Order F25-50

MINISTRY OF TRANSPORTATION AND TRANSIT

Rene Kimmett
Adjudicator

June 23, 2025

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Summary: An applicant asked for records from the Ministry of Transportation and Transit (Ministry) related to the subdivision decision-making process. The Ministry gave the applicant access to some information but withheld other information under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), and 16(1)(b) (harm to intergovernmental relations) of the *Freedom of Information and Protection of Privacy Act.* The adjudicator found that the Ministry was authorized to withhold all the information in dispute under s. 14 and some of the information in dispute under s. 13(1) but was not authorized to withhold any of the information in dispute under s. 16(1)(b). The adjudicator required the Ministry to give the applicant access to the information it was not authorized to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c. 165, ss. 13(1), 14, and 16(1)(b).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant asked for records from the Ministry of Transportation and Transit (Ministry) related to the subdivision decision-making process, including information about public interest considerations and consultation with First Nations.

[2] The Ministry responded to the access request by providing the applicant with five pages of responsive records and informing them that the remainder was being withheld under s. 3(3)(e) of FIPPA.[1]

[1] From this point forward, unless otherwise specified, whenever I refer to section numbers, I am referring to sections of FIPPA.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision to withhold information under s. 3(3)(e). The Ministry reconsidered its decision, withdrew its reliance on s. 3(3)(e) and provided the applicant with a revised records package. In the revised package, the Ministry withheld some information under ss. 13(1) (advice or recommendations), s. 14 (solicitor-client privilege), and 16(1)(b) (harm to intergovernmental relations).

[4] The OIPC engaged the parties in mediation, but it did not resolve the issues in dispute and the matter proceeded to this inquiry. Both the Ministry and the applicant provided submissions in this inquiry.

ISSUES AND BURDEN OF PROOF

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

1. Is the Ministry authorized to withhold the information in dispute under s. 13(1)?

2. Is the Ministry authorized to withhold the information in dispute under s. 14?

3. Is the Ministry authorized to withhold the information in dispute under s. 16(1)(b)?

[6] The Ministry has the burden to prove that the applicant has no right of access to a record or part of a record withheld under ss. 13(1), 14, or 16(1)(b).[2]

DISCUSSION

Background

[7] Landowners that want to divide their property into one or more parcels of land must make a sub-division application to the Ministry. Provincial Approving Officers (PAOs) are responsible for deciding whether to approve sub-division applications. PAOs are appointed to the Ministry by Order in Council under the *Land Title Act.* Ministry staff provide administrative support to PAOs.

Records at issue

[8] The records package responsive to the applicant's access request contains 412 pages of records. Four records were entirely withheld under s. 14.

[2] FIPPA, s. 57(1).

Five records were entirely or partially withheld under s. 13(1). Some information in one of the records withheld under s. 13(1) was also withheld under s. 16(1)(b).

Solicitor-client privilege – s. 14

[9] Section 14 permits a public body to refuse to disclose information that is subject to solicitor-client privilege. In order for solicitor-client privilege to apply, there must be:

1. a communication between solicitor and client (or their agent);
2. that entails the seeking or giving of legal advice; and
3. that is intended by the solicitor and client to be confidential.[3]

[10] Courts have found that solicitor-client privilege extends beyond the actual requesting or giving of legal advice to the "continuum of communications" between a lawyer and client, which includes the necessary exchange of information for the purpose of providing legal advice.[4]

Parties' submissions and evidence

[11] The Ministry has entirely withheld four records under s. 14. The Ministry did not provide me with these records. Instead, it provided affidavit evidence from two lawyers (Lawyer A and Lawyer B) employed with the Natural Resources, Transportation, and Indigenous Legal Group in the Legal Services Branch of the Ministry of Attorney General (MAG). With the OIPC's prior approval, some information in these two affidavits has been submitted *in camera,* meaning to only the OIPC and not the applicant.

[12] After reviewing the Ministry's evidence, I determined I did not have sufficient information to make an informed decision about one of the records in dispute under s.14 and gave the Ministry the opportunity to provide more information about this record.[5] The Ministry did so, and the additional information was sufficient to allow me to assess the Ministry's privilege claim.[6]

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[3] *Solosky v The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at p 837.
[4] *Huang v Silvercorp Metals Inc.,* 2017 BCSC 795 at para 83; *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 42.
[5] FIPPA s. 44(1)(b) states the Commissioner may order the production of records, and s. 44(2.1) reinforces that such a production order may apply to records subject to solicitor-client privilege. However, given the importance of solicitor-client privilege, the Commissioner will only exercise this power when it is necessary to decide the issues in dispute. See Order F19-21, 2019 BCIPC 23 at para 61.
[6] I gave the applicant the opportunity to respond to the Ministry's additional submissions and evidence, but they did not do so.

[13] Three of the four records are PowerPoint presentations that MAG lawyers presented to PAOs and Ministry staff on March 12, 2020, June 1, 2022, and November 23, 2022.[7]

[14] Lawyer A prepared and presented the June 1, 2022 presentation. Lawyer B prepared and presented the November 23, 2022 presentation and attended the March 12, 2020 presentation, which another lawyer (Lawyer C) prepared and presented. Lawyers A and B provide more details about the content of these presentations *in camera.* They depose that all three presentations contain legal advice about the responsibilities of PAOs and Ministry staff and were supplemented by oral legal advice. They further depose that the PowerPoints were not intended to be shared beyond their clients. They state that it was generally understood that the presentations were privileged and confidential because they contain legal advice and that one of them is marked "Privileged and Confidential" and another is marked "Legal Advice Subject to Solicitor-Client Privilege".[8]

[15] The fourth record, dated November 28, 2019, is a summary of a September 2019 meeting attended by MAG lawyers and staff of government ministries who work with Indigenous peoples.

[16] Lawyer A states that the meeting was part of a series of bi-monthly meetings promoting best practices in consultation across government, which she regularly attended. She says she does not recall attending the September 2019 meeting.

[17] Lawyer A says that the November 28, 2019 summary was prepared by another lawyer employed by the Ministry of Attorney General (Lawyer D). Lawyer A deposes that she is informed by Lawyer D, and verily believes it to be true, that Lawyer D attended the September 2019 meeting and that the contents of the November 28, 2019 document reflect the legal advice MAG lawyers gave to their clients during the meeting.[9] Lawyer A provides more details about what was discussed at this meeting *in camera.*

[18] Lawyer A says that this meeting could have been attended by employees of any government ministry and that only government employees were permitted to attend. She says that all attendees of the bi-monthly meetings promoting best practices in consultation were advised that the information exchanged during the meetings was confidential and privileged and not to be shared with external parties.

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[7] Lawyer A's affidavit #1 at paras 4(a) and (b); Lawyer B's affidavit at paras 8(a) and (b).
[8] Lawyer A's affidavit #1 at para 4(a); Lawyer B's affidavit at para 8(b).
[9] Lawyer A's affidavit #2 at para 5.

[19] Lawyer A says that this document has been posted to a confidential SharePoint site as an internal resource for government employees, including Ministry staff and PAOs. She deposes that the SharePoint site includes the following disclaimer:

> Material on this site is for use by provincial government employees only and may not be accessed by any contractors, Crown corporation staff, or other non-governmental employees. Some of the material is confidential and subject to solicitor-client privilege. By viewing this content, you acknowledge and agree not to disclose the material outside of government without prior written approval and to follow the appropriate security protocols associated with information that is confidential to government.[10]

[20] The applicant submits that the Ministry has not established that the records in dispute fall within the scope of solicitor-client privilege because the presentations provided to the PAOs were provided on an educational basis and only contained background information, departmental know-how, and policy advice that does not attract solicitor-client privilege.[11]

[21] The applicant submits, in the alternative, that any legal advice can be severed from the presentations so that the portions of the presentations containing background information, departmental know-how and policy advice can be given to the applicant.[12]

Analysis – s. 14

[22] Based on the Ministry's affidavit evidence, I accept that the records in dispute are communications between MAG lawyers and their clients that entail the seeking and giving of legal advice and that were intended, by the lawyers and the clients, to be confidential.

[23] The lawyers who created the four records are employed within MAG's Natural Resources, Transportation, and Indigenous Legal Group. I am satisfied that the PAOs, Ministry staff, and employees of other ministries, who attended the September 2019 meeting, are these lawyers' clients.

[24] It is clear to me, from the Ministry's *in camera* descriptions of these records, that the three PowerPoint presentations and the November 2019 meeting summary are part of the continuum of communications in which the MAG lawyers provided their clients with legal advice about specific aspects of the Ministry's work. I find that these records communicate legal advice and not merely information or business or policy advice.[13]

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[10] Lawyer A's affidavit #2 at para 9.
[11] Applicant's submission at para 15.
[12] *Ibid* at para 16.
[13] For a similar finding, see Order F22-26, 2022 BCIPC 28 (CanLII) at para 48.

[25] Based on the Ministry's evidence, I accept that the meeting and presentations were only attended by, and the records were only distributed to, the MAG lawyers' clients. I also find that the legal advice communicated in the records was intended to be, and has remained, confidential.

[26] I acknowledge that the November 2019 meeting was attended by, and the summary can be accessed by, government employees outside the Ministry. However, given the evidence about the clients' common interest in the legal advice, I am satisfied that, in this instance, the presence of more than one ministry client did not impact the expectation of confidentiality.

[27] As a final point, I note that courts have repeatedly cautioned against severing legal advice due to the risk of revealing privileged information. For example, the BC Court of Appeal in *British Columbia (Attorney General) v Lee* said that "severance should only be considered when it can be accomplished without any risk that the privileged legal advice will be revealed or capable of ascertainment".[14] In this case, I am not satisfied that the information at issue can be severed without any risk of revealing privileged legal advice, either directly or by inference.

[28] For the reasons above, I find that all of the information in the four records withheld by the Ministry under s. 14 would reveal, directly or by inference, information that is subject to solicitor-client privilege.

Advice or recommendations – s. 13(1)

[29] Section 13(1) states that 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 minister.

[30] The purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative process was exposed to excessive scrutiny.[15]

[31] The first step in the s. 13 analysis is to determine whether the information in dispute would reveal advice or recommendations developed by or for a public body. If it would, then I must decide whether the information falls into any of the categories listed in s. 13(2) or whether it has been in existence for 10 or more years under s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, then that information cannot be withheld under s. 13(1).

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[14] *British Columbia (Attorney General) v. Lee,* 2017 BCCA 219 (CanLII) at para 40.
[15] *Insurance Corporation of British Columbia v Automotive Retailers Association,* 2013 BCSC 2025 at para 52. See also *John Doe v Ontario (Finance),* 2014 SCC 36 [John Doe] at paras 43-45.

[32] "Recommendations" include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.[16] "Advice" has a broader meaning than the term "recommendations." It includes opinions that involve exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision for future action.[17] It also includes policy options prepared in the course of the decision-making process.[18]

[33] Section 13(1) applies to information that would directly reveal advice or recommendations, as well as information that would enable an individual to draw accurate inferences about advice or recommendations.[19]

[34] Previous OIPC orders have found that s. 13(1) does not apply to manuals, instructions, or guidelines issued to officers or employees of the public body because they do not relate to a public body's deliberative decision-making or policy-making processes and instead, communicate a public body's settled policy or position about how to approach an issue.[20]

[35] Previous OIPC orders have also found that s. 13(1) does not apply to information simply because it appears in a draft document.[21] Section 13(1) only applies to information in a draft document if the information is, or would reveal, advice or recommendations.[22]

[36] Under s. 13(1), the Ministry is entirely withholding:

- A "Draft Consultation Framework";[23]
- A presentation titled "First Nations Consultation: A conversation about best practices for Development Services Staff, Northern Region" (the "Consultation Presentation");[24]
- Two presentations given during a series of training sessions called the "Back to Basics Training" sessions (the "Back to Basics Presentations");[25]

[16] *John Doe, supra* note 15 at paras 23-24.
[17] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.
[18] *John Doe, supra* note 15 at para 35.
[19] Order F16-11, 2016 BCIPC 13 (CanLII) at para 21.
[20] Order F14-34, 2014 BCIPC 37 (CanLII) at paras 23-25 and 32-33; Order F23-67, 2023 BCIPC 78 (CanLII) at paras 15-19; Order F24-36, 2024 BCIPC 44 (CanLII) at paras 52-58.
[21] Order F17-13, 2017 BCIPC 14 at para 24 and the cases cited therein.
[22] For instance, Order F19-28, 2019 BCIPC 30 at paras 27-30.
[23] Records package at pages 128-159.
[24] Records package at pages 402-412.
[25] Records package at pages 265-289, duplicated at pages 357-381.

- A "Draft Guidance" document.

[37] The Ministry provided these records for my review and affidavit evidence from a Regional Manager and a PAO.

Draft Consultation Framework, Consultation Presentation, and Back to Basics Training Presentations

Ministry's submissions and evidence

[38] The Ministry submits the Draft Consultation Framework was not meant to be binding.[26] It submits this document contains information, examples, and templates meant to help Ministry staff address certain issues that frequently arise during consultation and help fulfill the Province's duty to consult Indigenous peoples.[27] The Ministry submits the Draft Consultation Framework was not finalized, has not been approved or disseminated as Province-wide policy, and does not purport to be a "settled policy" or "settled position".[28]

[39] The Regional Manager used the Draft Consultation Framework to prepare the "Consultation Presentation", which he delivered to Ministry staff as an "interim training measure."[29] The POA also used the Draft Consultation Framework to prepare the "Back to Basics Training" presentations and gave these presentations to Ministry staff in the Vancouver Island region.[30]

[40] The Ministry submits these records are "draft and interim educational resources prepared to assist [Ministry] staff and Provincial Approving Officers in fulfilling their functions."[31] The Ministry submits that it "should be granted a zone of privacy to develop these kinds of educational resources in order to provide full, free and frank advice to their counterparts and colleagues and ultimately arrive at a clear articulation of [Ministry] policies."[32]

Applicant's submissions

[41] The applicant submits that the "Draft Consultation Framework" is a policy framework and is akin to a guideline in that it provides guidance to Ministry staff on how to approach the topic of Indigenous consultation.[33] The applicant submits that the records in dispute are being disseminated as educational and guidance

[26] Ministry's initial submission at para 24.
[27] Regional Manager's affidavit at para 16(a).
[28] Ministry initial submission at para 31.
[29] Regional Manager's affidavit at para 16(a).
[30] Regional Manager's affidavit at para 16(b); records package at pages 152-153 and 268-269.
[31] Ministry's initial submission at para 22.
[32] Ministry's initial submission at para 37.
[33] Applicant's submission at para 11.

resources such that the records are effectively being operationalized by Ministry staff as current policy.[34]

Analysis

[42] The Draft Consultation Framework contains tracked changes and comments. Based on the content of this document and the Ministry's submissions and evidence, I find that the information in the tracked changes on pages 131, 133, 136, and 148-149 and the comments on pages 136 and 138 of the Draft Consultation Framework relate to the deliberative process of developing the Draft Consultation Framework and are advice or recommendations developed by or for the Ministry under s. 13(1). However, the comments on pages 131 and 146 of this document are statements about future events that will occur and are not, and would not reveal, advice or recommendations within the meaning of s. 13(1).

[43] Turning to the remainder of the Draft Consultation Framework and the entirety of the three presentations, I find that they do not contain information that is, or would reveal, advice or recommendations.

[44] The fact that information is not binding does not mean that it is, or would reveal, advice or recommendations.[35] Similarly, a record being in draft form does not mean that its contents are, or would reveal, advice or recommendations.[36]

[45] Further, despite the Ministry's submission to the contrary, it is clear that the framework was disseminated to at least some Ministry staff through the Consultation Presentation and the Back to Basics Presentations. The Ministry refers to the training its staff received as "interim" but does not adequately explain how the training being "interim" changes the nature of the information in dispute from an educational resource or training tool of general application to advice or recommendations developed in the context of a deliberative process.

[46] I find that the Draft Consultation Framework is a guidance document that the Ministry used to train its staff, via the Consultation Presentation and the Back to Basics Presentations, on how to approach consultation with First Nations. With the exception of the tracked changes and comments discussed above, these three records do not include, and would not reveal, a suggested course of action or an opinion given in the context of a deliberative process. In other words, these

[34] Applicant's submission at para 9.
[35] For example, questions are information that are, by their nature, not binding and, generally, are also not advice or recommendations. For example, see Order F24-67, 2024 BCIPC 77 (CanLII) at para 41: "While a question or request for advice may lead to advice or recommendations, the question itself does not amount to advice under s. 13 unless it would reveal or allow for accurate inferences about advice or recommendations actually received."
[36] Order F17-13, 2017 BCIPC 14 at para 24 and the cases cited therein.

records do not contain information that, if disclosed, would reveal advice or recommendations developed by or for a public body.

Draft Guidance

[47] Regarding the final "Draft Guidance" document withheld under s. 13(1), the Regional Manager provides the following evidence:

> I do not know who prepared this document, but it appears to be [a] draft guidance document relating to a page in the [Guide to Rural Subdivision Approvals]. […] to my knowledge [the Draft Guidance was] not intended to be public facing. Rather, the draft guidance document contains internal advice and recommendations [to Ministry staff and PAOs] on the conditions and procedural steps that must be taken for certain types of highway access."[37]

[48] Based on the limited information provided by the Ministry, I find that the Draft Guidance is general guidance and instructions issued to Ministry staff and POAs about how to approach certain highway access applications and is not advice or recommendations related to a deliberative decision-making or policy-making process. The information in this document cannot be withheld under s. 13(1).

Analysis – ss. 13(2) and 13(3)

[49] I have considered and conclude that the small amount of information that qualifies as advice or recommendations under s. 13(1) does not fall into any of the categories listed in s. 13(2) and has not been in existence for 10 or more years.

Summary – s. 13

[50] For the reasons given above, the Ministry is authorized to withhold the information in the tracked changes on pages 131, 133, 136, and 148-149 and the comments on pages 136 and 138 of the Draft Consultation Framework under s. 13(1). The Ministry is not authorized to withhold any other information under s. 13(1).

Harm to intergovernmental relations – s. 16(1)

[51] Section 16(1)(b) of FIPPA authorizes a public body to refuse to disclose information if its disclosure could reasonably be expected to reveal information received in confidence from another entity, including an Indigenous governing entity.

[37] Ministry's initial submission at para 36; Regional Manager's affidavit at para 16(c).

[52] The Ministry is withholding portions of several documents included in one of the Back to Basics Presentation (the "Sessions #7 Presentation") under s. 16(1)(b). The Ministry's position is that disclosure of these documents would reveal information the Ministry received in confidence from Quatsino First Nation and Cowichan Tribes.[38] These documents are

- a case study summarizing communications between Quatsino First Nation, Ministry staff, and a third party who had made an application to the Ministry (the Third Party). The case study includes some of the correspondence between these three parties; and

- a letter a Ministry employee sent to Cowichan Tribes, summarizing discussions between Cowichan Tribes and the Ministry.

Do the two Indigenous Nations qualify as "Indigenous governing entities"?

[53] FIPPA defines an Indigenous governing entity as "an Indigenous entity that exercises governmental functions, and includes but is not limited to an Indigenous governing body as defined in the *Declaration on the Rights of Indigenous Peoples Act* [(*DRIPA*)]."[39] *DRIPA* defines an Indigenous governing body as "an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982.*"[40]

[54] The Ministry submits that it recognizes both Quatsino First Nation and Cowichan Tribes as Indigenous entities that exercise governmental functions. The applicant did not dispute the Ministry's assertion.

[55] Previous OIPC orders found that an organization qualified as an "aboriginal government" (which was the language used in a previous version of s. 16) because, among other things, there was evidence that it "has independently negotiated a number of agreements with the Province and the Government of Canada" on behalf of its members.[41] I can see from the Government of British Columbia's "First Nations A-Z Listing"[42] that both First Nations have engaged in negotiations with the Government of Canada and the Government of British Columbia. I am satisfied, based on this publicly available information, that both Quatsino First Nation and Cowichan Tribes are Indigenous governing entities.

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[38] Records package at pages 274-282 and 287-288, duplicated at pages 366-374 and 379-380.
[39] Schedule 1 of FIPPA.
[40] *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, s. 1.
[41] Order F21-45, 2021 BCIPC 53 (CanLII) at para 76, citing Order F20-50, 2020 BCIPC 59 (CanLII) at para 25.
[42] Government of British Columbia, "First Nations A-Z Listing" online: https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/first-nations-a-z-listing.

Did the Ministry receive information, in confidence, from the Indigenous governing entities?

[56] In order for information to be received "in confidence," there must be an implicit or explicit agreement or understanding of confidentiality between the parties who supplied and received the information.[43] This analysis looks at the intentions of both parties, in all the circumstances, to determine if the information was received "in confidence."[44]

[57] Past orders have identified several non-exhaustive factors to consider when determining whether information was received in confidence. These factors include:

- the nature of the information;
- explicit statements of confidentiality;
- objective evidence of an expectation of, or concern for, confidentiality;
- evidence of an agreement or understanding of confidentiality;
- the subjective intentions of both parties.[45]

Parties' submissions and evidence

[58] The Ministry asserts that some information contained in the Session #7 Presentation was provided to the Ministry in confidence by Quatsino First Nation and Cowichan Tribes. It provides the following affidavit evidence from the PAO:

> […] The information within the documents used for the case studies was provide to [the Ministry] in confidence by Quatsino First Nation and Cowichan Tribes.
>
> When the Province engages in consultation with First Nations, both parties understand that the information shared between them is expected to be and intended to be confidential. This is because a First Nation or other Indigenous governing entities may be required to share sensitive

[43] Order No. 331-1999, 1999 CanLII 4253 (BC IPC) at page 7.
[44] Order F23-07, 2023 BCIPC 8 (CanLII) at para 76, citing Order No. 331-1999, 1999 CanLII 4253 (BC IPC) at page 8.
[45] Order No. 331-1999, 1999 CanLII 4253 (BC IPC), at pages 8-9; Order F19-38, 2019 BCIPC 43 (CanLII) at para 117; Order F23-07, 2023 BCIPC 8 (CanLII) at para 76; Order F23-07, 2023 BCIPC 8 (CanLII) at para 76.

> information about, among other things, traditional territories and spiritual practices that are not meant to be shared with others.[46]

[59] The applicant submits that it is unreasonable to assume that all information exchanged between the Province and Indigenous governing entities is received in confidence purely because it is exchanged during a consultation process.[47] The applicant submits that the Ministry's broad, conclusory statement, without corroborating evidence, should not be taken as determinative. They submit that not all information received in the process of consultation is subject to confidentiality, particularly information that is already public knowledge or was previously publicly disclosed by either party.[48]

[60] In response, the Ministry submits that, there may be times where information provided during consultation is intended to become public or is not otherwise sensitive, but that, in this case, its evidence supports a finding that the parties intended the communications to be confidential.[49]

Analysis

[61] For the reasons that follow, I find the evidence presented by the Ministry is insufficient to discharge its burden of proving the information in dispute was received in confidence.

[62] Some of the information in the records in dispute was provided by a third party or generated by the Ministry and would not reveal information received from either Quatsino First Nation or Cowichan Tribes.

[63] Turing to the rest of the information, there is nothing that appears to be inherently sensitive or confidential about the information in the records and I am unable to conclude, on the face of the records, that a reasonable person would regard the information as confidential in nature.

[64] The records do not contain explicit statements of confidentiality or provide any other indicators of an expectation of, or concern for, confidentiality. Further, the Ministry has not established there was an implicit or explicit agreement or understanding between the Ministry and Quatsino First Nation or Cowichan Tribes regarding the confidentiality of the specific information in dispute. The PAO's evidence that the information was received in confidence amounts to an assertion that information exchanged during consultation is generally expected to be received in confidence. This assertion is not sufficient to establish that the specific information in dispute was received in confidence.

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[46] POA's affidavit at paras 10-12; Ministry's initial submission at para 53.
[47] Applicant's submission at para 18.
[48] Applicant's submission at paras 20-21.
[49] Ministry's reply submission at paras 8-9.

[65] In the absence of evidence corroborating the Ministry's position, I find that the Ministry has not established that the information in dispute would reveal information received in confidence from Quatsino First Nation or Cowichan Tribes. The Ministry is not authorized under s. 16(1)(b) to withhold any of the information in dispute.

CONCLUSION

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

1. The Ministry is not authorized to refuse access to the information in dispute under s. 16(1)(b) and must give the applicant access to this information.

2. Subject to item 3, the Ministry is not authorized to refuse access to the information in dispute under s. 13(1) and must give the applicant access to this information.

3. I confirm the Ministry is authorized, under s. 13(1), to refuse access to the information I have highlighted in green in the records package accompanying this order.

4. I confirm that the Ministry is authorized to refused access to the records in dispute under s. 14.

5. I require the Ministry copy the OIPC registrar of inquiries on the cover letter and records it sends to the applicant in compliance with items 1 and 2 above.

[67] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by **August 6, 2025**.

June 23, 2025

ORIGINAL SIGNED BY

Rene Kimmett, Adjudicator

OIPC File No.: F23-93254