correspondence or information relevant to the request for legal advice. There are also a number of related emails described as discussions between Ministry employees about the lawyer's legal advice[40] or the need to obtain legal advice from the lawyer.[41]

Analysis and findings on s. 14

[46] I am satisfied that legal advice privilege applies to the emails between the lawyer and Ministry employees. The lawyer was directly involved in the communications and speaks about the nature of the relationship between the parties involved, the general subject matter and the confidentiality of the communications. I accept the lawyer's affidavit evidence since she has direct knowledge of the records and the context in which they were created.[42] In support of the confidential nature of the communications, the Ministry also identified all the email participants in these communications which indicates the emails were only between the lawyer and employees within the Ministry. I am, therefore, persuaded that the Ministry regarded and treated these communications as confidential in nature.

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[37] Ministry's response submission at p. 1.
[38] Ministry's response submission at p. 2.
[39] Pages 8-9, 112, 82-84, 89-90, 260-261, 269-274, 278-284, 287, 288-296, 297-304, 305-309, 310-322, 342-352, 353-358, 373-376, 509, 510-523, 524 and 525-538.
[40] Pages 13-17, 359-363, 364-367, 368-372, 424-425, 436-437, 448-471.
[41] Pages 380 and 488-489.
[42] Order F17-43, 2017 BCIPC 47 at paras. 32 and 35.

[47] I also accept that legal advice privilege applies to the email attachments described as background correspondence or information relevant to the request for legal advice. Courts have found that solicitor client privilege extends to communications that are "part of the continuum of information exchanged" between the client and the lawyer in order to obtain or provide the legal advice.[43] I conclude this information qualifies as part of the continuum of communications between the lawyer and the Ministry. A "continuum of communications" involves the necessary exchange of information between solicitor and client for the purpose of obtaining and providing legal advice such as "history and background from a client" or communications to clarify or refine the issues or facts.[44] I accept that these email attachments were part of the necessary exchange of information between a solicitor and client so that legal advice could be sought and given.

[48] As well, I accept that legal advice privilege applies to the emails between Ministry employees which the Ministry says reveals Ministry employees talking about or sharing the lawyer's legal advice. Past OIPC orders and the courts have found that the scope of solicitor client privilege may extend to communications between employees of a company or a ministry discussing previously obtained legal advice.[45] I accept that disclosing these communications would reveal the lawyer's legal advice.

[49] There are some emails that include an individual identified as a former Ministry employee. The Ministry submits that the departure of an employee who was involved in the seeking or receiving of legal advice does not cause solicitor client privilege to expire. I am satisfied that legal advice privilege applies to these emails. The Ministry clarified that this person was an employee at the time the legal advice was sought and given. There is also information disclosed in the records that confirms the Ministry's claim that this person was an employee at the relevant times. I also agree with the Ministry that the fact that this employee no longer works for the Ministry does not terminate the legal advice privilege that attaches to those communications. Subject to some exceptions that are not applicable here, if a communication has attracted privilege it remains privileged.[46] Generally speaking, the rule is "once privileged always privileged."[47]

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[43] *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83; *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [*Camp Development*] at paras. 40-46.
[44] *Camp Development* at para. 40.
[45] *Bank of Montreal v. Tortora*, 2010 BCSC 1430 at paras. 12-13 and, see for example, Order F17-23, 2017 BCIPC 24 at paras. 43-44.
[46] It is well established that solicitor-client privilege does not protect communications where legal advice is obtained to knowingly facilitate the commission of a crime or a fraud. A client can also expressly or implicitly waive privilege.
[47] *Mann v. American Automobile Insurance Company*, 1938 CanLII 205 (BC CA) at p. 264 and *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at para. 37.

[50] There are two emails where Ministry employees are discussing the need to obtain legal advice from the lawyer.[48] Typically, communications about the intent or need to seek legal advice at some point in the future does not suffice on its own to establish that privilege applies.[49] There must be evidence that disclosure of those communications would reveal actual confidential communications between legal counsel and the client.[50] To establish such a claim, previous OIPC orders accept evidence that the public body eventually did seek and receive legal advice on the particular matters discussed between the government employees.[51] I agree with that approach as the disclosure of the earlier employee discussions would then reveal confidential communications between a lawyer and client.

[51] In this case, it is not obvious that the legal advice Ministry employees discussed needing was actually sought and received. The LSB lawyer does not specifically address these records in her affidavit. However, the records table describes several occasions where the lawyer is providing legal advice in response to a request for legal advice.[52] One of those occasions is close in time to one of the emails at issue and the other email discussion precedes another occasion when legal advice was provided by the lawyer to Ministry employees.[53] All things considered, I accept on a balance of probabilities that some of the legal advice provided by the lawyer relates to the matters discussed by the Ministry employees.

[52] To summarize, I find legal advice privilege applies to all of the information withheld by the Ministry under s. 14.

Section 22 – harm to third party personal privacy

[53] Section 22 of FIPPA provides that a public body must refuse to disclose personal information the disclosure of which would unreasonably invade a third party's personal privacy. Previous OIPC orders have considered the application of s. 22 and I will apply the same approach in this inquiry.[54]

[54] The records at issue under s. 22 total approximately 118 pages. These records consist of emails (mostly between Ministry employees and a number of third parties) and letters and documents provided to the Comptroller as part of his initial order and reconsideration decision. The Ministry withheld some emails and documents in their entirety and others were disclosed with some information

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[48] Pages 380 and 488-489 of the records.
[49] Order F17-23, 2017 BCIPC 24 at para. 49.
[50] Order F17-23, 2017 BCIPC 24 at para. 49.
[51] Order F18-38, 2018 BCIPC 41 at para. 37 and Order F17-23, 2017 BCIPC 24 at para. 50.
[52] Pages 82-84, 260-261, 269-274, 342-352, 373-376 and 448-471.
[53] Those two occasions where legal advice was provided are found at pages 373-376 and 448-471.
[54] For example, Order F17-39, 2017 BCIPC 43 at paras. 71-138.

redacted, including a number of individual third party's names, their email addresses and signatures, as well as the names of some third party companies.

Personal information

[55] The first step in any s. 22 analysis is to determine if the information is personal information. "Personal information" is defined as "recorded information about an identifiable individual other than contact information."[55] Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.[56] Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."[57]

[56] The Ministry submits that the information withheld under s. 22 involves the personal information of various individuals who are connected with the Company. It says, though, there are instances where "information that would otherwise be considered contact information was redacted because it relates to business information other than [the Company]."[58]

[57] The applicant argues that the personal information withheld in the records consists of her own personal information, to which she is entitled, and the personal information of other property owners whom she says provided their consent to disclosure. The applicant also submits that most of the s. 22 information is not about an identifiable individual because it is the Company's information. As an example, she says financial information about the Company was provided to the Comptroller and Ministry employees. She says this information is not personal information because it is the Company's corporate information, including financial records.

[58] I find some of the withheld information is personal information because it is about identifiable individuals. This withheld information consists of the names, personal contact information and other details about a number of third parties (e.g. Ministry employees, water service customers/property owners and Company directors).[59] Some of this third party personal information is found in the Company's billing and financial records. The applicant argues that this information is not personal information because it is the Company's information. However, based on my review of these records, I can see that this information is

[55] See Schedule 1 of FIPPA for this definition.
[56] Order F16-36, 2016 BCIPC 40 at para. 17.
[57] See Schedule 1 of FIPPA for this definition.
[58] Ministry's initial submission at para. 47.
[59] Information found at pp. 48, 52, 53, 54, 55, 58, 59, 75 (also duplicated on pp. 386 and 414), 91, 92, 93, 101-102, 103, 107, 108, 109-180, 182, 250-251, 254, 262, 265, 266-267, 268, 382-385, 542-543, 544, 545.

a third party's home and email address and their water consumption and billing information. Therefore, I find this information qualifies as a third party's personal information under s. 22.

[59] I can also see that some of the information is a third party's opinion or comments about the applicant and her actions.[60] An individual's opinions and comments are their personal information only to the extent that the information reveals or identifies that individual as the opinion holder.[61] In this case, the Ministry disclosed the identity of these third parties in the records at issue so the applicant knows who provided these opinions. I conclude, therefore, that this information is both the applicant's personal information since it is about her and the personal information of the third parties since it is their opinion or comments about the applicant.

[60] There is other information in the disputed records that I find is not personal information because it is not about an identifiable individual. The Ministry withheld the header rows of two charts,[62] a date stamp for correspondence received by the Branch,[63] and the header of a fax transmission log which contains transmittal information such as the date, time and status of a fax job.[64] None of this information identifies any individual and the Ministry does not explain how this information is about an identifiable individual.

[61] The Ministry also withheld the name, mailing address, fax number or financial activities of several businesses, including the Company.[65] I find all of this information is not about an identifiable individual since it is information about a company. Corporations and organizations do not have personal privacy rights under s. 22 of FIPPA.[66] The Ministry provided no persuasive evidence to explain how this company information is about any identifiable individual(s) for the purposes of s. 22.

[62] There is also other information that I find is not personal information because it qualifies as contact information. Whether information will qualify as contact information under s. 22 depends on the context in which the information appears or in which it is sought or disclosed.[67] The Ministry withheld some third parties' names, job title, work mailing address, work phone number, fax number

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[60] Information located at pp. 53, 54, and 59.
[61] Order F17-01, 2017 BCIPC 1 (CanLII) at para. 48.
[62] Located on pp. 101 and 103 of the records.
[63] Information located on p. 265.
[64] Information located on p. 268.
[65] Information located at pp. 110, 171, 182, 265, 266, 267 and 268. I also note that the Ministry disclosed some of the business' names elsewhere in the records.
[66] Order F17-39, 2017 BCIPC 43 at para. 75.
[67] Order F14-45, 2014 BCIPC 48 at para. 41; Order F08-03, 2008 CanLII 13321 at para. 82.

or email address in a number of emails and documents.[68] I can see that most of the emails are work or professional email addresses, along with a couple personal email addresses. The Ministry also withheld the name, website address, logo, telephone number and mailing address of a particular third party company. This information appears in the signature block of several emails sent by a third party individual as part of her communications with Ministry employees or with other individuals.[69]

[63] Given the context in which this information appears, I conclude all of this withheld information is contact information because these individuals are using or providing this information to be contacted for business purposes or as part of their professional or business-related communications with others.[70] I find this conclusion also applies to the personal email addresses because it is the use of the email address, rather than its form, that determines whether a personal email address is contact information for the purposes of FIPPA.[71] In this case, the third parties are being contacted at these personal email addresses for business purposes. Therefore, I conclude the Ministry may not withhold any of this information under s. 22.

[64] The Ministry says this information would normally qualify as contact information, but it was redacted because "it relates to business information other than [the Company]."[72] The Ministry appears to be arguing that information will only qualify as contact information if it relates to the Company's information. If so, I disagree with that interpretation. The definition is clear that contact information is information to enable an individual at any place of business to be contacted and it is not limited to information in connection with a particular third party business. If the information is provided for business purposes or appears in a business context, then it will qualify as contact information.

Section 22(4) – disclosure not unreasonable

[65] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information or circumstances listed in s. 22(4). If it does, then the disclosure of the personal information is deemed not to be an unreasonable invasion of a third party's personal privacy and the information should be disclosed.

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[68] Information found at pp. 46, 48, 51, 107, 108, 184, 254, 262, 263, 265, 267, 268, 378, 398, 494, and 495.
[69] Information located at pp. 47, 48, 49, 50, 184, 262, 263, 264, 494, 495 and 496.
[70] For a similar conclusion, see Order F17-01, 2017 BCIPC 1 at para. 49; Order F18-20, 2018 BCIPC 23 at para. 8; Order F14-45, 2014 BCIPC 48 at para. 41; Order F16-46, 2016 BCIPC 51 at para. 16.
[71] Order F16-46, 2016 BCIPC 51 at para. 16.
[72] Ministry's initial submission at para. 47.

[66] The Ministry claims none of the provisions under s. 22(4) apply. Whereas, the applicant submits that s. 22(4)(a) applies since some of the third parties have consented, in writing, to the disclosure of their personal information. The applicant says some of the third party information belongs to other property owners whom she claims consented to the disclosure of their personal information to her. The applicant provided copies of emails from these other property owners that she relies on as proof of their written consent.

[67] I have considered the types of information and circumstances listed under s. 22(4) and agree with the applicant that s. 22(4)(a) applies to information withheld about one particular third party. I can see from an email provided by the applicant that this individual third party has explicitly given her consent, in writing, to the release of any personal information about her to the applicant.[73] During mediation, the Ministry previously released some of this third party's personal information to the applicant. However, the Ministry withheld other information about this individual at pages 53, 54, 108, 494 of the records. Considering this individual consents to the disclosure of her personal information, I conclude s. 22(4)(a) applies and the Ministry cannot withhold any of this information under s. 22(1).

[68] As for the other third parties, I have reviewed the emails provided by the applicant as proof of their consent to disclosure. Four property owners provided these emails to a number of government employees that all repeat verbatim the following information:

> I/we understand that [the applicant] has made the above access request in Jan of 2017 and further in 2018.
>
> When you provide a response to her in that regard, I am requesting that my personal and financial information be added to the list of those who are **concerned** with the release of paperwork and any information requested by her re: of the reveiw [*sic*] Water Management Branch review of Order and Decision 2009 and the take-over incident that occurred with our system in 2015. [Emphasis added].

[69] I am not satisfied that these third party individuals consent to the release of their personal information. My interpretation of these emails is that the third parties are "concerned" with the release of their personal information to the applicant. In my opinion, this type of language is not a sign of consent, rather it indicates these third parties do not want their personal information to be shared with the applicant. I am, therefore, not persuaded that s. 22(4)(a) applies in these circumstances.

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[73] Email dated April 10, 2018 found under "Attachment B" of the applicant's submission.

[70] I have also considered the other types of information and circumstances listed under s. 22(4) and find none that would apply to the personal information at issue.

Section 22(3) – presumptions in favour of withholding

[71] The third step in the s. 22 analysis is to determine whether any of the presumptions in s. 22(3) apply. Section 22(3) creates a rebuttable presumption that the disclosure of personal information of certain kinds or in certain circumstances would be an unreasonable invasion of third party personal privacy.[74]

[72] The Ministry submits that disclosing the information at issue is presumed to be an unreasonable invasion of third party privacy because some of it relates to a third party's medical condition under s. 22(3)(a) or a third party's financial history and activities under s. 22(3)(f). The Ministry explains that the bulk of the records withheld under s. 22 relate to information that was submitted by the Company to the Comptroller as part of the reconsideration decision.

Section 22(3)(a) – medical condition

[73] Section 22(3)(a) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. The Ministry says it withheld information about a third party's medical condition on pages 91-93. A duplicate of that same information is also withheld on pages 250-251 of the records.

[74] The applicant theorizes that the withheld medical information may be inaccurate because it was provided by the Company and not an individual third party. The applicant proposes that a Company representative provided this information to "explain a discrepancy in why some property owners were being firmly required to pay for water while others were having their debt forgiven."[75]

[75] Based on my review of the records, a third party provides a small amount of information on another third party's medical history or condition on pages 92 and 250. Therefore, the disclosure of this information is presumed to be an unreasonable invasion of third party personal privacy under s. 22(3)(a). This medical information is not provided by the Company or someone speaking on behalf of the Company. The rest of the information on pages 91-93 and 250-251 does not reveal a third party's medical history or condition; therefore, I find s. 22(3)(a) does not apply to this information.

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[74] *B.C. Teachers' Federation, Nanaimo District Teachers' Association et al. v. Information and Privacy Commissioner (B.C.) et al.*, 2006 BCSC 131 at para. 45.
[75] Applicant's submission at p. 17.

Section 22(3)(f) – third party's finances, financial history or activities

[76] Section 22(3)(f) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information describes a third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. The Ministry submits that s. 22(3)(f) applies to the financial information of several named third party individuals.

[77] The Ministry argues that past OIPC orders have taken a broad view on what constitutes financial information.[76] It says the financial information withheld in the records consist of the following information: outstanding balances owed to the Company by a number of third parties; details of the Company's share ownership; billing information relating to identifiable, individual third parties; a settlement agreement; and information about water service status and non-payment information for a specific property that could be linked to an identifiable third party property owner.

[78] The applicant submits that the information at issue is not personal information, but that it is corporate information provided by the Company to the Comptroller as part of the reconsideration decision.

[79] I can see that some of the information withheld in the records summarizes amounts owed by a number of third parties to the Company, the number of Company shares held by some individual third parties, how much several third parties were billed for water consumption over a period of time and some reimbursements made to a number of individual third parties.[77] I find s. 22(3)(f) applies to this withheld information. This finding is consistent with previous OIPC orders that found s. 22(3)(f) applies to similar information.[78]

[80] There is also a one-page agreement between the Company and a named individual third party about a matter that includes some financial terms.[79] As well, there is a letter from the Company to a third party that includes "non-payment information" about a specific property.[80] Based on information in the records, it is easy to determine the identity of the third party owner from the property's street

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[76] Ministry's initial submission at para. 52, quoting Order F18-16, 2018 BCIPC 19 at para. 38, Order F16-17, 2016 BCIPC 19 at para. 50 and Order F10-44, [2010] BCIPD No. 65 at para. 18.
[77] Information located at pp. 101-102, 103, 109-180 of the records.
[78] Order F17-05, 2017 BCIPC 6 at para. 32; Order F14-39, 2014 BCIPC 42 at para. 32.
[79] Located on page 182 of the records. The Ministry describes this document as a "settlement agreement." There is insufficient evidence for me to agree with that characterization since the term "settlement agreement" has a specific legal meaning. In particular, it is not apparent to me that there was a legal dispute between the parties that was settled out of court and that the terms of such a settlement are set out in this document. Instead, there are handwritten notes on the document that indicates it is a different type of agreement.
[80] Located on page 265 of the records.

address. Taking this into account, I find s. 22(3)(f) applies to some information in both documents that, alone or in combination with other information, would reveal a third party's financial liabilities.

[81] The remaining information withheld by the Ministry under s. 22(3)(f) does not describe a third party's finances, assets, liabilities or activities for the purposes of s. 22(3)(f). As an example, the ministry says the information withheld on pages 107-108 of the records consists of billing information. While this information is about a third party, it is not financial in nature nor does it describe a third party's financial history or activities. The same reasoning applies to the remaining information in the two documents at pages 182 and 265-268 of the records. None of the remaining information reveals the type of information listed under s. 22(3)(f).

[82] I have also considered whether any other section 22(3) presumptions may apply and find none that would apply to the personal information at issue.

Section 22(2) – relevant circumstances

[83] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information at issue in light of all relevant circumstances, including those listed under s. 22(2). It is at this stage that any s. 22(3) presumptions may be rebutted.

[84] The Ministry says it considered ss. 22(2)(g) and (h), the sensitivity of the personal information at issue and the "preliminary nature" of the Comptroller's reconsideration decision in determining that the disclosure of the withheld information would unreasonably invade a third party's personal privacy.

[85] The applicant submits that ss. 22(2)(a) and (c) are circumstances that establish disclosure of the personal information at issue would not be an unreasonable invasion of a third party's personal privacy.

[86] I will consider all these circumstances below in my s. 22(2) analysis.

Scrutiny of the public body – s. 22(2)(a)

[87] One of the factors listed under s. 22(2) is s. 22(2)(a) which considers whether disclosing the third party's personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Where disclosure of records would foster accountability of a public body, this may in some circumstances provide the foundation for a finding that the release of third party personal information would not constitute an unreasonable invasion of personal privacy.[81]

[81] Order F05-18, 2005 CanLII 24734 at para. 49.

[88] The applicant submits that s. 22(2)(a) favours disclosure in this case because the records would reveal meaningful information about how the public body conducted itself in relation to the reconsideration request and the initial order. She alleges the public body proceeded in an "unfair, biased, non-transparent fashion."[82] The applicant claims the public body did not seek the input of several key stakeholders when it made its decision not to reconsider, specifically the people who requested the reconsideration. She says the Comptroller should have done his due diligence to verify the accuracy of the submissions he accepted. The applicant alleges the Comptroller ignored input from a third party that the Company's billing records are inaccurate.[83]

[89] The Ministry did not provide any responsive arguments that are specific to s. 22(2)(a). It generally claims that it is in the public interest to ensure that individual third parties are not placed at risk by disclosure of personal information.[84]

[90] I have considered what information is left at issue under s. 22 and I do not find this information would subject the activities of a public body to scrutiny. Most of it reveals information about other property owners and will not reveal anything meaningful about a public body's activities. I understand the applicant is interested in seeing the specific information provided by the Company that was then considered by the Comptroller. It appears that the applicant is interested in reviewing this information to ensure that the Company did not change any information for its benefit.[85] For the sake of argument, if the applicant's allegations were true, then this third party personal information would highlight the Company's activities instead of a public body's activities.

[91] The applicant also theorizes that this information could demonstrate the unfairness of the Comptroller's decision-making process. However, based on my review of the information at issue, I am not persuaded that this withheld information would shed any further light on that process. The Comptroller's office already explained its reconsideration process, the Comptroller's order and decision also sets out the reasons for his conclusions and the Ministry disclosed information in the records that reveals what type of information the Comptroller sought from the Company. For s. 22(2)(a) to apply, the disclosure of the information must be desirable for subjecting the public body to scrutiny. In my view, none of the withheld information at issue would assist in holding a public body accountable for its actions. Therefore, I do not find s. 22(2)(a) is a factor that weighs in favour of disclosure.

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[82] Applicant's submission at p. 20.
[83] Exhibit "L" in applicant's submission.
[84] Ministry's response submission at p. 3.
[85] Exhibit "K" in applicant's submission.

Fair determination of the applicant's rights – s. 22(2)(c)

[92] Section 22(2)(c) applies to personal information that is relevant to a fair determination of the applicant's rights. Previous OIPC orders have said that all four parts of the following test must be met in order for s. 22(2)(c) to apply:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;

2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;

3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and

4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[86]

[93] The applicant provided a list of eight items that she describes as "current actions in other venues," which she says satisfies the four-part test. The list identifies what appear to be five court actions, an Ombudsperson investigation file, and two other items described as "possible judicial review" and an "Application re Authority" involving a named third party.[87] She says the documents reveal "ongoing redress" that she is seeking, along with two other named individuals.[88]

[94] The Ministry says the applicant has not provided evidence to establish that s. 22(2)(c) applies to the personal information at issue in this inquiry. It notes the applicant's evidence is a list of eight proceedings relating to various conflicts involving the applicant. The Ministry submits that "merely providing a list of current proceedings relating to the applicant's various legal conflicts is not enough to meet the test established to apply s. 22(2)(c)."[89]

[95] Based on the materials before me, I am not satisfied the test under s. 22(2)(c) has been met. It is unclear from the applicant's list the status of these proceedings or her involvement in some of the proceedings. For example, three of the court actions on the applicant's list appear to only involve some named individual third parties and the Company. I also note that the parties' submissions include evidence that one of the court cases on the list has concluded and that the Ombudsperson investigation is complete.[90]

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[86] Order 01-07, 2001 CanLII 21561 at para. 31.
[87] Applicant's submission at p. 23.
[88] Applicant's submission at p. 23.
[89] Ministry's response submission at p. 3.
[90] The court case is referred to on the applicant's list as "Road Action and temporary injunction."

[96] It is also unclear what legal right of the applicant is at issue here, how the information left at issue under s. 22 has any significance for the determination of that right or how it is necessary to prepare or ensure a fair hearing. In short, considering the materials before me, there is simply insufficient evidence or explanation for me to conclude that all four parts of the s. 22(2)(c) test have been met. I, therefore, find s. 22(2)(c) is not a factor in favour of disclosure.

Likely to be inaccurate or unreliable – s. 22(2)(g)

[97] Section 22(2)(g) is intended to prevent the harm that can flow from disclosing third party personal information that may be inaccurate or unreliable.[91] The Ministry submits that s. 22(2)(g) applies to information withheld on pages 46-60 and 254 of the records. It says the withheld information "relates to information stated about a third party by another" and that "this information may be inaccurate and could reasonably be expected to have an adverse effect on the third parties."[92]

[98] The applicant questions whether the withheld information is about a third party. Without the benefit of seeing the information at issue, the applicant assumes the withheld information is a third party's opinion about her.

[99] I am not satisfied that s. 22(2)(g) applies to the information at issue. Aside from its assertions, the Ministry does not explain what specific information on pages 46-60 and 254 might be inaccurate or unreliable. Some of the information is a third party's positive opinion about another third party and the rest merely relays, in a factual way, what another third party said.[93] It is not clear to me, and the Ministry's submissions do not adequately explain, in what way this third party personal information is likely to be inaccurate or unreliable. Therefore, without more, I am not persuaded that s. 22(2)(g) is a factor that weighs in favour of withholding the information at issue.

Unfair damage to reputation - s. 22(2)(h)

[100] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage a third party's reputation. The Ministry's arguments under s. 22(2)(h) appear to be tied to its claims under s. 22(2)(g). The Ministry submits the third party personal information may be inaccurate and, therefore, disclosing this information would be prejudicial to the third parties' reputations.

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[91] Order F14-47, 2014 BCIPC 51 at para. 34.
[92] Ministry's initial submission at para. 66.
[93] Pages 52, 53-54, 55, 254.

[101] For the same reasons given under s. 22(2)(g), I am not satisfied s. 22(2)(h) applies to the information at issue. Aside from its assertions, the Ministry does not explain or provide evidence as to how the withheld information would likely cause unfair reputational harm to any third parties. As well, it is not obvious from reviewing the information at issue that disclosure would unfairly damage the reputation of any person referred to in that information. I, therefore, find s. 22(2)(h) is not a factor that weighs in favour of withholding the information at issue.

Preliminary nature of the Comptroller's decision

[102] The Ministry says a relevant circumstance in this case is the fact that the reconsideration decision is of a "preliminary nature." The secretary to the Comptroller explains that the materials considered by the Comptroller were not disclosed to any of the other parties and the Comptroller's practice is not to give this information out upon request.[94] The secretary clarifies that if the threshold had been met, then any registered intervenors or interested parties would be invited to comment on the reconsideration application. It is at this stage that any submissions or evidence would be shared with all parties.[95]

[103] I understand the Ministry to be arguing that disclosing the personal information would be an unreasonable invasion of third party personal privacy because this type of information is normally only shared with interested parties once the Comptroller decides it is necessary to invite their comment on the reconsideration application. However, the Ministry does not sufficiently explain or provide any authorities as to why this would be a relevant circumstance for the purposes of determining whether disclosing the personal information would be an unreasonable invasion of personal privacy under s. 22. Therefore, I find this factor does not weigh in favour of non-disclosure.

Sensitivity of the information

[104] Previous OIPC orders have considered that when the sensitivity of the information is high (i.e. medical or other intimate information), withholding the information should be favoured.[96] However, where the information is of a non-sensitive nature or that sensitivity is reduced by the circumstances, then this factor may weigh in favour of disclosure.[97]

[105] I have considered the sensitivity of the withheld information and I find only the information about a third party's medical condition or history is particularly sensitive and that weighs in favour of withholding this information. There is other

[94] Affidavit of secretary to the Comptroller at paras. 8 and 12.
[95] Affidavit of secretary to the Comptroller at paras. 13-14.
[96] Order F16-52, 2016 BCIPC 58 at para. 87.
[97] *Ibid* at paras. 87-91 and 93.

third party information related to the Company that I find is not sensitive such as names of the Company's directors or the name and signature of the Company's representative in some records.[98] The non-sensitive nature of this information weighs in favour of its disclosure.

Third party concerns

[106] I have also considered the fact that a number of third party property owners have expressed concerns with the release of their personal information to the applicant. I find this factor weighs against disclosure.

Information already disclosed

[107] Based on information already disclosed in the records, it is clear that the applicant already knows some of the s. 22(1) information that the Ministry is withholding. The Ministry withheld the names, addresses and signatures of several third parties in a document, but then disclosed this exact information elsewhere in the records.[99] The Ministry also withheld a four-page letter to the Comptroller sent on the behalf of several third parties, but it then disclosed this same letter elsewhere in the records.[100] It is unclear, and the Ministry does not explain, how disclosing all of this information a second time would unreasonably invade the personal privacy of these third parties. Therefore, this factor weighs in favour of disclosure.

Applicant's personal information

[108] Another factor that supports disclosure is that some of the withheld information is the personal information of the applicant. It would only be in rare circumstances where disclosure to an applicant of their own personal information would be an unreasonable invasion of a third party's personal privacy.[101]

Conclusion on s. 22(1)

[109] Considering all the relevant circumstances, I am satisfied that disclosing some of the personal information at issue would be an unreasonable invasion of third party personal privacy.[102] This information includes a number of individual third party's names, email addresses, financial information such as billing information and outstanding balances, along with some correspondence with the

[98] Pages 182 and 265 of the records.
[99] The same information withheld on pp. 75, 386 and 414 was then disclosed on p. 396.
[100] Information withheld on pp. 382-385 was disclosed on pp. 71-74, 392-395, 405-408, and 410-413.
[101] Order F14-47, 2014 BCIPC 51 (CanLII) at para. 36, citing Order F10-10, 2010 BCIPC 17 (CanLII) at para. 37 and Order F06-11, 2006 CanLII 25571 at para. 77.
[102] This information is found in the records on pages 53-54, 55, 58-59, 91, 92-93 (information duplicated on pages 250-251), 101-102, 107, 109-180, 182, 254, 262-268, 542-545.

Comptroller or the Company. I also found the presumptions under ss. 22(3)(a) and (f) apply to some of this personal information and conclude there are no circumstances in favour of rebutting those presumptions.

[110] I have considered whether there were any factors that weigh in favour of disclosing this third party personal information to the applicant and could find none. Most of this information consists of the personal information of several third parties. It is also not apparent to me that the applicant is already aware of, or can easily infer, this third party personal information. I also find the fact that some of the third parties expressed concerns with the disclosure of their personal and financial information to the applicant weighs heavily against disclosure. Therefore, I conclude the disclosure of all this personal information would unreasonably invade a third party's personal privacy and the Ministry is required to refuse to disclose it under s. 22(1).

[111] However, I find it would not unreasonably invade a third party's personal privacy to disclose information that the applicant already knows or already received in response to her access request.[103] I am also satisfied that disclosing non-sensitive third party information to the applicant would not unreasonably invade a third party's personal privacy, especially considering some of this information is already evident elsewhere in the records.[104] I also find that it would not unreasonably invade a third party's personal privacy to disclose some third parties' opinion or comments about the applicant and her actions.[105] These third party's opinions or comments are not particularly sensitive and it is also clear from the materials before me that the applicant already knows some of these opinions and comments about her.[106]

[112] I have highlighted the information that I find s. 22(1) does not apply to in a copy of the records that will be sent to the Ministry along with this order. The Ministry is not required to withhold this information under s. 22(1) and must, therefore, disclose this information to the applicant.

CONCLUSION

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

1. The Ministry must give the applicant access to page 402 of the records since I found s. 3(1) does not apply to this record.

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[103] Information withheld on pp. 75, 382-385, 386 and 414.
[104] Information found on pp. 48, 52, 182 and 265. I draw this conclusion from reviewing pp. 62, 85-86, 263-264, 276 of the records and Exhibit "K" of the applicant's submission.
[105] Information located at pp. 53, 54 and 59.
[106] I draw this conclusion from reviewing Exhibit "K" and "L" of the applicant's submission.

2. I confirm the Ministry's decision to refuse access to the information withheld under s. 14.

3. Subject to paragraph 4 below, I confirm in part the Ministry's decision to refuse access to the information withheld under ss. 13(1) and 22(1).

4. The Ministry is not authorized or required by ss. 13(1) or 22(1) to refuse to disclose the information highlighted in a copy of the records that is provided with this order.

5. The Ministry must disclose to the applicant the information it is not authorized or required to withhold, as set out in paragraph 4 above, and it must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, along with a copy of the relevant records.

6. Under s. 58(2)(b), I require the head of the Ministry to reconsider its decision to refuse access to the information on pages 336 and 490 that I found it is authorized to withhold under s. 13(1). The head of the Ministry is required to exercise its discretion and consider whether this s. 13(1) information should be released even though it is technically covered by the discretionary exception. It must deliver its reconsideration decision, along with the reasons and factors it considered for that decision, to the applicant and to the OIPC registrar of inquiries.

[114] Under s. 59 of FIPPA, the Ministry is required to give the applicant access to the information it is not authorized or required to withhold by February 4, 2020. The Ministry is also required to deliver its reconsideration to the applicant and to the registrar of inquiries by this same date.

December 19, 2019

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F17-70459