OFFICE OF THE
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Order F14-02

MINISTRY OF JUSTICE

Elizabeth Barker, Adjudicator

January 23, 2014

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Summary: A member of the Legislative Assembly of BC requested information from the Ministry related to the decision to fund the legal expenses of two ministerial assistants who were charged with criminal offences. He argued that disclosure of the records was clearly in the public interest (s. 25). The Ministry withheld some of the responsive records claiming they were protected by solicitor-client privilege (s. 14) and others because it believed disclosure would be an unreasonable invasion of third-party personal privacy (s. 22). The ministerial assistants argued that all of the information in dispute should be withheld under ss. 14 and 22.

The adjudicator finds that s. 25(1)(b) does not apply to the responsive records. The adjudicator also finds that the Ministry is authorized to refuse access to all of the information in dispute under s. 14 because it is protected by solicitor-client privilege. In light of the conclusion that s. 14 applies to all of the disputed information, there is no need to consider s. 22.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14 and 25(1)(b).

Authorities Considered: B.C.: Order 00-07 2000 CanLII 7711 (BC IPC); Order 00-16, 2000 CanLII 7714 (BC IPC); Order 00-18 2000 CanLII 7416 (BC IPC); Order 01-20, 2001 CanLII 21574 (BC IPC); Order 01-53, 2001 CanLII 21607 (BC IPC); Order 02-38, 2002 CanLII 42472 (BC IPC); Order 03-28, 2003 CanLII 49207 (BC IPC); Order 04-09, 2004 CanLII 34263 (BC IPC); Order 04-12, [2004 CanLII 34268 (BC IPC); Order F06-16, 2006 CanLII 25576 (BC IPC); Order F07-05, 2007 CanLII 9596 (BC IPC); Order F09-04, 2009 CanLII 14731 (BC IPC); Order F11-33, 2011 BCIPC 41 (CanLII); Investigation Report F13-05, 2013 BCIPC No. 33 (CanLII).

Cases Considered: *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665; *R. v. B.,* 1995 Can LII 2007 (BCSC); *Canada v. Solosky*, [1980], 1 S.C.R. 82; *Legal Services Society v. The Information and Privacy Commissioner of the Province of B.C.*,1996 Can LII 1780 (BC SC); *Legal Services Society v. British Columbia (Information and Privacy Commissioner)*, 2001 BCSC 203; *British Columbia (Auditor General) v. Butler*, 2011 BCSC 1064; *British Columbia (Auditor General) v. British Columbia (Attorney General)*, 2013 BCSC 98.

Authors Cited: Manes and Silver, *Solicitor-Client Privilege in Canadian Law*, 1993.

INTRODUCTION

[1] This inquiry concerns a request for records related to two indemnity agreements, by which the Ministry of Justice ("Ministry"), on behalf of the Province of British Columbia ("Province"), agreed to pay the legal defence fees of two former ministerial assistants ("Third Parties"). The Ministry is withholding all of the responsive records, some because they are protected by solicitor-client privilege (s. 14) and others because disclosure would be an unreasonable invasion of the Third Parties' personal privacy (s. 22).

[2] The applicant disagrees with the Ministry's response and contends that disclosure of the records is clearly in the public interest (s. 25).

[3] The Third Parties submit that all of the records should be withheld under s. 14 and s. 22.[1]

[4] The responsive records in this case include most of those at issue in Order F14-03, which is being released at the same time as this order. The Ministry's and the Third Parties' submissions in both cases are almost identical.

[5] A review of the Ministry's decision was conducted by the Office of the Information and Privacy Commissioner ("OIPC"), but the issues in dispute were not resolved. The applicant requested that this matter proceed to an inquiry under Part 5 of FIPPA.

ISSUES

1. Is the Ministry required by s. 25(1)(b) of FIPPA to disclose the requested information without delay?

2. Is the Ministry authorized by s. 14 of FIPPA to refuse access to the requested information?

[1] Only one of the Third Parties provided a submission. The other indicated that he adopted the first's submissions as his own.

3. Is the Ministry required by s. 22(1) of FIPPA to refuse access to the requested information?

[6] The Ministry has the burden of proof, under s. 57(1) of FIPPA, to establish that s.14 authorizes it to withhold the requested information. However, s. 57(2) of FIPPA places the burden on the applicant to establish that disclosure of personal information would not be an unreasonable invasion of third-party personal privacy under s. 22 of FIPPA.

[7] Section 57 is silent on the burden of proof for s. 25. However, I agree with the following statement from BC Order 02-38:

> …an applicant argues that s. 25(1) applies, it will be in the applicant's interest, as a practical matter, to provide whatever evidence the applicant can that s. 25(1) applies. While there is no statutory burden on the public body to establish that s. 25(1) does not apply, it is obliged to respond to the commissioner's inquiry into the issue, and it also has a practical incentive to assist with the s. 25(1) determination to the extent it can.[2]

DISCUSSION

[8] **Background**—At the time of the information request that led to this inquiry, the applicant was a member of the Legislative Assembly of BC.

[9] The Third Parties were formerly employed by the Province as ministerial assistants to the Minister of Finance and the Minister of Transportation. While still employed by the Province, they were charged with criminal offences alleging breach of trust and improper disclosure of confidential information concerning the sale of provincial assets.

[10] Since the 1980's the Province has provided its employees with indemnity coverage to fund the costs of their legal expenses when the employee's involvement in the legal proceedings arises from conduct that occurred in the performance of employment. The terms and conditions for such coverage are contained in collective agreements for unionized employees and in policy for excluded employees. In addition, the Province may enter into indemnity agreements under s. 72 of the *Financial Administration Act* for employees who are not covered by indemnity protection in either a collective agreement or the Province's policy for excluded employees.

[11] In 2005, the Province, as represented by the Ministry (then the Attorney General), entered into an indemnity agreement with each of the Third Parties ("Indemnity Agreements") to pay their lawyer's bills for their defence of the

[2] Order 02-38, [2002] B.C.I.P.C.D. No. 38, at para. 39.

criminal charges. These Indemnity Agreements were granted under the authority of s. 72 of the *Financial Administration Act*.

[12] On October 18, 2010 the Third Parties each pleaded guilty to several counts.

[13] In an October 20, 2010 public statement, the Deputy Attorney General revealed the existence and the contents of some of the records in dispute here.[3] He explained that the Indemnity Agreements specified that the Third Parties would be obliged to repay their legal costs unless acquitted on all counts, but that the Province had decided to release them from that liability. He also disclosed that a letter would be sent that same day to the Third Parties and their lawyers releasing them from an October 14, 2010 condition that they not discuss the release from liability and they refer all inquiries to the Ministry.

[14] In August of 2012, the applicant requested the Ministry provide him the following records:

- The Indemnity Agreements and any documents that amend or modify them.
- Any documents regarding the Province's decision to release the Third Parties from liability to repay their legal costs.
- A copy of the letter that on October 20, 2010 the Deputy Attorney General publically stated would be sent later that same day to the Third Parties and their lawyers releasing them from an October 14, 2010 condition that they not discuss the release from liability and they refer all inquiries to the Ministry.

[15] **Records at Issue**—The Ministry identified 79 pages of records responsive to the applicant's request. Pages 59-64 contain internal correspondence between a Ministry lawyer and government officials, and in his reply submission the applicant clarified that he is not seeking that information. For this reason, it is not necessary for me to consider those pages. All references, therefore, to the "records" or "information" in dispute in these reasons are to the following:

Category 1:

Each Third Party's Indemnity Agreement accompanied by its respective Schedules A and B. The Ministry withheld the main body of the Indemnity Agreements under s. 22 and their Schedules A and B under s. 14. [Pages 1-46 of the records].

[3] Ministry's initial submission, Appendix C.

Category 2:

Documents concerning changes or amendments to the Indemnity Agreements. This includes records relating to the Deputy Attorney General's October 20, 2010 public announcement, that the Third Parties had been released from the obligation under the Indemnity Agreement to repay their legal costs if convicted. The Ministry withheld all of the information in these records under s. 22. [Pages 47-58 and 65-78 of the records].

Category 3:

A copy of the October 20, 2010 letter, the Deputy Attorney General publically stated would be sent to the Third Parties and their lawyers. The Ministry withheld all of the information in this letter under s. 22. [Page 79 of the records].

[16] As mentioned above, the Third Parties submit that all of the responsive records should be withheld under both ss. 14 and 22.

Is disclosure in the public interest? (s. 25)

[17] The applicant submits that there is an "overwhelming public interest in compelling"[4] the Ministry to give the public access to the records in dispute. I take this to be an argument that s. 25(1)(b) of FIPPA applies in these circumstances although the applicant does not explicitly reference it.

[18] If s. 25(1) applies in this case, it overrides any other exceptions to disclosure of the requested records. The relevant parts of s. 25(1) are as follows:

> 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
>
> ...
>
> (b) the disclosure of which is, for any other reason, clearly in the public interest.
>
> (2) Subsection (1) applies despite any other provision of this Act.

[4] Applicant's initial submission, para. 5.

[19] Section 25 has been analyzed in many orders and most recently in an Investigation Report by Commissioner Denham who stated:

> In considering whether to disclose information pursuant to s. 25(1)(b), a public body must conduct a two-step analysis. First, there must be an urgent or compelling need for disclosure of the information. Second, there must be a sufficiently clear public interest in disclosure of the information in question.[5]
>
> In order for there to be a clear public interest, the information must contribute in a substantive way to the body of information that is already available to enable or facilitate effective use of various means of expressing public opinion and making political choices.[6] Section 25(1)(b) does not apply to information that will add little or nothing to that which the public already knows.[7]
>
> The potential interest of the public in learning about an issue does not necessarily make disclosure of that information "clearly" in the public interest;[8] rather, it must further the education of or debate among the public on a topical issue.
>
> While information rights are an essential mechanism for holding government to account, s. 25(1)(b) is not intended to be used by the public to scrutinize public bodies.[9] In these circumstances, the public may still use its general right to access records under FIPPA. [10]

[20] Importantly, the phrase "without delay" in s. 25(1) indicates that it is not triggered unless there is an element of temporal urgency. In Order 02-38 and again in Order 03-28, former Commissioner Loukidelis explained that matters of public interest under s. 25(1)(b) must be matters in urgent need of immediate disclosure.[11] Therefore, in considering whether s. 25(1)(b) applies, I will first consider whether there is an urgent need for disclosure of the requested information. Only if there is, will I go on to consider whether there is also a sufficiently clear public interest in disclosure.

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[5] Order F09-04, 2009 CanLII 14731 (BC IPC), at para. 13.
[6] Order 02-38, 2002 CanLII 42472 (BC IPC), at para. 66.
[7] Order 02-38, 2002 CanLII 42472 (BC IPC), at para. 67.
[8] Order 04-12, [2004 CanLII 34268 (BC IPC), at para. 14; and Order 01-20, 2001 CanLII 21574 (BC IPC), at para. 31, which reads, "Although the words used in s. 25(1)(b) potentially have a broad meaning, they must be read in conjunction with the requirement for immediate disclosure and by giving full force to the word 'clearly,' which modifies the phrase 'in the public interest'."
[9] Order 00-16, 2000 CanLII 7714 (BC IPC), and Order 04-09, 2004 CanLII 34263 (BC IPC).
[10] Investigation Report F13-05, 2013 BCIPC No. 33 (CanLII).
[11] Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 53; and Order 03-28, 2003 CanLII 49207 (BC IPC) at para. 25.

[21] The applicant submits that many people were angered by the release of the Third Parties from their liability to repay their legal fees, and access to the records is necessary to allow the public to check the veracity of the Province's characterization of what occurred. He explains that disclosure will also enable him to authenticate records already in his possession (obtained from a confidential source), which he believes are copies of some of the responsive records. He asserts that full disclosure of the responsive records will provide a basis for debate about the conduct of the Province.

[22] The Ministry disagrees that s. 25 applies to the records in dispute. The Third Parties make no submissions regarding s. 25.

Conclusion (s. 25)

[23] The materials before me do not support a finding that there is an urgent need, in a temporal sense, for disclosure of the disputed records. The events leading to the applicant's request for records (i.e., the indemnification of the Third Parties and their subsequent release from the obligation to repay the Province) took place in October 2010. The applicant does not explain why there is now a pressing need for immediate access to the records related to those earlier concluded events. In short, the applicant fails to satisfy me that a time-based urgency exists, which would necessitate overriding the exceptions in FIPPA and require disclosure of the disputed records pursuant to s. 25(1)(b).

Solicitor-client privilege (s. 14)

[24] The Ministry has applied s. 14 to withhold only Schedules A and B to the Indemnity Agreements, but the Third Parties claim it applies to all of the responsive records. In light of the Third Parties' position, the Ministry submits that it does not have the discretion to disclose information properly subject to s. 14 where a third party privilege is at stake and the third party has not waived that privilege. Therefore, I will consider all of the records in light of s. 14.

[25] Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. This provision encompasses both legal advice privilege and litigation privilege.[12] The Ministry submits that legal advice privilege applies, but the Third Parties do not narrow their argument in this regard.

[12] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665, para. 26.

[26] For legal advice privilege to apply, the following conditions must be satisfied:

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

[27] If these four conditions are satisfied then the communication, and the papers relating to it, are privileged.[13]

Description of the records

[28] Given that a portion of the Ministry and Third Party submissions were submitted *in camera*, I am restricted somewhat in what I may reveal here when describing the nature of the records. However, I can say that the two Indemnity Agreements, their respective Schedules A and B and the documents modifying them (the category 1 and 2 records) contain details of how the Third Parties' lawyers are to be retained, instructed and paid. The category 3 record is a copy of the October 20, 2012 letter that the Deputy Attorney General publically stated would be sent to the Third Parties, releasing them from October 14, 2010 conditions that they not discuss the release from liability and that they refer all inquiries to the Ministry.

Case law

[29] In considering whether the records in dispute are protected by legal advice privilege I was guided by the following three analogous cases.

[30] *Descoteaux v. Mierzwinski*[14] ("Descoteaux") involved an attempt by the police to gain access to communications between an applicant and the Legal Aid Society employee who interviewed him regarding his eligibility for legal aid. Although it was ultimately held that the privilege was defeated by fraud,[15] the court determined that information concerning an individual's financial means, the

[13] For a statement of these principles see also *R. v. B.,* 1995 Can LII 2007 (BCSC), para. 22 and *Canada v. Solosky*, [1980], 1 S.C.R 82, p. 13.
[14] [1982] 1 S.C.R. 860.
[15] The SCC explained that there are exceptions to the principle of the confidentiality of solicitor-client communications. Thus communications that are in themselves criminal or that are made with a view to obtaining legal advice to facilitate the commission of a crime will not be privileged.

basis of his claim and any other information he must provide the Legal Aid Society in order to obtain the services of a lawyer is privileged. Lamer, J. wrote:

> The items of information that a lawyer requires from a person in order to decide if he will agree to advise or represent him are just as much communications made in order to obtain legal advice as any information communicated to him subsequently...
>
> Moreover, the same applies not only to information given before the retainer is perfected concerning the legal problem itself, but also to information concerning the client's ability to pay the lawyer and any other information which a lawyer is reasonably entitled to require before accepting the retainer. First, this information of an administrative nature is just as related to the establishment of the professional relationship as any other information; this is especially clear when, as in the case at bar, the legal aid applicant "must set forth [his] financial means... and the basis of his claim". In addition, information of this nature that a person gives his lawyer for that purpose may also be highly confidential and would have been kept secret by that person were it not for that person's need of the assistance of a legal adviser.
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> ...
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> I therefore do not think that a distinction should be made between information that must be given in order to establish the probable existence of a valid claim and that given to establish eligibility from the point of view of financial means, since, on the one hand, information concerning the person's financial situation may be just as highly confidential as any other information and since, on the other hand, the fact of being unable to meet the eligibility requirements respecting financial means is no less fatal to the ability to obtain the services sought. [16]

[31] In *Legal Services Society v. The Information and Privacy Commissioner of the Province of B.C.*[17], ("*Legal Services*"), Lowry, J. found that information disclosed by an applicant to the Legal Aid Society for the purpose of obtaining legal advice and representation is privileged and should be kept confidential in the same manner and to the same extent as if it had been disclosed directly to the applicant's solicitor. He wrote:

> The nature and the terms of a legal aid retainer appear to me to be unquestionably a communication between lawyer, client, and the Society as agent that occurs for the purpose of obtaining legal advice where,

[16] Pages 877-78.

[17] 1996 CanLII 1780 (BC SC), at para. 16. Similarly, several years later in L*egal Services Society v. British Columbia (Information and Privacy Commissioner)*, 2001 BCSC 203, Scarf J. agreed that the nature and terms of a lawyer's legal aid retainer agreement with a client is privileged information.

> generally, there exists an expectation of confidence. Either directly or through the Society, the client instructs the lawyer to undertake the defence on the basis that he will be paid for his services in accordance with the legal aid tariff and the lawyer, in turn, accepts the arrangement. It is a communication that occurs within the framework of the solicitor-client relationship and is accordingly privileged.

[32] A similar finding was made in BC Order 03-28,[18] which dealt with a request for the accounts of lawyers who, at public expense, defended an individual accused of the 1985 Air India bombing. The records included a funding agreement between the Ministry and the accused's defence counsel and an agreement with an external lawyer to review the defence counsel's fees and disbursements. In that case the functions of the Ministry of the Attorney General respecting the funding of the accused's defence were determined to be central to the solicitor-client relationship between the accused and his lawyer as were the functions performed by the lawyer retained by the Ministry to review the legal accounts submitted for payment. It was found that the communications contained in the records were privileged because they were both confidential and related to the seeking or giving of legal advice.

[33] I understand the above three cases as confirming that a client has the right to keep communications with his or her lawyer confidential even when those communications flow through others or commence by way of communications with others regarding how the client will compensate the lawyer. In other words, when communications of this nature are made in this manner for the purpose of obtaining or giving of legal advice, they need not be made by an applicant to their lawyer directly in order for privilege to apply.

[34] I have also considered the recent British Columbia Supreme Court decisions in *British Columbia (Auditor General) v. Butler*[19] ("*Butler*") and *British Columbia (Auditor General) v. British Columbia (Attorney General)*[20] ("*Attorney General*"), as well as the Auditor General's December 2013 report entitled *An Audit of Special Indemnities*, all of which dealt with many of the same records that are before me in this inquiry. Although there was no specific finding that solicitor-client privilege applies to the records, the implication in all three is that it does.

[35] In *Butler,* Greyell, J. dealt with the Auditor General's application for access to the Third Parties' Indemnity Agreements and related records, which were in the possession of the Ministry. He found that the Third Parties had waived any solicitor-client privilege they may have over the records, but only for the express purpose of, and for no other purpose, than the Auditor General's audit. However,

[18] 2003 CanLII 49207 (BC IPC).
[19] 2011 BCSC 1064.
[20] 2013 BCSC 98.

he concluded his reasons by stating, "I wish to make it clear I am making no finding that solicitor/client privilege applies to any of the documents requested by the Auditor General."[21]

[36] Two years later, in *Attorney General*, Bauman, J. addressed the issue of whether the *Auditor General Act* permitted BC's Auditor General to access indemnity agreement records, notwithstanding that such records may be subject to a claim of solicitor-client privilege. The records the Auditor General sought were those in the possession of the individuals reviewing the Third Parties' lawyers' legal accounts. Bauman, J. found that solicitor-client privilege may only be abrogated by clear and unambiguous legislative language, which the *Auditor General Act* did not contain. As was the case in *Butler*, the Court did not examine whether the requested records were properly protected by solicitor-client privilege; however the analysis proceeded as if they were.

[37] More recently, in the BC Auditor General's report it is evident that a significant obstacle in his investigation was the privilege asserted over the indemnity agreements he sought to examine. It appears that most of the individuals who were asked to provide him with access to their indemnity agreements claimed solicitor-client privilege, and only a portion of those agreed to waive privilege for the purposes of the audit.

Communication between client and solicitor

[38] The applicant submits that the records in dispute here cannot be privileged because they are not a direct communication between client and lawyer. It is true that the records are not exclusively between the Third Parties and their lawyers. The parties to these records also include the Ministry and a lawyer whose task was to review and certify defence counsel's accounts prior to payment.[22] However, such third party communications may be protected by legal advice privilege where the third party is performing a function, on the client's behalf, that is integral to the relationship between the solicitor and the client.[23] I find that this is the case with respect to the records here. In a manner similar to the situation in *Descoteaux*, *Legal Services* and BC Order 03-28, the Ministry and the reviewer were agents or intermediaries of the Third Parties for the purpose of facilitating the attainment and provision of legal advice and representation. In other words, I find that the Ministry and the reviewer are performing a function integral to the relationship between the Third Parties and their lawyers.

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[21] At para. 69.
[22] As per details provided in *Attorney General,* 2013 BCSC 98.
[23] *College of Physicians and Surgeons of British Columbia* v. *British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665, para. 31; Order F06-16, 2006 CanLII 25576 (BC IPC); Order F11-33, 2011 BCIPC 41 (CanLII).

[39] The applicant also submits that the disputed records cannot be protected by solicitor-client privilege because they involve communications between parties who are adverse in interest.[24] Although he does not elaborate, I understand this to be a reference to the fact that the Ministry's Criminal Justice Branch was prosecuting the Third Parties. I have considered this argument, but I am not persuaded by it. As was described in *Butler*, there was a "screening wall in place"[25] between the Ministry's Legal Services Branch responsible for the indemnification process and the Ministry's Criminal Justice Branch responsible for the prosecution of the Third Parties. I am satisfied that, with respect to the indemnity process, the Ministry's Legal Services Branch was not adversarial in interest. The Ministry was acting on behalf of, and to the benefit of, the Third Parties with regard to facilitating their acquisition of the funds needed to obtain legal advice and representation.

Communication related to seeking or providing legal advice

[40] The applicant also argues that the records in dispute cannot be privileged because they do not relate to the seeking or providing of legal advice. The Third Parties, on the other hand, explain that they relied on the records to assess their legal situation, provide instructions and obtain legal advice from their lawyers. They add that the records contain information dealing with their criminal charges and their lawyers' professional obligations to them, as well as legal fees and costs. My review of the disputed records satisfies me that the communications they contain directly relate to the seeking or providing legal advice and representation.

Confidential communication

[41] I have also considered the applicant's argument that the Indemnity Agreements in this case cannot be privileged because there is nothing inherently confidential about the standard or template legal indemnity agreement employed by the Province. This argument does not persuade me that the communication contained in the *actual* Indemnity Agreements is not confidential. The Indemnity Agreements before me reflect information unique to the parties involved and they are not the same as a blank form or template.

[42] Further, the Ministry's Legal Services Branch lawyer responsible for negotiating, implementing and administering the indemnity arrangements provided evidence that he and the Third Parties' lawyers had an unwritten agreement that information exchanged regarding the indemnity arrangements would remain confidential between themselves, their respective clients, and

[24] Applicant's initial submission, para. 98. No legal precedent to support this argument was provided.
[25] At para. 26.

where applicable, the lawyer reviewing the legal accounts.[26] The Third Parties submit that all of the records in dispute are confidential communications related to their retainer agreements with their lawyers so are protected by solicitor-client privilege. Therefore, I am satisfied that all of the records contain confidential communications.

Waiver of privilege

[43] Waiver of privilege is ordinarily established where it is shown that the possessor of the privilege knows of the existence of the privilege and voluntarily shows an intention to waive that privilege.[27] The law is well established that the privilege belongs to, and may only be waived by, the client. The clients in this case are the Third Parties.

[44] The applicant submits that if any of the records are found to be protected by privilege, the privilege was waived because the records were communicated to the Ministry. I disagree that this amounts to a waiver because, as set out above, the Ministry was an agent of the Third Parties for the purpose of facilitating the attainment and provision of legal advice and representation.

[45] This case also raises the issue of whether privilege was waived when the Ministry publically revealed particulars of the Indemnity Agreements and their amendments. For example, on October 20, 2010 the Deputy Attorney General stated that the Indemnity Agreements contained a repayment condition and that the Third Parties had been released from that condition. At the same time, he also revealed conditions imposed on October 14, 2010 (in the category 2 records) as well as the nature and contents of the category 3 record.

[46] The Ministry explains that it obtained the consent of the Third Parties' lawyers before issuing the Deputy Attorney General's October 20, 2010 statement. However, there is nothing in the materials that demonstrates that their clients - the Third Parties - agreed to this disclosure or had any intention of waiving privilege. In fact, *Butler* and *Attorney General*, as well as their submissions in this inquiry, indicate that the Third Parties have (with the sole exception of the Auditor General's audit) refused to relinquish their claim of privilege over the records related to their indemnification arrangement with the Ministry.

[47] I find that the Third Parties have not waived privilege over these records.

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[26] The Province also asserted this confidentiality in *Butler*.

[27] Manes and Silver, *Solicitor-Client Privilege in Canadian Law*, 1993, p. 187-191; Order 00-07 2000 CanLII 7711 (BC IPC); Order F07-05, 2007 CanLII 9596 (BC IPC).

Conclusion (s. 14)

[48] I find that the disputed records contain confidential communications directly related to the seeking, formulating, or giving of legal advice. Although the communication is not exclusively between the Third Parties and their solicitors, it is integral to the establishment and operation of the professional relationship between them. Further, there has been no waiver of the privilege claimed by the Third Parties. In conclusion, I find that the disputed records are protected by solicitor-client privilege and the Ministry is authorized to withhold them under s. 14.

[49] In light of this, I need not consider the application of s. 22 to the records.

ORDER

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

1. The Ministry is authorized under s. 14 of FIPPA to refuse access to all of the information in dispute.

January 23, 2014

ORIGINAL SIGNED BY

Elizabeth Barker, Adjudicator

OIPC File No.: F12-51380