



Order F20-53

LAW SOCIETY OF BRITISH COLUMBIA

Elizabeth Barker
Director of Adjudication

November 18, 2020

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Summary: The applicant requested her own personal information in the custody or under the control of the Law Society of British Columbia (LSBC). LSBC refused to disclose some information because it was not her personal information and/or ss. 13, 14, 22 of the *Freedom of Information and Protection of Privacy Act* and s. 88(2) of the *Legal Professions Act* applied. The adjudicator found that most of the information in dispute was not the applicant's personal information and LSBC was authorized to refuse to disclose it on that basis because it was not the information she requested. However, the adjudicator also found that the disputed information included a few instances of the applicant's name, that ss.13, 14, 22 and 88(2) did not apply in those instances and LSBC was required to disclose those instances to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 13, 14, 22 and the *Legal Professions Act*, s. 88(2).

INTRODUCTION

[1] The applicant asked the Law Society of British Columbia (LSBC) for access to her own personal information in the custody and control of LSBC. LSBC provided her with some records but withheld others in whole or in part under ss. 13 (policy advice or recommendations) and 22 (unreasonable invasion of third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review LSBC's decision. The applicant confirmed that she only wants access to only her own personal information. Mediation failed to resolve the matter and it proceeded to an inquiry.

[3] At the start of the inquiry, LSBC reconsidered its decision and disclosed additional information to the applicant. Some weeks later, LSBC requested

permission to add s. 14 (solicitor client privilege) of FIPPA and s. 88 of the *Legal Professions Act* (LPA) into the inquiry. The OIPC agreed to add those issues.

[4] LSBC provided an initial submission and a final reply. The applicant provided a response submission, some of which was submitted *in camera* with the OIPC's prior consent.

ISSUES

[5] The applicant says in her access request and in her inquiry submission that she only seeks access to her own personal information in the records. Therefore, the first issue that I will decide is whether the information in dispute is the applicant's personal information. Only if it is, will I go on to consider if LSBC is authorized or required to refuse to disclose that information pursuant to ss. 13, 14 and 22 of FIPPA and s. 88 of the LPA.

[6] Section 57 of FIPPA says that it is up to the public body to prove ss. 13 and 14 apply and it is up to the applicant to prove that disclosure of any personal information about a third party would not be an unreasonable invasion of the third party's personal privacy under s. 22 of FIPPA. As indicated in previous orders, the public body has the burden of proving that s. 88 of the LPA applies.¹

DISCUSSION

Background

[7] The Law Society is a professional regulatory body governed by the *Legal Profession Act* and is responsible for regulating the legal profession in British Columbia. Its responsibilities include receiving, investigating and responding to complaints made by members of the public about lawyers practising law in British Columbia.

[8] The applicant complained to LSBC about a lawyer who provided legal services to the applicant's friend. LSBC investigated and closed the complaint after deciding it warranted no further action. The applicant requested that LSBC's Complainants' Review Committee (CRC) review the decision. The records in dispute in this inquiry relate to the CRC process.

[9] The applicant alleges information LSBC and other public bodies disclosed to her reveals that her now deceased friend's professional service providers made false and misleading statements about the applicant. The applicant believes this was a distraction from the actions that should have been taken to protect her friend and it led LSBC to misconstrue and trivialize the applicant's concerns. The applicant explains that she wants access to her personal

¹ Order 03-26, 2003 CanLII 49205 (BC IPC) and Order 02-01, 2002 CanLII 42426 (BC IPC).

information so she can exercise her right under s. 29 of FIPPA to request LSBC correct any errors or omissions in her personal information.²

The Records

[10] There are 42 pages of records in dispute in this case. The records are emails, case summaries and notes, letter templates and draft decision letters. LSBC is refusing the applicant access to entire pages and parts of pages under ss. 13, 14 and 22 of FIPPA and s. 88 of the LPA.

Personal information

[11] The first issue to decide in this inquiry is whether the information in dispute is the applicant's personal information. FIPPA defines "personal information" as "recorded information about an identifiable individual other than contact information." 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".³

[12] The applicant says that it appears to her that some pages of the records "contain statements about and/or attributed" to her.⁴

[13] LSBC submits that it has provided the applicant all of her personal information in the records and the information in dispute is not about her.

Blacked-out information

[14] LSBC provided the OIPC with a copy of the responsive records for the purpose of this inquiry. They have been marked in two ways. Some of the withheld information is redlined so I can see it. Other information is completely blacked-out and is labelled as "ss. 13 and 22, Unrelated Matters also s. 14". LSBC calls this blacked-out information the "Unrelated Information" and says it pertains to four CRC matters that are unrelated to the applicant and her complaint.⁵

[15] I wrote to LSBC to ask why it had not provided the OIPC a copy of the records with this blacked-out information visible.⁶ LSBC responded that it did not

² Section 29 states that an applicant who believes there is an error or omission in their personal information may request the head of the public body that has the information in its custody or under its control to correct the information. Section 29 also sets out how corrections and annotations are to be made.

³ See Schedule 1 of FIPPA for these definitions.

⁴ Applicant's submission at p. 2.

⁵ LSBC's initial submission at para. 7.

⁶ Adjudicator's October 15, 2020 letter to LSBC, copied to applicant.

do so because the blacked-out information is subject to solicitor client privilege and s. 88 of the LPA.⁷

[16] Section 44(1) of FIPPA gives the OIPC the power to order production of records for which solicitor client privilege is claimed. However, given the importance of solicitor client privilege, and in order to minimally infringe on that privilege, the OIPC will only order production of records being withheld under s. 14 when it is absolutely necessary to adjudicate the issues in dispute.⁸ I decided that it was not necessary to order production of this blacked-out information because, for the reasons that follow, I am satisfied that it is not the applicant's personal information.

[17] LSBC has provided an affidavit from its Director, Policy and Planning (Director). The Director is a lawyer and is responsible for the department that researches and plans the development of policy for consideration by the Benchers of the Law Society. As part of his duties, he also has the delegated responsibility for ensuring LSBC complies with Part 2 of FIPPA. The Director says that the disputed records were prepared by or for the CRC as part of its deliberations related to five discrete complaints about lawyer misconduct, only one of which relates to the applicant and her complaint.⁹ He describes the records as emails, CRC summaries, working notes and analysis, draft decision letters and template documents related to the applicant's complaint and other unrelated complaints.¹⁰

[18] Based on the context provided by the records and the redlined information and the Director's affidavit evidence I am satisfied that the blacked-out information is solely about other people and their complaints. I can see nothing that even remotely suggests that there would be any information about the applicant intermingled with the information about these other peoples' complaints. I conclude this information is not about the applicant and her complaint, so it is not her personal information.

[19] Because the blacked-out information is not the applicant's personal information, it is unnecessary to decide if LSBC is required or authorized to withhold it under ss. 13, 14, 22 and s. 88 of the LPA. In my view, deciding those issues would be a purely academic exercise and serve no purpose, given that information is clearly not what the applicant says she wants.

⁷ LSBC's October 23, 2020 letter.

⁸ Orders F20-16, 2020 BCIPC 18 (CanLII) at para. 9; F19-14, 2019 BCIPC 16 (CanLII) at para. 10; Order F17-30, 2017 BCIPC 32 (CanLII) at paras. 17-21.

⁹ Director's affidavit at para. 28.

¹⁰ Director's affidavit at para. 29.

Redlined information

[20] I will now decide whether any of the redlined information is the applicant's personal information. For the reasons that follow I find that there are a few instances where LSBC withheld the applicant's personal information, specifically on pages 13, 16, 33 and 34.

[21] Page 1 is a partially disclosed email about the processing of the applicant's and other individuals' complaints. None of the withheld information is the applicant's personal information because it is not about her.

[22] Pages 3-4 and 18-19 are case summaries/notes about the applicant's complaint. LSBC has disclosed parts of these pages. The information that has been withheld is about the applicant's friend and the lawyer the applicant complained about. It is also the CRC's conclusions about the lawyer's conduct. There are also a few headings that are not personal information. None of this withheld information is about the applicant, so it is not her personal information.

[23] Pages 13 and 16 are emails discussing the processing of the applicant's and other peoples' complaints. LSBC completely withheld these emails. Page 16 is a response to the email at page 13. The applicant's name is mentioned in the email subject lines, the name of an attachment and a reference to documents the sent. The applicant's name is her personal information.

[24] Pages 14-15 are a partially disclosed draft decision letter. I find that none of the information that LSBC withheld is the applicant's personal information. Instead, it is the CRC's analysis of the complaint and details about the applicant's friend and the lawyer.

[25] Pages 28-30 and 31-32 are templates for two types of decision letter. They contain no personal information because they are templates with no details about individuals.

[26] Page 33 is a partially disclosed email discussing the processing of the applicant's and other peoples' complaints. The withheld information includes two instances where the applicant's name appears in the name of attachments. The applicant's name is her personal information.

[27] Pages 34-38 are two draft decision letters attached to the email on page 33. These two letters are about the applicant's complaint and they have been partially disclosed to her. The withheld information is about the applicant's friend, the lawyer and the analysis and processing of the complaint. There is also one instance of the applicant's name that has been withheld on page 34 and I find that is her personal information. The rest of the information that LSBC withheld from these drafts is not the applicant's personal information.

[28] Pages 39-40 and 41-42 are partially disclosed email chains responding to the email on page 33 and its attachments on pages 34-38. I find that none of the information withheld from these email chains is about the applicant. It is about administrative processes and some cursory feedback regarding the attachments.

[29] In summary, the only withheld information that is the applicant's personal information are the instances where her name appears on pages 13, 16, 33 and 34, specifically in email subject lines, the name of email attachments and references to documents she sent.

Advice or recommendations - s. 13(1)

[30] Section 13(1) says that 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. The purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny.¹¹ Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences about the advice or recommendations.¹²

[31] LSBC says that it has withheld the entirety of the disputed information under s. 13. LSBC says, "In the present case, the Working Papers, the Template Documents and the Draft Decisions are all documents that form part of the decision-making file of the CRC and are directly related to the CRC's deliberative processes."¹³ The Director says that LSBC's usual practice is to refuse access to CRC files given their sensitive and inherently deliberative nature, but LSBC decided to disclose the applicant's personal information because there was only a small amount of it in the disputed records.¹⁴

[32] The Director also says:

The Disputed Records, in their entirety, constitute confidential file materials of the CRC and have been withheld by the Law Society on the basis that their disclosure would reveal opinions, advice, recommendations and the deliberations of CRC. It is the Law Society's consistent practice to maintain the confidentiality of these materials consistent with the provisions of the *Legal Profession Act* and the Rules (discussed above) and in order to, among other things, maintain the integrity of its decision-making processes.¹⁵

¹¹ *John Doe v Ontario (Finance)*, 2014 SCC 36 at paras. 45-51.

¹² Order 02-38, 2002 CanLII 42472 (BCIPC) and Order F10-15, 2010 BCIPC 24 (CanLII).

¹³ LSBC's initial submission at para. 40.

¹⁴ Director's affidavit at para. 11.

¹⁵ Director's affidavit at para. 33.

[33] The applicant disputes that s. 13 applies.

[34] I am not persuaded by LSBC's submissions and evidence that disclosing the applicant's name on pages 13, 16, 33 and 34 would reveal advice or recommendations. Therefore, I find that s. 13(1) does not apply to that information.

Solicitor client privilege, s. 14 and s. 88 of the LPA

[35] Section 14 states that the head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege. The law is well established that s. 14 encompasses both legal advice privilege and litigation privilege.¹⁶ Although LSBC does not specifically say, it is clear from its submissions that it is claiming legal advice privilege applies.

[36] BC Orders have consistently said that the following criteria must be satisfied in order to establish that 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.¹⁷

[37] Not every communication between solicitor and client is privileged, but if the four conditions above are satisfied, then privilege applies to the communications and the records relating to it.¹⁸

[38] LSBC submits that in addition to s. 14, it is also required to refuse to disclose the disputed information pursuant to s. 88(2) of the LPA.

[39] Section 88(2) provides:

88(2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of exercising powers or carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information

¹⁶ *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 26.

¹⁷ *R. v. B.*, 1995 CanLII 2007 (BCSC) at para. 22; *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at paras. 15-16; *Canada v. Solosky*, 1979 CanLII 9 (SCC) [Solosky] at pp. 829 and 837.

¹⁸ *Solosky*, *ibid* at p. 829.

as the person from whom the information, files or records were obtained.

[40] Section 88 recognizes that when LSBC exercises its regulatory mandate, it may ask lawyers to disclose to LSBC information that is confidential and privileged between the lawyers and their clients. When this happens, s. 88(2) says that LSBC has the same obligation as the lawyer from whom the information was obtained respecting confidentiality and solicitor client privilege. If s. 88(2) applies, LSBC does not have the discretion to decide whether or not to refuse access under s. 14 of FIPPA.¹⁹

[41] LSBC says that lawyers are required to provide information to LSBC in responding to complaints. It says, “Under sections 14 of the Act and section 88 of the *Legal Profession Act*, the Law Society is required by law to maintain such information in confidence.”²⁰

[42] LSBC says that it has applied s. 14 and s. 88 to the blacked-out information.²¹ The Director’s evidence is that privilege applies to the blacked-out information and to the information provided by the lawyer the applicant complained about.²²

[43] The applicant disputes that s. 14 applies to the information in dispute.

[44] I have considered the redlined information on pages 13, 16, 33 and 34 and conclude that disclosing the applicant’s name would not reveal information that is subject to solicitor client privilege. LSBC does not say if it applied ss. 14 and 88 to the redlined information (as it did with the blacked-out information). LSBC also does not assert, or provide evidence that pages 13, 16, 33 and 34 are confidential communications between solicitor and client about seeking, formulating or providing legal advice. In conclusion, I find that s. 14 does not apply to the applicant’s name on those pages.

[45] I also find that s. 88 of the LPA does not apply to that information because there is nothing to suggest that the applicant’s name in that context is confidential or subject to solicitor client privilege.

Unreasonable invasion of third party personal privacy - s. 22

[46] Section 22 requires public bodies to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party’s

¹⁹ See: Order 02-01, 2002 CanLII 42426 (BC IPC) at paras. 107-110; Order 04-16, 2004 CanLII 7058 (BC IPC) at paras. 23-26; Order F20-19, 2020 BCIPC 22 (CanLII) at para. 35.

²⁰ LSBC’s initial submission at para. 41.

²¹ LSBC’s initial submission at paras. 41, 49 and 57(d). LSBC calls the blacked-out information “Unrelated Matters”.

²² Director’s affidavit at para. 37-39.

personal privacy. The approach for applying s. 22 is well established and it is not necessary to repeat it in this case.²³

[47] I find that the applicant's name on pages 13, 16, 33 and 34 is not about anyone else, so disclosing it would not be an unreasonable invasion of third party personal privacy. LSBC is not required to refuse to disclose that information under s. 22(1).

CONCLUSION

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

1. Subject to paragraph 2 below, LSBC is authorized to refuse the applicant access to the information in dispute because it is not the information she requested, namely her personal information.
2. LSBC is not authorized or required to refuse to disclose the applicant's name which I have highlighted on pages 13, 16, 33 and 34 of the records provided to LSBC with this order.
3. I require LSBC to give the applicant access to the highlighted information.
4. LSBC must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

[49] Pursuant to s. 59(1) of FIPPA, LSBC is required to comply with this order by January 4, 2021.

November 18, 2020

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

OIPC File No.: F18-76658

²³ See for example, Order F17-39, 2017 BCIPC 43 (CanLII) at paras. 71-138.