Order F26-25

**HEALTH PROFESSIONS REVIEW BOARD**

Allison J. Shamas
Adjudicator

March 31, 2026

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**Summary:** An individual (applicant) asked the Health Professions Review Board (Board) for access to records. The Board disclosed some responsive records but refused to provide others on the basis that they were outside the scope of FIPPA pursuant to s. 61(2)(a) of the *Administrative Tribunals Act* (*ATA*) and s. 3(1)(b) (now s. 3(3)(e)) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Board also withheld information under ss. 13(1) (advice and recommendations), 14 (solicitor-client privilege), and 22(1) (disclosure harmful to personal privacy) of FIPPA. The adjudicator determined that the applicant had no right of access to some of the records because they were outside of the scope of FIPPA pursuant to s. 61(2)(a) of the ATA. Considering the remaining records, the adjudicator decided that ss. 13, 14 and 22(1) of FIPPA applied to some information in dispute and authorized or required the Board to withhold that information. The adjudicator also ordered the Board to produce some information for her review so she could decide whether s. 13(1) applied to it. Finally, finding that no exceptions to disclosure applied to it, the adjudicator ordered the Board to disclose the remaining information in dispute to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 3(1)(b) (now 3(3)(e)), 13(1), 13(2), 13(3), 14, 22(1), 22(2)(e), 22(2)(f), 44(1); *Administrative Tribunals Act*, SBC 2004, c 45 s. 61(2)(a).

## INTRODUCTION

[1] An individual (applicant) asked the Health Professions Review Board (Board) for access to a complete copy of the Board's file in an application for review the applicant made to the Board.

[2] The Board disclosed some responsive records to the applicant but refused to provide others on the basis that they were outside the scope of FIPPA pursuant to s. 61(2)(a) (personal note, communication or draft decision of a decision maker) of the Administrative Tribunals Act (ATA), and s. 3(1)(b)

(personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity) (now s. 3(3)(e)) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).[1] The Board also withheld information from the responsive records on the basis of ss. 14 (solicitor-client privilege) and 22(1) (disclosure harmful to personal privacy) of FIPPA.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Board's decision. During mediation, the Board amended its response to the applicant's request by adding s. 13(1) (advice and recommendations) as an additional basis for withholding some of the information in dispute.

[4] Mediation by the OIPC did not resolve the issues in dispute and the matter proceeded to inquiry.

[5] Both parties provided submissions in the OIPC's written inquiry process. In addition, during the inquiry I wrote to the parties to identify issues with the Board's s. 14 evidence and to give both parties the opportunity to provide additional evidence and argument in respect of the issues identified in my letter. Both parties provided additional materials in response to my letter. In issuing the decision below, I have considered the materials submitted by the parties in both the standard and supplementary submissions processes.

## PRELIMINARY MATTERS

### *Evidentiary foundation for s. 14*

[6] The Board did not provide the s. 14 information for my review. Instead, it relies on affidavit evidence to support its position that s. 14 applies.

[7] The applicant argues that I should not accept the Board's affidavit evidence. He requests that I order the Board to produce the s. 14 information, or alternatively, that I grant him the opportunity to cross examine the Board's affiants. In support of these requests, the applicant raises concerns about compliance with the OIPC's *Instructions for Written Inquiries*, procedural fairness, and the principles of natural justice, and asserts that the Board made a false claim of privilege, and that its evidence in support of its claim of privilege is insufficient.

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[1] I am reviewing the Board's decision to refuse access under s. 3(1)(b) of FIPPA and for this reason, I will refer to s. 3(1)(b) through my order. After the Board made its decision, FIPPA was amended and s. 3(1)(b) was renumbered s. 3(3)(e). There were no other changes to the provision.

[8] I am not persuaded by the applicant's arguments about compliance with the OIPC's *Instructions for Written Inquiries*, procedural fairness, and the principles of natural justice.

[9] The Supreme Court of Canada has repeatedly made clear solicitor-client privilege is of central importance to the legal system as a whole,[2] and that it is not "merely a rule of evidence", but also "an important civil and legal right and a principle of fundamental justice in Canadian law."[3] It has also explained that solicitor-client privilege: "should only be set aside in the most unusual circumstances."[4]

[10] Owing to the fundamental importance of solicitor-client privilege, the OIPC makes an exception to its usual practice of requiring parties to provide unredacted copies of records in dispute when s. 14 is at issue. Where a party does not provide information withheld under s. 14 for the OIPC's review, the OIPC's practice is to decide whether solicitor-client privilege applies without reviewing the records unless it is necessary to do so to fairly decide.

[11] Where the OIPC decides a dispute over the application of s. 14 without reviewing the records, the OIPC addresses procedural fairness concerns related to s. 14 by requiring the party asserting privilege to provide sufficient evidence so that the party opposite and the decision maker may understand their claim. As I will explain below, in this case, I find the Board has done so. Furthermore, in considering affidavit evidence about the application of s. 14, the OIPC does not simply accept the position of the affiant. Rather, the OIPC decision maker considers the evidence in the affidavit in light of all other relevant factors to arrive at their own decision about whether the asserting party has made out its claim of privilege. I am not persuaded that the OIPC's practices, procedural fairness, or the principles of natural justice require a different approach in this case.

[12] With respect to his claim that the Board is making a false claim of privilege, the applicant explains that during the Board's review of how the College of Physicians and Surgeons of BC (College) handled the applicant's complaint, the Board changed its decision about whether a College record was protected by settlement privilege.[5] I am unable to see the relationship between this

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[2] *R v McClure*, 2001 SCC 14 (CanLII) at para 2 [*McClure*]; cited in *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at para 17 [*Pritchard*].
[3] *Alberta (Information and Privacy Commissioner) v. University of Calgary,* 2016 SCC 53 [*Alberta IPC*] at para 41, citing *Lavallee, Rackel & Heintz v Canada (Attorney General)*, 2002 SCC 61 at para 49.
[4] *Pritchard* supra note 2 at para 17.
[5] See 2016-HPA-199(b) *Complainant v College of Physicians and Surgeons of British Columbia*, 2018 BCHPRB 10 and 2016-HPA-199(c) *Complainant v College of Physicians and Surgeons of British Columbia*, 2019 BCHPRB 9 (CanLII).

circumstance and a false or inappropriate claim of privilege by the Board in this inquiry.[6]

[13] Finally, I am not persuaded that this is a circumstance where the Board's evidence is insufficient to establish its assertion of privilege. The Board's evidence in support of its application of s. 14, is primarily found in three affidavits from the Board's Executive Director (ED), and information in a document titled "submissions on asserted grounds for non-disclosure" (Submissions Document) that the ED confirms is accurate.[7]

[14] Both parties made arguments about whether the ED was an appropriate affiant. The applicant argues that the ED's evidence should not be believed because the ED is not a lawyer and does not have first-hand knowledge about some of the responsive records. In response, the Board submits that there is no rule requiring a party's evidence about the application of s. 14 come from a lawyer, and that the ED has first-hand knowledge of the relevant material facts through their role because they supervised the severing of the records.

[15] Affidavit evidence from a lawyer attracts higher probative value because lawyers are officers of the court who are bound by a professional duty to ensure that privilege is properly claimed.[8] However, there is no rule requiring that such evidence come from a lawyer. Rather, it is one relevant consideration in assessing whether the Board provided sufficient evidence to establish that s. 14 applies to the information at issue.

[16] In the present matter, it is clear from the ED's evidence that they have first-hand knowledge about the operation of the Board and the review application. I also accept that the ED supervised the severing of the records and that they therefore have first-hand knowledge of why the Board decided to apply s. 14 to the information in dispute.

[17] Furthermore, the ED addresses each record individually. Although in some instances the Board's evidence about individual records is limited and requires considerable effort to piece together from the various sources, considering the Board's evidence as a whole, I find that it is sufficient to allow the OIPC and the applicant to understand the Board's position about the s. 14 information. Therefore, I find that the Board's evidence is sufficient to adjudicate its decision to withhold information based on s. 14.

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[6] See for example *Alberta IPC supra* note 3 and *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District,* 2014 BCSC 1560 [*Bilfinger*].

[7] The Board also submitted an affidavit from one of its paralegals. However, as the paralegal's affidavit is limited to a single ancillary issue and the records are highly redacted, most of the Board's evidence about its decision to withhold s. 14 information comes from the ED.

[8] See for example *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at paras. 76-93 and Order F20-16, 2020 BCIPC 18 at paras. 8-10.

Conclusion – request for a production order

[18] In conclusion, for all the reasons above, I do not find it necessary or appropriate to order the Board to produce the s. 14 information for my review.

*Applicant's request for an oral hearing*

[19] During the submission process that followed my letter about the Board's s. 14 evidence the applicant requested that the OIPC conduct an oral inquiry in addition to the written inquiry to give him the opportunity to cross examine the Board's affiants.

[20] While s. 56(4)(a) of FIPPA gives the Commissioner the power to decide whether representations are to be made orally or in writing, for the reasons below, I decline to grant this request.

[21] The notice of inquiry provides that submissions were to be made in writing. This is the OIPC's usual process. In addition to the usual submission process, I also provided the parties with an additional opportunity to provide submissions about the Board's s. 14 evidence. Through this extensive written submission process, the applicant had multiple opportunities to respond to the Board's affidavits. The applicant used these opportunities to identify several issues related to the reliability and accuracy of that affidavit evidence.

[22] I have taken the applicant's submissions into account in assessing his request for a production order. I will consider them again in assessing the merits of the Board's application of s. 14 below. It is not clear to me how permitting in-person cross-examination would meaningfully contribute to my evaluation of the reliability, sufficiency, and accuracy of the evidence.

[23] I find that the applicant has had a sufficient and meaningful opportunity to respond to the Board's evidence, and that there is sufficient evidence and argument before me on which to assess the Board's decision to withhold information under s. 14. I am not persuaded that it is appropriate to put the parties or the OIPC to the inconvenience, expense, and delay of convening an in-person hearing at this point in the inquiry. I decline to grant the applicant's request for an oral hearing so he can cross examine the Board's affiants.

***Sufficiency of the Board's evidence concerning s. 61(2)(a)***

[24] The Board applied s. 61(2)(a) and s. 14 to some of the same records. As a result, I cannot see some of the records at issue under s. 61(2)(a).

[25] The applicant submits that I do not have sufficient evidence to decide the Board's application of s. 61(2)(a) and argues that I should order the Board to

produce unredacted copies of the records for my review. The Board opposes any production order.

[26] For the reasons below, I decline to order the Board to produce the s. 14 information so I can decide the s. 61(2)(a) issue.

[27] Section 61(2)(a) of the ATA is a scope provision. If s. 61(2)(a) applies to a record, FIPPA does not. Accordingly, I must decide the s. 61(2)(a) issue before I decide the s. 14 issue.

[28] In this case, I find it is not necessary to review unredacted records to decide if s. 61(2)(a) applies. The Board provided a partial copy of the records, the affidavit evidence of the ED, and the Submissions Document in support of its position under s. 61(2)(a). I have reviewed that evidence, and I find that it clearly sets out the facts I need to decide whether s. 61(2)(a) applies to the records at issue in this inquiry. Accordingly, I find that it is appropriate to decide the s. 61(2)(a) issue without ordering the Board to produce the information over which the Board asserts s. 14 in the s. 61(2)(a) records.

**ISSUE IN DISPUTE**

[29] The notice of inquiry lists five issues to be decided in this inquiry:

1. Whether the requested records are excluded from the scope of FIPPA under s. 61(2)(a) of the ATA;
2. Whether the requested records are excluded from the scope of FIPPA under s. 3(1)(b) of FIPPA;
3. Whether the Board is authorized to refuse to disclose the information at issue under ss. 13 and 14 of FIPPA; and
4. Whether the Board is required to refuse to disclose the information at issue under s. 22 of FIPPA.

[30] FIPPA does not assign a statutory burden of proof with respect to issues of scope, including the application of s. 61(2)(a) of the ATA or s. 3(1)(b) of FIPPA. Previous orders indicate that it is in the interest of both parties to provide the adjudicator with evidence and argument supporting their positions.[9]

[31] Section 57(1) of FIPPA places the burden on the Board to prove that the applicant has no right of access to the information withheld under ss. 13 and 14.

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[9] See for example Order F26-10, 2026 BCIPC 13 (CanLII) at para 18; Order F25-03, 2025 BCIPC 3. (CanLII); Order F22-41, 2022 BCIPC 46 (CanLII); Order F10-41, 2010 BCIPC 61 (CanLII) at para 5; and Order F18-02, 2018 BCIPC 2 (CanLII) at para 8.

[32] While under s. 22(1) the Board has the initial burden to establish that the information in dispute is personal information about a third party, s. 57(2) places the burden on the applicant to prove that disclosure of any personal information would not be an unreasonable invasion of a third party's personal privacy.[10]

## BACKGROUND

[33] The Board is governed by the *Health Professions Act* [HPA].[11] The Board's purposes include reviewing decisions made by BC health care colleges with respect to complaints against college registrants.[12]

[34] The applicant made a complaint to the College about a physician. The College's inquiry committee made a decision about the complaint. Dissatisfied with the college's decision, the applicant applied to the Board for review of the decision. The Board reviewed the college's decision and confirmed it. The applicant sought judicial review of the Board's decision, and the application for judicial review remains open and ongoing.

[35] The applicant asked the Board for access to a complete copy of its file concerning the application for review he submitted to the Board (review application).

## RECORDS IN DISPUTE

[36] The responsive records relate to the review application. They total 2572 pages consisting of emails, email attachments, letters, log entries, checklists, memoranda, pleadings, draft decisions, final decisions, and shipping labels. The Board withheld information from approximately 181 of those pages.

## SECTION 61(2)(A) OF THE ATA - SCOPE

[37] Section 61(2)(a) of the ATA operates to exclude certain types of records from the scope of FIPPA. If s. 61(2)(a) applies, then FIPPA does not. The relevant parts of 61 provide:

> 61 (1) In this section, "decision maker" includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a facilitated settlement process.

[10] Order 03-41, 2003 BCIPC 49220 (CanLII) at paras. 9–11.
[11] *Health Professions Act,* RSBC 1996, c 183 [HPA]. The HPA will be replaced by the *Health Professions and Occupations Act* upon coming into force on April 1, 2026. However, at the time of the applicant's access request, the applicable legislation was the HPA.
[12] Board initial submission at para 4 and see HPA s. 50.53(1)(b).

(2) The Freedom of Information and Protection of Privacy Act, other than section 44 (1) (b), (2), (2.1) and (3), does not apply to any of the following:

(a) a personal note, communication or draft decision of a decision maker; …

[38] The OIPC has considered s. 61(2)(a) of the ATA in several recent orders.[13] To date, those orders have consistently held that s. 61(2)(a) applies to records written by or on behalf of decision makers,[14] but not to records written by non-decision makers simply because they were sent to a decision maker.[15] Those orders also provide that s. 61(2)(a) does not exclude all records of an administrative tribunal from the scope of FIPPA but rather operates to codify the principle of deliberative secrecy defined in the common law.[16]

[39] The core of the principle of deliberative secrecy is protection of the substance of the matters decided and the decision-maker's thinking with respect to such matters.[17] However, the principle extends to the administrative aspects of the decision-making process - at least those matters which directly affect adjudication – such as the assignment of adjudicators to particular cases,[18] and to "matters relating to the formal process established by [an administrative tribunal] to ensure consistency in its decisions."[19]

***Parties' Positions – s. 61(2)(a)***

[40] The ED describes the records at issue under s. 61(2)(a) as emails, notes, and draft decisions authored by Board hearing panel members, Chairs, Executive Directors, case managers, administrative assistants, and legal counsel.[20]

[41] The ED states that the hearing panel members who the ED says decided the review application, and the Board Chairs who the ED explains were

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[13] I am not aware of, and the parties did not direct me to any decisions interpreting s. 61(2)(a) other than past OIPC orders.
[14] See Order F26-10, 2026 BCIPC 13 (CanLII); Order F25-03, 2025 BCIPC 3 (CanLII) at paras 20 and 23-35; Order F24-64, 2024 BCIPC 74 (CanLII) at para 28. See also Order F18-02, 2018 BCIPC 2 (CanLII) at para 22 and 25; and Order F24-59, 2024 BCIPC 69 (CanLII) at paras 32-38.
[15] See for See F25-03, 2025 BCIPC 3 (CanLII) at paras 20 and 23-35; and Order F24-64, 2024 BCIPC 74 (CanLII) at para 28.
[16] See Order F25-03, 2025 BCIPC 3 (CanLII); Order F24-64, 2024 BCIPC 74 (CanLII); Order F24-59, 2024 BCIPC 69 (CanLII); and Order F24-14, 2024 BCIPC 20.
[17] *Cherubini Metal Works Ltd. v Nova Scotia (Attorney General),* 2007 NSCA 37 (CanLII) [*Cherubini*] at para 15 citing *Tremblay v Quebec (Commission des affaires sociales),* 1992 CanLII 1135 (SCC) [*Tremblay*] at 964-65.
[18] *Cherubibi ibid* at para 15 citing *MacKeigan v Hickman*, 1989 CanLII 39 (SCC), … per McLachlin J (as she then was) at 831-33.
[19] *Cherubini supra* note 17, citing *Tremblay.*
[20] Each record is clearly described in the Submissions Document.

responsible for deciding the appointment of tribunal members to hearing panels were the decision makers for the purpose of the review application.[21]

[42] While the ED acknowledges that the Board's Executive Directors, Chairs (regarding issues other than the appointment of tribunal members), case managers, administrative assistants, and legal counsel were not decision makers for the purpose of the review application, they assert that these other individuals assisted the hearing panel members during the decision-making process (collectively "non-decision makers").[22] Specifically, the Board says that the records from these individuals contain information, instructions, legal advice, options, next steps, suggested courses of action, requests for a decision, "indications of the decision required," factors, proposed edits, and letters drafted for the hearing panel members' consideration in drafting their decisions.[23]

[43] The Board argues that past OIPC orders holding that s. 61(2)(a) only applies to materials authored by or on behalf of decision makers are wrongly decided. Pointing to those orders holding that s. 61(2)(a) codifies the principle of deliberative secrecy, the Board submits that the "authored by" interpretation fails to give effect to the full scope of the principle, which the Board says also covers records sent to decision-makers that inform their deliberations. The Board also submits that limiting the application of s. 61(2)(a) to materials authored by decision makers is inconsistent with Order F24-14, which, according to the Board, holds that s. 61(2)(a) protects communications other than those authored by the decision-maker.[24]

[44] In support of its position, the Board submits that the records authored by non-decision makers were "integral to the hearing panel's deliberative process,"[25] and that s. 61(2)(a) applies to these records because disclosing them would "materially impair or even vitiate the deliberative secrecy that s. 61(2)(a) is designed to protect."[26]

[45] The applicant argues that the OIPC's past approach to the interpretation of s. 61(2)(a) as limited to materials authored by a decision maker is correct.

***Findings and Analysis***

[46] For the reasons that follow, I find that s. 61(2)(a) applies to records written by and written on behalf of decision makers, but not to records written by non-

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[21] Affidavit of ED at paras 18, 19 and 21. See also paragraphs 11, 12, 15-21, and 35-38 of the Board's initial submission.
[22] See paragraphs 20-26 of the ED's affidavit.
[23] These descriptions are found throughout the table of records.
[24] Initial submission of Board at para 30.
[25] Board initial submission at para 36.
[26] Board initial submission at para 39.

decision makers for which there is insufficient evidence to suggest that they were written on behalf of a decision maker.

[47] The ED clearly identifies who was a decision maker for the purposes of the issues in the underlying review application, and the nature of the records at issue. That evidence is clear and based on the ED's firsthand knowledge. I accept it. Based on that evidence, I make the following findings.

*Emails and draft decisions authored by decision makers*

[48] I find that the hearing panel members were the "decision makers" for the purpose of deciding the review application and that the Chair was the decision maker for the purpose of appointing hearing panel members to the hearing panel (collectively decision makers).

[49] I find that some of the records at issue under s. 61(2)(a) are emails and draft decisions authored by decision makers.[27] These records fall squarely within the parameters of s. 61(2)(a) which applies to "a communication or draft decision of a decision maker." I find that s. 61(2)(a) applies to these records.

*Emails non decision makers wrote on behalf of decision makers*

[50] I also accept Chairs (when dealing with matters other than the appointment of panel members), Executive Directors, case managers, administrative assistants, and legal counsel were not decision makers for the purpose of the issues in the underlying review application (collectively non-decision makers).

[51] I find that the Board also withheld emails that non-decision makers wrote to request information that decision makers asked them to obtain, and draft decision letters non-decision makers wrote on behalf of hearing panel members and sent to them for review.[28] Past orders have applied s. 61(2)(a) both to records written by and on behalf of a decision maker. I agree with this approach because records written or sent on behalf of decision makers (like records written by them) can reveal information about what is in the mind of the decision maker. I also find that such an approach is consistent with the language of s. 61(2)(a) because, in my view, a communication written or sent on behalf of a decision maker remains a communication <u>of</u> that decision maker as opposed to being a communication of the individual providing administrative assistance as an intermediary or drafter. I find that s. 61(2)(a) also applies to the emails and draft decision letters written and sent on behalf of hearing panel members.

[27] These records are clearly identified in the Submissions Document.
[28] Items 146 and 176 from the Submissions Document.

*Emails and notes non-decision makers did not write on behalf of decision makers*

[52] The remaining records are emails and notes written by non-decision makers for which there is insufficient evidence to suggest that they were written on behalf of a decision maker. For the reasons below, I am not persuaded that s. 61(2)(a) applies to these records.

[53] To start, it is my view that past OIPC orders have consistently held that s. 61(2)(a) applies to records written by or on behalf of decision makers, but not to records written by non-decision makers simply because they were sent to decision makers.[29] In this regard, in those orders where the issue is before the decision maker, the OIPC's resounding approach has been expressed as follows: "It is not clear to me that any of these records are a personal note, communication or draft decision "of" a decision maker because there is nothing to suggest that they were authored by a "decision maker" as required for s. 61(2)(a) of the ATA to apply to them."[30]

[54] I am not persuaded by the Board's argument that the OIPC's past orders concerning s. 61(2)(a) have been inconsistently decided. In this regard, I do not accept the Board's interpretation of Order F24-14 as applying s. 61(2)(a) to communications written by non-decision makers regardless of whether they were written on behalf of the decision maker.[31] In my view, Order F24-14 does not address the issue of whether s. 61(2)(a) applies to those kinds of communications, and the Board does not adequately explain how it does.

[55] I am also not persuaded by the Board's argument that the OIPC's past orders holding that s. 61(2)(a) does not apply to materials written by non-decision makers are wrongly decided because they fail to adequately protect deliberative secrecy. While past orders hold that the provision codifies the principle of deliberative secrecy, that does not mean that s. 61(2)(a) must be interpreted to capture every record to which the principle could arguably apply. Rather, it means that the principle of deliberative secrecy informed the Legislature's drafting of s. 61(2)(a), and therefore that same principle is useful as an aid to interpreting s. 61(2)(a).

[56] In drafting s. 61(2)(a), the Legislature did not exclude from the application of FIPPA "all records that are subject to deliberative secrecy." Rather, it chose to exclude three specific types of records - "a personal note, communication or draft decision of a decision maker." The relevant question is how to interpret the words

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[29] See Order F26-10, 2026 BCIPC 13 (CanLII); Order F25-03, 2025 BCIPC 3 (CanLII) at paras 20 and 23-35; Order F24-64, 2024 BCIPC 74 (CanLII) at para 32. See also Order F18-02, 2018 BCIPC 2 (CanLII) at para 22 and 25; and Order F24-59, 2024 BCIPC 69 (CanLII) at paras 32-38.
[30] Order F24-64, 2024 BCIPC 74 (CanLII) at para 32. And see *ibid.*
[31] 2024 BCIPC 20 (CanLII).

of the provision. While the common law principle of deliberative secrecy assists in this interpretive task, the interpretive exercise is not to ignore the words of the provision in favour of an interpretation that captures every possible record to which the principle could arguably apply.

[57] Finally, I am not persuaded by the Board's argument that emails and notes written by non-decision makers comprise the "core" of the principle of deliberative secrecy. In the administrative decision-making context, it is the administrative decision maker who must make the decision, not those who provide them with information or advice. Therefore, while materials written by non-decision makers who advised decision makers could allow inferences into the decision maker's thinking, such materials would not actually tell the reader what the decision maker thought or how they arrived at their decision. For this reason, I find that personal notes, communications, or draft decisions of non-decision makers do not comprise the "core" of deliberative secrecy.

[58] The words of s. 61(2)(a) are clear – personal notes, communications, and draft decisions of a decision maker are outside the scope of FIPPA. Consistent with the OIPC's established approach to the interpretation of this provision, I find that it does not apply to personal notes and emails of non-decision makers if those records were not written on behalf of a decision maker.

*Conclusion – s. 61(2)(a)*

[59] For all of the reasons above, I conclude that s. 61(2)(a) of the ATA applies to the emails and draft decisions that I found were written by decision makers and to the emails and drafts that I found were written by non-decision makers on behalf of decision makers.[32] By operation of s. 61(2)(a) of the ATA, FIPPA does not apply to these records, and the applicant has no right to access them under FIPPA. I will not consider these records further.

[60] The Board also applied ss. 3(1)(b), 13(1), 14, and 22(1) of FIPPA to the non-decision makers' emails and notes that I found were not written on behalf of the decision makers. I will consider these records further under these other provisions.

## SECTION 3(1)(B) – SCOPE OF FIPPA

[61] Section 3(1)(b) provides:

> 3(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following: …

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[32] The Board's redactions in this case are numerous and complex. For these and all other pinpoint citations of which provisions apply to which information, see Schedule A to this order.

(b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi judicial capacity;

[62] The language of s. 3(1)(b) is similar but not identical to that of s. 61(2)(a). As with s. 61(2)(a), past orders have also held that s. 3(1)(b) applies only to records authored or sent by "a person who is acting in a judicial or quasi judicial capacity," not to records simply because they were sent to such a person. In this regard, in Order 00-16,[33] after a lengthy interpretation of s. 3(1)(b), then Commissioner Loukidelis explained that the provision applied to communications written by a person acting a judicial or quasi-judicial capacity, but not to communications received by those individuals.[34] Similarly, in Order F11-16,[35] the adjudicator considered the application of s. 3(1)(b) to communications between "a person who is acting in a judicial or quasi-judicial capacity" and the tribunal's lawyer and held that the provision applied to letters written by the person, but not letters from the lawyer to the person as those letters were not from the person acting in a judicial or quasi-judicial capacity.[36]

[63] The parties' evidence and argument about the application of s. 3(1)(b) were the same as their representations about s. 61(2)(a).[37] I will not reproduce them here.

[64] My analysis in respect of s. 61(2)(a) of the ATA is equally applicable here, and I adopt and rely on it. For the reasons given in the s. 61(2)(a) analysis above, and consistent with the past orders cited above, I am not satisfied that these records are communications or personal notes <u>of</u> a person who is acting in a judicial or quasi judicial capacity. Accordingly, I find that s. 3(1)(b) does not apply to the non-decision makers' emails and notes that were not written on behalf of decision makers.

## SECTION 14 – SOLICITOR CLIENT PRIVILEGE

[65] Section 14 provides that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. It encompasses legal advice privilege and litigation privilege.[38] In this case, the Board asserts that both apply.

[33] Order 00-16, 2000 CanLII 7714 (BC IPC).
[34] Order 00-16, 2000 CanLII 7714 (BC IPC) at p 8.
[35] Order F11-16, 2011 BCIPC 22 (CanLII).
[36] Order F11-16, 2011 BCIPC 22 (CanLII) at para 28.
[37] In this regard, the Board argues that past OIPC decisions which have concluded that s. 61(2)(a) is broader than s. 3(1)(b) were wrongly decided. I need not decide this argument to decide whether s. 3(1)(b) applies to the records at issue. Moreover, given my findings that s. 61(2)(a) does not apply to the records that remain in dispute, such a finding would not assist the Board. Therefore, I decline to consider this argument any further.
[38] Order F22-64, 2022 BCIPC 72 (CanLII) at para 15.

***Legal Advice Privilege***

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

- a communication between solicitor and client (or their agent);
- that entails the seeking or providing of legal advice; and
- that is intended by the solicitor and client to be confidential.[39]

While not every communication between client and solicitor is protected by legal advice privilege, if the conditions set out above are satisfied, then legal advice privilege applies.

[67] However, it is not only the direct communication of advice between solicitor and client that may be privileged. Legal advice privilege extends beyond the document that communicates legal advice to those that are "part of the continuum of information exchanged" between the client and the lawyer in order to obtain or provide the legal advice.[40] In this regard, the courts have held that the "continuum of communications" includes 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.[41] The courts have also held that the continuum includes communications at the other end of the continuum, after the client receives the legal advice, such as internal client communications about the legal advice and its implications.[42] In addition, legal advice privilege applies not only to privileged communications themselves, but also to information that would reveal those communications.[43]

*Parties' submissions*

[68] Broadly, the Board's position is that it has applied s. 14 to information that is or concerns legal advice the Board's lawyer (Lawyer) provided to the Board in respect of the review application.

[69] The ED explains that the Board has access to external legal counsel to assist in the proper administration of its duties. The ED identifies the Lawyer who

[39] *Solosky v The Queen,* 1979 CanLII 9 (SCC) at page 837, and *R v B*, 1995 CanLII 2007 (BC SC) [*R v B*] at para 22.
[40] *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority,* 2011 BCSC 88 (CanLII) [*Camp Development*] at paras 40 – 46; *Bilfinger supra* note 60 at paras 22-24; and *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 [*Huang*] at para. 83.
[41] *Camp Developments ibid, Bilfinger supra* note 60*, and Huang* ibid.
[42] *Camp Developments supra* note 40*, Huang supra* note 40, and *Bilfinger supra* note 6.
[43] Order F22-16, 2022 BCIPC 18 (CanLII) at para. 31.

advised the Board in respect of the review application and affirms that the records containing the s. 14 information relate to specific issues that arose in the review application.[44]

[70] In their affidavits, the ED provides evidence about the records as a group. In their first affidavit, the ED deposes that the Lawyer was party to all the communications described in the affidavit and provided real-time advice to the Board "in the stream of communications."[45]

[71] However, in their second affidavit, the ED clarifies that they did not intend to suggest that the Lawyer was a party to the emails at issue under s. 14, but rather that the Board's lawyer was a party to the communications that those emails "document." Elaborating, the ED explains:

> In some instances, there are email strings involving [the Lawyer], in which he provided real-time advice to members. In these strings, [the Lawyer] was an author or a recipient of the emails which comprise the string. The Records also include emails which [the Lawyer] did not send or receive but which discuss [the Lawyer's] legal advice to the Board.[46]

[72] In their third affidavit, The ED adds that some of the records "form part of continuums of communications wherein legal advice is sought, offered or discussed."[47]

[73] In the Submissions Document, the ED addressed each s. 14 record individually, describing them as falling into one of the following categories:

- Emails between the Board and the Lawyer;
- Internal Board emails that discuss, summarize, solicit, contain, refer to, or concern the Board's lawyer's legal advice or that discuss communications with the Lawyer on legal matters; and
- Notes and communications "documenting continuum of communication for counsel to provide legal advice;" that are "part of continuum of communication for counsel to provide legal advice;" that are "part of continuum of communication" regarding a specific legal matter; or that are "in the continuum of communication concerning counsel's legal advice."

[74] Finally, the ED deposes that the Board expects all communications between Board members or staff and legal counsel to be, and to remain, confidential.

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[44] Affidavit no. 1 of the ED, paras 28 – 50.
[45] Affidavit no. 1 of the ED.
[46] Affidavit no. 2 of the ED, para 9.
[47] Affidavit no 2 of the ED, paras 10 and 11.

[75] The focus of the applicant's argument is that he does not have sufficient information about the s. 14 information to be able to argue why s. 14 does not apply.

[76] He also makes several arguments on the merits, namely, he argues that:

- Much of the s. 14 information relates to non-legal or business advice to which s. 14 does not apply.
- Board employees such as the ED, case managers, and administrative assistants do not appear to be lawyers and could not provide legal advice to the Board.
- Section 14 does not apply to non-privileged attachments simply because they may be attached to privileged communications.
- Privilege does not attach to records simply because a lawyer was hired to undertake an administrative task relating to those documents.
- Privilege does not attach to all communications between a lawyer and client, and that the privilege does not extend to materials a lawyer found useful in advising the Board or to documents a lawyer created in the provision of legal services.
- Information relating to both legal fees and settlement amounts are not subject to s. 14.

*Findings and analysis*

[77] It is clear from the ED's affidavits that they are informed about the Board's operations, the review application, the relationship between the Board and the Lawyer, and the nature of the records themselves. I accept the ED's first-hand, factual evidence about these matters.

[78] More specifically, I accept that the records relate to the review application, and that there was a solicitor-client relationship between the Board and the Lawyer regarding the review application. In this regard, having reviewed the records and the Board's submissions about the myriads of legal issues that arose during that review application, I have no difficulty accepting that the Lawyer's role with respect to the records at issue was to provide legal advice to the Board.

[79] Finally, I accept the ED's description of the individual s. 14 records as accurate. That is, I accept that they can be described as:

- Emails between the Board and the Lawyer;
- Internal Board emails that discuss, summarize, solicit, contain, refer to, or concern the Board's lawyer's legal advice or that discuss communications with the Lawyer on legal matters; and

- Internal notes and communications "documenting continuum of communication for counsel to provide legal advice;" that are "part of continuum of communication for counsel to provide legal advice;" that are "part of continuum of communication" regarding a specific legal matter; or that are "in the continuum of communication concerning counsel's legal advice."

[80] I now turn to the applicant's arguments. The applicant says that Board employees are not lawyers and cannot provide legal advice. The Board's evidence is that the Lawyer, not the Board's own employees, provided legal advice to the Board. I do not find this argument relevant to the circumstances before me.

[81] The applicant also submits that privilege does not attach to communications about legal fees and settlement amounts; to materials the Lawyer found useful in advising the Board; to materials the Lawyer created in the provision of legal services, non-privileged attachments; or to records related to business advice or administrative tasks provided or performed by the Lawyer. Nothing in the parties' evidence, the parts of the records the Board provided for my review, or the broader circumstances suggests that any of the s. 14 records are the kind of information identified by the applicant. The applicant does not explain why he believes these submissions are relevant to the records. Furthermore, many of these submissions are inconsistent with the ED's evidence about the relationship between the Lawyer and the Board and the nature of the records. While I have considered the applicant's arguments, I do not find them relevant to the facts before me.

[82] Finally, I will consider whether s. 14 applies to each of the categories of disputed records that I described above.

<u>Emails between the Board and the Lawyer</u>

[83] I accept that s. 14 applies to the emails between the Board and the Lawyer. Once a claim of privilege has been established it applies "to all communications made within the framework of that solicitor-client relationship." Based on my findings that the Board-Lawyer communications related to the review application, I find that there was a solicitor-client relationship between the Lawyer and the Board with respect to that application. The ED's evidence and the Board's subsequent treatment of these communications satisfies me that the Board intended its communications with its Lawyer to be confidential. Therefore, I find that s. 14 applies to the emails.

Internal Board emails

[84] I also accept that s. 14 applies to the internal Board emails that "discuss, summarize, solicit, contain, refer to, or concern the Board's lawyer's legal advice or discuss communications with the Lawyer on legal matters."

[85] As noted above, solicitor-client privilege applies not only to communications between lawyer and client, but also to internal client communications that would reveal privileged communications. [48] In my view, it is clear that disclosing emails that "discuss, summarize, solicit, contain, refer to, or a lawyer's legal advice or that discuss communications with the lawyer on legal matters would reveal privileged communications." For this reason, I find that s. 14 applies to the internal Board emails.

Internal notes and communications

[86] I am not persuaded that s. 14 applies to the notes and communications that the ED variously describes in the Submissions Document as "documenting continuum of communication for counsel to provide legal advice;" that are "part of continuum of communication for counsel to provide legal advice;" that are "part of continuum of communication" regarding a specific legal matter; or that are "in the continuum of communication concerning counsel's legal advice."

[87] To start, whether or not information falls within the continuum of communications is a legal determination, that is ordinarily made by a decision maker based on factual evidence about the nature of that information.

[88] The continuum of communications is a broad tent that encompasses a broad range of communications. The ED does not provide sufficient factual evidence to allow me to understand why, in their view, these records fall within this broad legal tent. To put it more simply, the ED's statement that the records are in the continuum of communications does not allow me to understand what the remaining records are, beyond the fact that, in the ED's view, they fall within the continuum of communications.

[89] The ED's statements in their affidavits are too broad to provide much assistance in understanding how this group of records meets the requirements of s. 14. As the Board did not provide the records for my review and they are heavily redacted (for the most part all that is available is the date), it is difficult to glean much from the records. Nor do the other pieces of information in the Submissions Document provide much assistance. Even considering all these sources together, they do not provide a sufficient factual basis to allow me to

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[48] Order F22-16, 2022 BCIPC 18 (CanLII) at para. 31; *Camp Developments Supra* note 40*, Bilfinger Supra* note 6*, and Huang supra* note 40.

understand what these records are or why they fall within the continuum of communications.

[90] Finally, the ED is not a lawyer. They have no professional duty to ensure that privilege is properly claimed. I have no evidence about their degree of legal knowledge, or how they understand the legal term "continuum of communications."

[91] Under these circumstances and based on the material that is before me, I do not accept the ED's very broad legal conclusion that the remaining records fall within the continuum of communications. The Board has not persuaded me that s. 14 applies to the internal notes and communications.

[92] I considered whether to ask the Board for further explanation concerning these records, in light of the importance of solicitor-client privilege to the legal system. For the reasons below, I have decided not to do so.

[93] In *British Columbia (Minister of Public Safety) v British Columbia (Information and Privacy Commissioner)*, the BC Supreme Court reviewed an OIPC order in which the adjudicator found that s. 14 did not apply to certain documents over which the public body had claimed privilege.[49] During the course of the judicial review, the public body took the position that the adjudicator should have offered it a further opportunity to provide evidence to support its claim of privilege. Justice Gomery rejected this argument, holding that the circumstances of the case were not "so exceptional as to require that the [public body] be given another opportunity to substantiate its claim".[50] Justice Gomery also noted that:

> [P]ublic bodies subject to FIPPA are invariably well advised and professionally represented. The process by which requests for access to information are adjudicated is already prolonged. The legal principles governing solicitor-client privilege are well established…public bodies have the means and ample opportunity to assert claims of privilege to which they are entitled, and they should be expected to put forward all of the relevant evidence correctly and at the first available opportunity.[51]

[94] In the present matter, the Board is a sophisticated party that was represented by legal counsel throughout this inquiry. It received ample notice that its evidence about s. 14 was lacking. In his submissions, the applicant identified several problems with the Board's s. 14 evidence, including that it was vague; that the Board's affiant was not a lawyer; and that the Board refused to identify the parties involved in the s. 14 evidence. Furthermore, after reviewing the parties' inquiry submissions, I wrote to the parties to identify several concerns I

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[49] Order F23-42, 2023 BCIPC 50 (CanLII) at paras 36-46.
[50] *British Columbia (Minister of Public Safety) v British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 345 [*Minister of Public Safety*] at paras 20-21 and 28-38.
[51] *Ibid* at para 33.

had with that same evidence and to give the Board the opportunity to address these concerns. In that letter, I identified issues related to the sufficiency and internal consistency of the Board's s. 14 evidence and explained the usual principles that apply when a party claims privilege without providing the disputed records to the OIPC. The explanation of these principles included that the description of the record should include the names of the author and the recipient(s), the necessity of evidence to establish privilege over each individual record, and the value of evidence from a lawyer.[52]

[95] While the Board did provide additional evidence in response to my letter, that evidence did not include an affidavit from a lawyer, the names of the individuals involved in the internal communications containing the s. 14 information, or much in the way of additional factual information about the nature of the information at issue. Instead, the Board devoted much of its effort to explaining why the evidence it had provided to date was sufficient. The Board was made aware of the problems with its evidence. It has had four separate opportunities to provide evidence about its application of s. 14 in this inquiry. Its evidence remains insufficient to make out its claim that s. 14 applies to the internal notes and communications that the Board says document or are part of the continuum of communications.

[96] Parties have the right to decide what evidence to put before the OIPC. The Board has done so. In the circumstances of this case, I can see no reason to take highly exceptional step of providing yet another opportunity for the Board to provide additional evidence to support its application of legal advice privilege to the remaining information.

[97] I find that the Board has failed to establish that legal advice privilege applies to the information in this third category of the records.

*Conclusion – legal advice privilege*

[98] I find that legal advice applies to the records the ED describes in the Submissions Document as emails between the Board and the Lawyer and internal Board emails, but not to the internal notes and communications.[53]

### *Litigation Privilege*

[99] The Board also applied litigation privilege to some of the same information it withheld under s. 14. I will only consider the application of litigation privilege to the internal notes and communications which are the records I found were not

[52] See for example *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at paras. 76-93 and Order F20-16, 2020 BCIPC 18 at paras. 8-10.
[53] See Schedule A.

covered by legal advice privilege. Six records remain at issue under litigation privilege.[54]

[100] Litigation privilege protects a party's ability to effectively conduct litigation. Its purpose is "to create a 'zone of privacy' in relation to pending or apprehended litigation."[55] Given the purpose of the privilege, once the litigation ends, so does the privilege, unless the related litigation is ongoing or reasonably apprehended.[56]

[101] To establish litigation privilege, the party asserting the privilege must show that two elements are met for each document, namely:

1. Litigation was ongoing or was in reasonable prospect at the time the document was created; and
2. The dominant purpose of creating the document was to prepare for or aid in the conduct of litigation.[57]

*Litigation in reasonable prospect*

[102] The threshold for determining whether litigation is "in reasonable prospect" is a low one. It does not require certainty, but the party asserting the privilege must establish something more than mere speculation.[58] The essential question is would a reasonable person, being aware of the circumstances, conclude that the claim will not likely be resolved without litigation?[59]

[103] The Board's ED deposes that the applicant filed the petition for judicial review on September 23, 2019, and served it on the Board on September 21, 2020. The ED also says that the petition has not yet been heard by the court.

[104] I find that litigation was ongoing from September 23, 2019, when the applicant filed the petition for judicial review of the Board's decision. The emails at issue are dated between January 16, 2020 and December 17, 2020. As a result, I conclude that all the emails I am considering satisfy the first branch of the test.

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[54] The information that remains in dispute under litigation privilege is found on pages 33, 37, 39, 42, 43, and 45 of the records.
[55] *Raj v Khosravi*, 2015 BCCA 49 [Raj] at para 7 citing *Blank v Canada (Minister of Justice),* 2006 SCC 39 (CanLII) [*Blank*] at paras 27-28 and 34.
[56] *Blank ibid* at paras 34 – 39.
[57] See *Hamalainen (Committee of) v Sippola (1992)*, 1991 CanLII 440 (BC CA); *Gichuru v British Columbia (Information and Privacy Commissioner)*, 2014 BCCA 259 (CanLII) at para 32; and *Raj* supra note 55 at paras 12 and 20.
[58] *Raj Supra* note 55 at para 10.
[59] *Raj Supra* note 55 at para 11 citing *Sauvé v ICBC*, 2010 BCSC 763 at para 30.

*Dominant purpose is for the conduct of litigation*

[105] The second part of the test requires the party claiming the privilege to prove that the "dominant purpose" of the document, at the time it was produced, was to prepare for or aid in the conduct of litigation.[60] The dominant purpose analysis is a "factual determination to be made based on all of the circumstances and the context in which the document was produced. The privilege applies only if litigation was the primary reason for creating the document.[61]

[106] The Board says that litigation privilege attaches to communications "considering judicial review proceedings that were initiated by the applicant."[62] The ED describes the six records at issue as emails that are either part of continuum of correspondence "regarding" or "are predominantly concerned with" anticipated court proceedings by applicant."[63]

[107] The applicant says that the Board was not involved in an adversarial process when it investigated his complaint. I understand the applicant to mean that litigation privilege does not attach to the Board's records that relate to his application for review to the Board since the Board was not involved in an adversarial process when it reviewed his complaint.

[108] I accept the ED's evidence that the records at issue relate to the applicant's application for judicial review. I find that the judicial review was an adversarial process that involved the Board. Therefore, I find that the applicant's argument is not relevant to the six records that remain in dispute.

[109] I am not, however, persuaded that the *dominant purpose* of each email, at the time it was produced, was to prepare for or aid in the conduct of litigation. The ED's evidence that the emails were "regarding" or "predominantly concerned with" the applicant's judicial review is vague and conclusory. It fails to adequately explain what the dominant purpose of the emails was or how these emails relate to preparing for or aiding in the conduct of that litigation.

*Conclusion – litigation privilege*

[110] The Board has failed to provide sufficient evidence to establish that the second step of the test for litigation privilege is satisfied. As both requirements must be met for litigation privilege to apply, I find that the Board has not established that litigation privilege applies to the six remaining records which are the internal notes and communications.

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[60] *Hamalainen Supra* note 57 at para 21, cited in *Raj* supra note 55 at para 12.
[61] *Raj Supra* note 55 at para 17.
[62] Board's initial submission at para 70.
[63] See evidence about information withheld from pages 33, 37, 38, 42, 43, and 45 of the Records in Submissions Document.

## SECTION 13(1) – ADVICE AND RECOMMENDATIONS

[111] Section 13(1) allows a public body to refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

### *Production Order*

[112] The Board applied s. 13(1) to some of the same information that was at issue under s. 61(2)(a) of the ATA and s. 14 of FIPPA.

[113] I will not consider whether s. 13(1) applies to any information to which I have already decided ss. 61(2)(a) or 14 applies. What remains in dispute is the information that I have not already decided the Board may withhold on some other basis.

[114] The Board also applied s. 13(1) to some of information I decided it was not authorized to withhold based on s. 14. There are 29 such pieces of information.[64] The Board did not provide this information for my review.

[115] With very limited exceptions such as those discussed earlier in this order, the OIPC does not decide disputes concerning exceptions to disclosure of information without reviewing the information that is the subject of the dispute.[65] Deciding whether an exception to disclosure applies requires the OIPC decision maker to conduct an independent, line by line review of the information in dispute to decide whether that exception applies. My ability to conduct this analysis would be severely hampered if I cannot independently review the information.

[116] As I have decided that neither s. 61(2)(a) of the ATA nor s. 14 of FIPPA apply to the 29 pieces of information that remains in dispute under s. 13(1), I find that it is necessary and appropriate to exercise the jurisdiction under s. 44(1) of FIPPA to order the Board to produce that information for my review so that I may decide whether s. 13(1) applies.

[117] In the interest of providing a timely resolution for as much of the parties' dispute as possible, I will consider the application of s. 13(1) to the information the Board did provide for my review. The test under s. 13 is well-established, and I will apply it below.

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[64] See Schedule A of this Order.
[65] OIPC's *Instructions for Written Inquiries* page 7. See also for example Order F23-41, 2023 BCIPC 49 (CanLII) paras 105-106.

***Section 13(1) –Advice or Recommendations***

[118] The first step in the s. 13 analysis is to determine whether disclosing the information at issue would reveal advice or recommendations developed by or for a public body.

[119] "Recommendations" involve "a suggested course of action that will ultimately be accepted or rejected by the person being advised."[66]

[120] The term "advice" has a broader meaning than the term "recommendations,"[67] and includes:

- an opinion that involves exercising judgment and skill to weigh the significance of matters of fact;[68]
- opinion on matters of fact on which a public body must make a decision;[69]
- opinions that are obtained to provide background explanations or analysis necessary to the deliberative process of a public body;[70] and
- factual information compiled and selected by an expert, using their expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.[71]

[121] 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 to be drawn about advice or recommendations.[72]

*Parties' submissions*

[122] The Board describes the information it withheld under s. 13(1) as advice and recommendations that non-decision makers provided to decision makers, all in relation to the applicant's review application.

[123] The applicant submits that s. 13(1) does not apply to information that does not reveal advice or recommendations. He raises examples of the kinds of information that he says cannot be withheld under s. 13, such as information about what occurred during meetings, information provided by way of update,

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[66] *John Doe v Ontario (Finance)*, 2014 SCC 36 [*John Doe*] at para 24.
[67] *Ibid* at para 23.
[68] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 [*College*] at para 113, endorsed in *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [*PHSA*] at para 80.
[69] *College ibid* at para 113, endorsed in *PHSA ibid* at para 80.
[70] *College Supra* note 68 at para 111, endorsed in *PHSA Supra* note 68 at para 80.
[71] *PHSA Supra* note 68 at para 94. See also *College Supra* note 68 at para 110.
[72] See for example *John Doe Supra* note 66 at para 24; Order 02-38, 2002 CanLII 42472 (BCIPC), Order F10-15, 2010 BCIPC 24 (CanLII) and Order F21-15, 2021 BCIPC 19 (CanLII).

information that only reveals discussion topics, information about administrative matters, information that reveals a direction or a request for a certain action, email headers, subject lines, greetings, and signature lines.

*Findings and analysis*

[124] The Board applied s. 13 to emails from non-decision makers that were sent to hearing panel members. These emails are about various matters that arose during the review application. In most of the emails, the authors make suggestions, offer feedback, and provide their opinions about how panel members should proceed or approach specific issues. Some of these emails also include reasons for these opinions and suggestions, as well as facts and updates relevant to the suggestions and opinions.

[125] A small number of emails discuss decisions already made, standard practices and instructions, and actions that will be taken.

[126] Finally, all the emails include the standard information commonly found in email messages such as the from, sent, to, and subject lines, the name of the sender and recipient, email signatures, salutations, and pleasantries.

[127] I find that the following information either is or would reveal advice or recommendations developed by or for the Board:

[128] The **suggestions** are express statements about how the author believes the decision maker should proceed on issues arising in the course of the review application. It is clear on the face of the records that the decision maker has the choice to accept or reject the suggestion. I find that disclosing this information would reveal recommendations.[73]

[129] The **opinions** and **feedback** offer the author's views on how decision makers should proceed or approach specific issues. The **reasons** accompany and provide support for the author's opinions and the suggestions discussed above. It is clear from the authors' roles and the content of the information that the non-decision makers who provided their opinions, feedback and reasons used their expertise to do so. I find that disclosing this information would reveal advice.

[130] The **request for a decision** from the decision maker is drafted in such a way as to make clear the author's opinion about how the decision maker should proceed. As a result, while it is not structured as advice, I find that disclosing the request would nonetheless reveal the author's advice to the decision maker.

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[73] Records page 213, items 78, 80, and records page 220, item 83; records page 523, item 142.

[131] Some of the information discussed above is accompanied by **updates** and **facts** that the author provided to the decision maker along with their advice or recommendation. In most cases this information is directly related to and necessary for the decision maker to make an informed decision about the subject of the advice or recommendation. It is also clear that the authors used their knowledge and skill to compile this information and to decide how to present it to the decision maker. I find that disclosing this information would reveal advice.

[132] However, I will explain below, I am not persuaded that s. 13(1) applies to the balance of the information in dispute because I find it would not reveal advice or recommendations.

[133] I do not accept that s. 13(1) applies to the **descriptions of decisions already made, standard practices and instructions, or actions to be taken**. It is clear from the content and context of this information that it relates to decisions that have already been made and policies that are already established. Section 13(1) is intended to protect a public body's deliberative process, not the outcome of those processes.[74] As such, information that communicates only the content of finalized decisions or policy positions does not qualify as advice or recommendations under s. 13(1).[75] Consistent with the OIPC's past orders, I do not accept that s. 13(1) applies to this kind of information.

[134] I also do not accept that s. 13(1) applies to the **sender, recipient, subject lines, recipient's name, email signature, salutations, pleasantries, and statements that indicate that the decision is ultimately up to the decision maker** which are found throughout the emails the Board withheld based on s. 13(1). This kind of information reveals no advice or recommendations, and the Board does not explain how it could.

***Section 13(2) – exceptions to the application of s. 13(1)***

[135] The next step in the s. 13 analysis is to decide whether the information that I have found is or would reveal advice or recommendations under s. 13(1), falls into any of the categories in s. 13(2). If s. 13(2) applies, that information cannot be withheld under s. 13(1).

[136] The Board says that the exceptions in s. 13(2) do not apply to any of the information in dispute. The applicant submits that ss. 13(2)(a), (g), (k), (m), and (n) apply.

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[74] Order F23-101, 2023 BCIPC 117 (CanLII) at paras 117 and 118.

[75] See for example Order F24-48, 2024 BCIPC 56 (CanLII) at para 38; Order F23-101, 2023 BCIPC 117 (CanLII) at paras 117, 118; Order F21-16, 2021 BCIPC 21 (CanLII) at para 22; Order F19-27, 2019 BCIPC 29 at para 32, Order F18-04, 2018 BCIPC 4 (CanLII), at para 83; Order F15-37, 2015 BCIPC 40 at para 22; and Order F15-33, 2015 BCIPC 36 at para 25.

*Factual material – s. 13(2)(a)*

[137] Section 13(2)(a) provides that a public body must not refuse to disclose factual material under s. 13(1).

[138] The term “factual material” is not defined in FIPPA. However, in distinguishing it from “factual information” (which may be withheld under s. 13(1)), the courts have interpreted “factual material” to mean “source materials” or “background facts in isolation” that are not necessary to the advice provided.[76] Thus, where facts are compiled and selected by an expert as an integral component of their advice, they do not constitute “factual material” within the meaning of s. 13(2)(a).[77]

[139] Most of the facts and updates are intertwined with and provide necessary context for the decision maker to consider the advice and recommendations I discussed above. As a result, I find that it is not the kind of distinct source material or isolated background facts that courts have found to be “factual material.” I am satisfied that this kind of information is not “factual material” within the meaning of s. 13(2)(a).

[140] However, in two instances the Board withheld facts that, at least on their face, do not appear to be necessary to understand the advice or recommendations discussed above. These facts relate to the review application and appear to be information the author provided to the decision maker, but it is not clear on the face of the records how these facts relate to any advice or recommendations. The Board did not explain the relationship between these facts and any advice or recommendations. Consequently, I find that these facts are factual material. Therefore, the Board cannot withhold them under s. 13(1).

*Sections 13(2)(g) and (k)*

[141] Sections 13(2)(g) and (k) respectively state that a public body must not refuse to disclose the following under s. 13(1):

> (g) a final report or final audit on the performance or efficiency of a public body or on any of its policies or its programs or activities,
>
> (k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body,

The information is not a final report, an audit or a report. I find that ss. 13(2)(g) and (k) do not apply to it.

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[76] *PHSA Supra* note 68 at para 94.
[77] *Ibid.*

*Cited publicly as basis for decision or policy – s. 13(2)(m)*

[142] Section 13(2)(m) provides that a public body must not refuse to disclose information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy.

[143] The applicant submits that s. 13(2)(m) applies to the information the Board withheld from page 260 of the records (item 89 on the Submissions Document). I have already decided that s. 13(1) does not apply to this information because it is a description of a decision already made and action to be taken, therefore, I will not consider the application of s. 13(2)(m) to this information.

*Decision that affects the rights of the applicant – s. 13(2)(n)*

[144] Section 13(2)(n) provides that a public body must not refuse to disclose a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[145] The applicant submits that some of the information is decisions, including reasons, made in the exercise of an adjudicative function that affects his rights within the meaning of s. 13(2)(n). The records at issue do relate to an adjudicative process that affects the applicant's rights. However, as discussed above, I have already decided that s. 13(1) does not apply to decisions already made, standard practices and instructions, or actions to be taken. The information that I found reveals advice or recommendations does not consist of decisions or reasons for decisions. Therefore, I find that s. 13(2)(n) does not apply.

***Section 13(3) – Information in Existence for 10 or More Years***

[146] The third step is to consider whether the information has been in existence for 10 or more years under s. 13(3). Information that has been in existence for 10 or more years cannot be withheld under s. 13(1).

[147] The applicant filed the review application that is the subject of his access request on November 1, 2016 – less than 10 years ago. The information that I found reveals advice or recommendations has not been in existence for 10 or more years. Consequently, s. 13(3) does not apply.

***Conclusion – s. 13***

[148] I determined that s. 13(1) applies to the suggestions, opinions, feedback, reasons, request for a decision, updates, and most of the facts the Board withheld, but not to the descriptions of decisions already made, standard practices and instructions, or actions to be taken from, sender, recipient or

subject lines, recipient's name, email signature, salutations, pleasantries, and some facts.[78] The Board may not withhold this latter information under s. 13(1).

## SECTION 22 – UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY

[149] Section 22 of FIPPA requires a public body to refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy.

[150] There are four steps in the s. 22(1) analysis and I will apply each step under the subheadings below.[79]

### *Personal Information*

[151] As s. 22(1) only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information within the meaning of FIPPA.

[152] Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." Information is "about an identifiable individual" when it is "reasonably capable of identifying an individual, either alone or when combined with other available sources of information."[80]

[153] "Contact information" is defined in FIPPA 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."[81]

[154] The information the Board withheld under s. 22(1) consists of the following:

- A law firm mailing address;
- A personal mailing address;
- An email address associated with a law firm; and
- An email address with a personal domain name.

[155] The Board says this information is the personal or work addresses and email addresses of hearing panel members. It explains that this information is in

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[78] See Schedule A of this Order.
[79] Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.
[80] Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.
[81] Schedule 1.

the records because these hearing panel members used these addresses to exchange information with the Board.

[156] The Board says that the home addresses and personal email addresses are clearly personal information because they are not associated with a place of business.

[157] The Board acknowledges that law firm addresses and email addresses are “technically business information”. However, it submits that in this case, the information should be treated as personal information because it does not relate to the panel member’s work for the Board and does not allow the panel members to be contacted at the Board. The Board also submits that treating panel member’s law firm addresses as contact information would create an arbitrary distinction between hearing panel members who use their personal versus work addresses for Board business.

[158] The applicant submits that the law firm email addresses and addresses are not personal information because they are business contact information.

[159] I find that the home addresses and personal email addresses are personal information. I make this finding because they are about identifiable individuals and not contact information because they are not associated with a place of business, and therefore clearly were not provided to enable an individual to be contacted at a place of business.

[160] I find that the law firm addresses and law firm email addresses are contact information because they appear in the records to enable the law firm to be contacted for a business purpose. They are thus excluded from the definition of personal information.

[161] An individual’s mailing address and email address at the law firm where they are working is the kind of information typically captured by the contact information exclusion. This kind of information is ordinarily published online so that the individual can be contacted at their place of business. In this case, based on the Board’s submission, I find that the panel members, in fact, provided it to the Board so they could send and receive information – that is to enable them to be contacted at their places of business.

[162] I am not persuaded by the Board’s argument that the information is not contact information because it is not about the panel members’ work for the Board. The definition of contact information excludes all information whose purpose it is to enable an individual to be contacted at a “place of business”. It is not limited to circumstances where the place of business is also the public body who is party to the inquiry.

[163] I am also not persuaded by the Board's argument that treating the hearing panel members' personal and work contact information differently draws an arbitrary distinction. The distinction is drawn based on the purposes of s. 22 of FIPPA, which is to balance an access applicant's right to information against a third party's right to personal privacy. In general, disclosing an individual's home address and personal email address is a more significant infringement on their personal privacy than disclosing their work address and email address at a law firm. While there is a distinction, it is grounded in the defined terms in FIPPA. It is not an arbitrary distinction.

[164] In conclusion, I find that the personal email address and home mailing address are personal information, but that the law firm mailing address and email address are not. The Board is not authorized to withhold the law firm mailing or email addresses under s. 22(1).

***Section 22(4) - not an unreasonable invasion of privacy***

[165] The second step in the s. 22 analysis is to consider whether s. 22(4) applies to any of the information that I have found is "personal information" – that is to the personal email address and home mailing address. Section 22(4) lists circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. If the information falls into one of the circumstances enumerated in s. 22(4), the public body is not required to withhold the information under s. 22(1).

[166] Neither party asserts that s. 22(4) applies, and having considered the circumstances listed in s. 22(4), I find that none apply.

***Section 22(3) – disclosure Presumed to be an Unreasonable Invasion of Third-Party Personal Privacy***

[167] The third step in the s. 22 analysis is to consider whether the presumptions listed in s. 22(3) apply to any of the personal information that is not excluded under s. 22(4). Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[168] Again, neither party asserts that s. 22(3) applies, and having considered the presumptions listed in s. 22(3), I find that none apply.

***Section 22(2) – all relevant circumstances***

[169] The fourth and 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 in s. 22(2).

[170] The Board submits that ss. 22(2)(e) and (f) favour withholding the personal information.

[171] The applicant's submissions concern the law firm email and mailing addresses. As I have already decided that s. 22(1) does not apply to this information, I will not address these submissions further.

[172] Having considered the remaining circumstances listed in s. 22(2), I find that no others are relevant.

*Section 22(2)(e) – financial or other harm*

[173] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm. Previous OIPC orders have held that "other harm" for the purposes of s. 22(2)(e) consists of "serious mental distress or anguish or harassment."[82]

[174] The Board says that if the home mailing addresses were disclosed the hearing panel members would be exposed unfairly to the harm of having their personal residential address known publicly. It does not elaborate. There is also nothing in the records themselves or the surrounding circumstances that would explain how disclosure of the third party's home address would unfairly expose them to harm.

[175] The Board's bare assertion about harm is not sufficient to establish that s. 22(2)(e) applies. In this case, I find that there is insufficient explanation or evidence for me to conclude that disclosing the third party's home address will unfairly expose them to financial or other harm. I find that s. 22(2)(e) does not weigh against disclosure.

*Section 22(2)(f) – supplied in confidence*

[176] Section 22(2)(f) requires consideration of whether "the personal information has been supplied in confidence. For s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information, and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.[83]

[177] The Board says that the third parties provided their addresses and email addresses to the Board in confidence. Again, it does not elaborate.

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[82] Order F15-29, 2015 BCIPC 32 at para 33.

[83] Order F11-05, 2011 BCIPC 5 at para 41 citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras 23-26 regarding s. 21(1)(b).

[178] There is insufficient explanation or evidence in the material before me to conclude that when the third party supplied their personal information they did so under an objectively reasonably expectation of confidentiality. The Board does not address this issue in any detail, and there is nothing in the records themselves or the surrounding circumstances that assists me. I find that s. 22(2)(f) is not a relevant circumstance.

### *Conclusion – s. 22(1)*

[179] I have already decided that the law firm email address and address are not personal information. Section 22(1) does not apply to this information.[84]

[180] However, I found that the home address and personal email address is personal information. As this information is personal information, onus is on the applicant to establish that it would not be an unreasonable invasion of the third parties' personal privacy to disclose it. No ss. 22(2), (3) or (4) exclusions, presumptions or circumstances apply to the third parties' home address and email address. As a result, I find that the applicant has not provided sufficiently persuasive evidence or argument about the home addresses and personal email addresses to discharge this burden. Consequently, I find that disclosing the third parties' personal home and email addresses would be an unreasonable invasion of their personal privacy. Section 22(1) applies to the home address and personal email address, and the Board must withhold it on that basis.[85]

## CONCLUSION

[181] For the reasons given above, I make the following orders under ss. 58(2) and 58(4) of FIPPA:

1. Subject to item 4 below, I confirm, in part, the Board's decision that s. 61(2)(a) of the *Administrative Tribunals Act* applies to the records. The applicant has no right to access these records under FIPPA.

2. Subject to item 4 below, I confirm, in part, the Board's decision that s. 13(1) and 14 apply to the records.

3. Subject to item 4 below, I require the Board to refuse access to some of the information it withheld under s. 22(1).

4. I require the Board to give the applicant access to the information I found was not excluded from the scope of FIPPA by operation of s. 61(2)(a) of the ATA and/or that the Board was not authorized or required to withhold under ss. 13(1), 14, or 22(1). That information is located at the redaction numbers

[84] See Schedule A of this Order.
[85] See Schedule A of this Order.

or page numbers listed below. Where the information was provided for my review, I have highlighted it in yellow in a copy of the records which will be provided to the Board with this order.

Redaction numbers: 9, 17, 24, 33, 37, 39, 41-43, 45, 50, 53, 54, 56, 58, 64, 66, 67, 70, 75, 77, 78, 80, 83, 84, 86, 88, 91, 93, 94, 96, 98, 100, 102, 103, 110, 121, 136, 142, 143, 144, 149, 151, 153, 155, 156, 157, 161, 167, 175, 177, 180, 182, 183, 206, 213, 215, 222-224, 226, 227, 228, 230, 233, 236, 237, 238, 241, 243, 244, 249, 251, 253, 255, 256, 259, 265, 270, 273, 279, 287, 304, 325, 327, 329, 330, 332, 333-335, 337, 339, 340, 341, 343, 345, 348, 350, 353, 355. 372, and 373.

Pages: 61, 62, 212, 213, 214, 220, 260, 268, 307, 308, 310, 312, 523, 692, 693, 694, 695, 699, 700, 710, 730, 752, 753, 754, 755, 756, 757, 758, 760, 761, 762, 768, 769, 770, 771, 772, 791, 801, 937, 938, 939, 940, 949, 972, 973, 976, 977, 978, 980, 981, 1008, 1009, 1015, 1016, 1017, 1018, 1019, 1020, 1041, 1042.

5. I require the public body to copy the OIPC registrar of inquiries on its delivery of its cover letter to the applicant, together with a copy of the information described in item 4 above.

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

[183] For the reasons given above, I make the following order under s. 44(1)(b) of FIPPA:

1. I require the Board to produce for my review the information found at the following redaction numbers so I can decide if s. 13(1) applies:

   51, 133, 138, 187, 189, 193, 194, 198, 200, 203, 205, 210, 212, 214, 289, 291, 294, 300, 302, 307, 309, 311, 318, 320, 360, 363, 364, 367, 369, and 370.

   The Board is also required to clearly identify what information in those records it is withholding under s. 13(1).

[184] Under s. 44(3) of FIPPA, the Board must comply with paragraph 54, item 1 above by **April 16, 2026**.

March 31, 2026

**ORIGINAL SIGNED BY**

Allison J. Shamas, Adjudicator

OIPC File No.: F22-90832

## Schedule A

The Board redacted multiple pieces of information from some pages of the records. The Submissions Document assigns each redaction a unique number from 1 – 373. When pinpointing information, I will refer to the unique redaction number rather than the page number the Board assigned in the Submissions Document, unless otherwise indicated.

The Board also applied multiple redactions to the same information. For this reason, I will identify the information that the Board is required to provide to the applicant – that is, information that falls within the scope of FIPPA and Board is not authorized or required to withhold – once, at the end.

The ED's second affidavit contains several corrections to the Submissions Document. I have incorporated these corrections below.

Finally, the Board's evidence about the records and information in dispute was complicated. I have made every effort to ensure that the redaction and page numbers below match the reasons in my order. In the event of any conflict between my reasons and the redaction and page numbers below, my reasons take precedence.

**Section 61(2)(a) applies to emails and a draft decision authored by or written on behalf of decision makers, but not to the notes and emails authored by non-decision makers. Section 61(2)(a) applies to the information at the following redaction numbers:**

49, 52, 59, 61, 63, 65, 71, 72, 74, 76, 79, 82, 85, 87, 90, 92, 95, 97, 99, 101, 104, 107, 109, 112, 114, 115, 117, 119, 123, 124, 125, 126, 130, 135, 137, 139, 145, 146, 147, 148, 150, 152, 154, 158, 159, 162, 163, 164, 166, 168, 170, 171, 173, 174, 176, 178, 179, 181, 184, 185, 190, 191, 192, 195, 196, 207, 208, 218, 219, 220, 221, 225, 226, 229, 231, 232, 234, 235, 237, 238, 240, 242, 246, 247, 248, 250, 252, 254, 257, 258, 264, 265, 266, 267, 268, 269, 271, 272, 274, 276, 280, 281, 283, 284, 286, 288, 290, 292, 295, 298, 299, 301, 303, 306, 308, 310, 312, 315, 317, 319, 323, 324, 326, 328, 331, 334, 336, 338, 342, 344, 346, 347, 349, 351, 354, 356, 359, 362, 366, 368, and 371.

**Section 14 applies to emails between the Board and the Lawyer and internal Board emails, but not to emails the Board describes as part of continuum of communications. Section 14 applies to the information at the following redaction numbers:**

1-8, 10-16, 18-23, 25-32, 34-36, 38, 40, 44, 46, 55, 57, 60, 62, 68, 69, 73, 108, 111, 113, 116, 118, 120, 122, 127-129, 131, 132, 134, 140, 160, 165, 169, 172, 186, 188, 197, 199, 201, 202, 204, 209, 211, 245, 263, 275, 277, 278, 282, 285, 293, 296, 297, 313, 314, 316, 357, 358, 361, 365.

**The Board is required to produce for my review the information at the following redaction numbers so I can decide whether s. 13(1) applies to it. The redaction numbers for that information are as follows:**

51, 133, 138, 187, 189, 193, 194, 198, 200, 203, 205, 210, 212, 214, 289, 291, 294, 300, 302, 307, 309, 311, 318, 320, 360, 363, 364, 367, 369, and 370.

**Section 13 applies to the following information, which is found on the following <u>pages:</u>**

- Suggestions – 213, 214, 220, 268, 307, 308, 523, 699, 753, 755, 760, 768, 771, 772, 937, 938, 939, 940, 949, 972, 976, 981,
- Opinions, feedback, reasons, updates and facts – 212, 220, 523, 693, 699, 700, 752, 753, 754, 755, 756, 757, 760, 762, 769, 770, 772, 937, 938, 940, 949, 972, 977, 978, 980, 981, 1008, 1009, 1015, 1016, 1017, 1018
- Request for a decision – 752, 1041, 801, 1042

**Section 13(1) does not apply to the following information, which is found on the following <u>pages</u>:**

- Descriptions of decisions already made, standard practices and instructions, or actions to be taken – 260, 523, 692, 699, 758, 761, 980, 981,
- From, sent, to, subject lines, recipient's name, email signature, salutations, pleasantries and statements indicating that the decision is ultimately up to the decision maker – 212, 213, 214, 220, 260, 268, 307, 308, 310, 312, 523, 692, 693, 694, 695, 699, 700, 710, 752, 753, 754, 755, 756, 757, 758, 760, 761, 762, 768, 769, 770, 771, 772 801, 937, 938, 939, 940, 949, 972, 973, 976, 977, 978, 980, 981, 1008, 1009, 1015, 1016, 1017, 1018, 1019, 1020, 1041, 1042,
- Factual material the Board must not withhold under s. 13(2)(a) – 523, 771, 798

**Section 22 applies to the personal addresses and email addresses with personal domain names. That information is found on the following <u>pages:</u>**
61, 62, 215, 522, 730, 792, 793, 871, 989.

**Section 22 does not apply to law firm addresses and email addresses. That information is found on the following <u>pages:</u>**

61, 62, 730, 791.

**No scope provisions or exceptions to disclosure apply to the information at the redaction numbers or to the highlighted information on the pages listed below:**

Redaction numbers:

9, 17, 24, 33, 37, 39, 41-43, 45, 50, 53, 54, 56, 58, 64, 66, 67, 70, 75, 77, 78, 80, 83, 84, 86, 88, 91, 93, 94, 96, 98, 100, 102, 103, 110, 121, 136, 142, 143, 144, 149, 151, 153, 155, 156, 157, 161, 167, 175, 177, 180, 182, 183, 206, 213, 215, 222-224, 226, 227, 228, 230, 233, 236, 237, 238, 241, 243, 244, 249, 251, 253, 255, 256, 259, 265, 270, 273, 279, 287, 304, 325, 327, 329, 330, 332, 333-335, 337, 339, 340, 341, 343, 345, 348, 350, 353, 355. 372, and 373.

Pages: 61, 62, 212, 213, 214, 220, 260, 268, 307, 308, 310, 312, 523, 692, 693, 694, 695, 699, 700, 710, 730, 752, 753, 754, 755, 756, 757, 758, 760, 761, 762, 768, 769, 770, 771, 772, 791, 801, 937, 938, 939, 940, 949, 972, 973, 976, 977, 978, 980, 981, 1008, 1009, 1015, 1016, 1017, 1018, 1019, 1020, 1041, 1042.