Order F19-36

DISTRICT OF SECHELT

Laylí Antinuk
Adjudicator

October 4, 2019

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Summary: An applicant requested records from the District of Sechelt related to a residential property development. The District withheld information under several FIPPA exceptions. Mediation at the OIPC narrowed the issue for inquiry to s. 14 (solicitor client privilege) of FIPPA. During the inquiry, the adjudicator identified some information that may be subject to s. 22 (harm to third party privacy) and received submissions from the parties on this issue. The adjudicator determined that ss. 14 and 22 applied to some of the information and ordered the District to disclose the rest to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14, 22(1), 22(2)(a), 22(2)(b), 22(2)(f), 22(2)(g), 22(2)(h), 22(3)(a), 22(3)(f), 22(4)(b).

INTRODUCTION

[1] An applicant requested that the District of Sechelt (District) provide records related to a property development project in Sechelt called Seawatch at the Shores (Seawatch). Apart from what it had already shared publicly, the District refused to disclose any information to the applicant citing ss. 12 (cabinet confidences), 13 (advice and recommendations), 14 (solicitor client privilege), 17 (harm to public body's financial or economic interests) and 21 (harm to third party business interests) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the District's decision. As a result of mediation, the applicant rephrased his access request, which narrowed the scope of the issues to just s. 14. Mediation did not resolve the s. 14 issue and the applicant requested that the matter proceed to inquiry.

[3] The District provided submissions respecting s. 14 for the inquiry, but the applicant chose not to. During the inquiry, I invited the parties to make submissions respecting the potential application of s. 22 (harm to third party privacy) to two specific records at issue. Both parties responded by making submissions about s. 22.

ISSUES

[4] The first issue I must decide in this inquiry is whether s. 14 authorizes the District to refuse access to the information in dispute. The District bears the burden of proving that the applicant has no right to access the information.[1]

[5] The second issue I must decide is whether s. 22 requires the District to refuse access to any information that I find s. 14 does not apply to. The applicant bears the burden of proving that disclosing the information would not be an unreasonable invasion of third party personal privacy.[2]

DISCUSSION

Background

[6] A developer known as Concordia built Seawatch as a 28-lot residential community.[3] Over time, various geotechnical issues arose at Seawatch which led to multiple ongoing law suits. For example, in 2015, a sinkhole developed on one Seawatch property rendering it uninhabitable. The owners of that property filed a Notice of Civil Claim respecting the property damage against Concordia, the District and other defendants on March 12, 2015. Other owners of Seawatch properties followed suit, filing legal actions that named the District and Concordia (among others) as defendants. In general and as the claims relate to the District, these law suits allege that the District negligently relied on the independent engineering team led by Concordia when approving and allowing the development of Seawatch. Three of these law suits are scheduled to be tried together in March of 2020.

[7] In addition to the legal actions commenced by individual Seawatch property owners, Concordia commenced an action against the District in June of 2016. The District filed an action of its own against Concordia in July of 2017.

[8] Beyond this litigation, eight Seawatch owners and Concordia all delivered notices to the District under what was then s. 286 of the *Local Government Act*

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[1] Section 57(1) of FIPPA. Whenever I refer to section numbers throughout the remainder of this order, I am referring to a section of FIPPA unless otherwise specified.
[2] Section 57(2).
[3] The District's initial submissions at p. 2. All information summarized in the remainder of the background section comes from these submissions at p. 2-4 unless otherwise specified.

respecting damages sustained in relation to Seawatch.[4] The District received its earliest s. 286 notice in July of 2012.[5]

Information in dispute

[9] The records at issue consist of 342 emails and email chains.[6] The District provided me with a copy of all of these emails and email chains.

[10] Initially, the District chose to withhold all the information in the records under s. 14. During the inquiry, however, the District decided to sever and release some information in the records to the applicant. Specifically, the District released a number of individual emails from several email chains.[7]

[11] The District continues to withhold many of the records in their entirety and some information (i.e. some individual emails within chains) from the severed records under s. 14. The information in dispute in this inquiry is all the information the District continues to withhold under s. 14.

Solicitor client privilege – section 14

[12] Section 14 allows public bodies to refuse to disclose information protected by solicitor client privilege. Section 14 encompasses two kinds of privilege recognized at common law: legal advice privilege and litigation privilege.[8] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of obtaining and giving legal advice; litigation privilege applies to materials gathered or prepared for the dominant purpose of litigation.[9]

[13] For the reasons that follow, I find that legal advice privilege or litigation privilege applies to much, but not all, of the information in dispute.

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[4] Section 286 provides every municipality in BC with immunity from liability for alleged damages if the municipality does not receive notice of the alleged damages within two months of the damages occurring. I note that s. 286 of the *Local Government Act*, [RSBC 1996] Chapter 323 has been replaced with s. 736 of the *Local Government Act*, [RSBC 2015] Chapter 1.
[5] The District's March 11, 2019 letter to the OIPC at p. 2.
[6] During the inquiry, I confirmed that email attachments are not in dispute for the purposes of this inquiry. The District's September 6, 2019 letter to the OIPC.
[7] Initially, the District withheld every email in all 342 records. During the inquiry, the District disclosed emails from within 124 of those 342 records.
[8] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 at para. 26 [*College of Physicians*].
[9] *Ibid*.

Parties' positions regarding s. 14

[14] In its initial submissions, the District asserts that s. 14 applies to the information at issue because it is "privileged by reason of solicitor-client privilege, litigation privilege, or both."[10] The District says that the documents subject to legal advice privilege consist of communications between the District and the District's lawyers made for the purpose of obtaining legal advice.[11] The District claims litigation privilege applies to certain documents given the context of the various impending or anticipated legal actions related to Seawatch.[12]

[15] After reviewing the District's initial submissions, I decided that the District had not provided sufficient information to allow me to make findings respecting the application of s. 14 to the records. Because of the vital importance of solicitor client privilege to the justice system, I wrote to the District to offer it an opportunity to provide additional evidence and submissions. In response, the District provided me with the following:

- A copy of a s. 286 *Local Government Act* notice served on the District in July 2012 to support its claims respecting litigation privilege;
- A table that the District says names each individual involved in the emails (the identification table); and
- A spreadsheet with a description of each record at issue (the description spreadsheet).

[16] In the description spreadsheet, the District characterizes certain records as "internal communications of client's personnel relating legal advice, or for the predominant purpose of obtaining or considering legal advice."[13] Other descriptions characterize some records as "communications between counsel and third party consultants retained by counsel for the purpose of advising client."[14]

[17] As noted above, the applicant did not make submissions respecting s. 14.

Legal advice privilege

[18] Legal advice privilege arises out of the unique relationship between the client and solicitor.[15] The Supreme Court of Canada describes its purpose in the following terms:

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[10] The District's submissions, p. 7.
[11] The District's submissions, p. 6.
[12] *Ibid*.
[13] Description spreadsheet, e.g. inquiry item 13 on p. 5.
[14] *Ibid*, e.g. item 75 on p. 28.
[15] *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 839 [*Solosky*].

> Clients seeking advice must be able to speak freely to their lawyers secure in the knowledge that what they say will not be divulged without their consent… The privilege is essential if sound legal advice is to be given in every field. It has a deep significance in almost every situation where legal advice is sought… Without this privilege clients could never be candid and furnish all the relevant information that must be provided to lawyers if they are to properly advise their clients.[16]

[19] To this end, legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking, formulating and giving legal advice. In order for legal advice privilege to apply, the communication must meet the following criteria:[17]

1) It must be an oral or written communication;
2) The communication must be confidential in character;
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.

[20] The scope of legal advice privilege extends beyond the explicit requesting or provision of legal advice to include communications that make up "part of the continuum of information exchanged [between solicitor and client], provided the object is the seeking or giving of legal advice."[18] Legal advice privilege also extends to internal client communications that discuss legal advice and its implications.[19]

[21] Additionally, legal advice privilege can extend to confidential communications respecting legal advice between a client, the client's insurer and the solicitor because of the special, tripartite relationship between these parties.[20] However, legal advice privilege only extends to communications that involve

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[16] *Smith v. Jones*, 1999 CanLII 674 (SCC) at para. 46.
[17] *R. v. B.*, 1995 CanLII 2007 (BC SC) at para. 22; *Solosky*, *supra* note 15 at p. 837. For examples of OIPC orders that have applied this test, see Order F18-33, 2018 BCIPC 36 at paras. 15-16; Order F17-43, 2017 BCIPC 47 at para. 38; Order F15-52, 2015 BCIPC 55 at para. 10; and Order F15-15, 2015 BCIPC 16 at para. 15.
[18] *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83.
[19] *Bank of Montreal v. Tortora*, 2010 BCSC 1430 at para. 12; *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District,* 2013 BCSC 1893 at paras. 22-24.
[20] *Corp. of the District of North Vancouver v BC (The Information and Privacy Commissioner)*, 1996 CanLII 521 (BC SC) at para. 22; *Chersinoff v. Allstate Insurance Co.*, 1968 CanLII 671 (BC SC) at p. 660-663; Order F18-33, 2018 BCIPC 36 at paras. 20 and 22.

other types of third parties in limited circumstances which I will explain in greater detail in my analysis below.[21]

[22] Before delving into the meat of my privilege analysis, I will briefly describe my approach to the communications at issue.

[23] The vast majority of the records before me are email chains. For the purpose of deciding if legal advice privilege applies, I have analysed each email in every chain as a discrete communication. However, in doing so, I have kept in mind the following cautionary statement from the BC Supreme Court:

> Disclosing one part of a string of communications gives rise to the real risk that privilege might be eroded by enabling the applicant for the communication to infer the contents of legal advice.[22]

[24] Therefore, while each email is a discrete communication, I have not looked at any email in isolation. When deciding whether an email reveals information protected by legal advice privilege, I have also considered the context of the email. By context, I mean its sequence in the chain, its relationship to all the other emails before me (including those the District decided to disclose to the applicant during the inquiry), and the broader events as described in the records and the parties' evidence. In considering each email's context, I have carefully evaluated whether the disclosure of any specific email would allow someone to make accurate inferences as to information protected by solicitor client privilege. I have only found s. 14 inapplicable where, in my view, disclosure can be accomplished without any risk that "privileged legal advice will be revealed or capable of ascertainment."[23]

Analysis and findings on legal advice privilege

[25] For the reasons set out below, I find that legal advice privilege applies to some, but not all of the emails at issue. I have categorized the communications at issue and will discuss them as follows.

- Communications exclusive to the District and its lawyers;
- Internal District communications; and
- Communications that involve third parties.

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[21] *College of Physicians*, *supra* note 8 at para. 32. I note that the treatment of third party communications differs when it comes to litigation privilege: *Greater Vancouver Water District v. Bilfinger Berger AG,* 2015 BCSC 532 at para. 21 [*Bilfinger Berger*]. Accordingly, I will assess third party communications differently when considering the District's assertions of litigation privilege.

[22] *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para. 46 [*Camp Development*].

[23] *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at para. 40.

Communications exclusive to the District and its lawyers

[26] Many of the emails at issue only involve the District and its lawyers. For the reasons that follow, I find that legal advice privilege applies to all but one of these exclusive solicitor client communications.

[27] Based on my review of the records, I find that the vast majority of the exclusive solicitor client communications consist of the following:

- District representatives explicitly asking District lawyers for legal advice.
- District lawyers providing legal advice to District representatives.
- District representatives providing counsel with instructions, or District lawyers requesting instructions.
- District representatives providing information to District lawyers that relates to legal advice, or District lawyers requesting information from District representatives in order to provide legal advice.
- District lawyers providing, describing and/or commenting on written materials they authored, reviewed or edited to District representatives.

[28] These types of emails clearly meet the four criteria required for legal advice privilege to apply. They are written communications between the District and its lawyers that directly relate to the seeking, formulating and giving of legal advice. As noted, these emails exclusively involve District representatives[24] and lawyers retained by the District. This fact, paired with the context and content of these communications, leads me to find that these emails were intended to be confidential. I find that s. 14 authorizes the District to withhold these communications.

[29] However, as noted, in order for legal advice privilege to protect a communication, that communication must be directly related to the seeking, formulating or giving of legal advice or part of the continuum of communications related to that legal advice. The fact that a client and solicitor have a confidential communication does not necessarily suffice to establish privilege. Former Commissioner Loukidelis put it this way: "… even if a solicitor and client relationship exists, the lawyer must be acting as a lawyer and must be providing legal advice before the communication in question can be privileged.[25]

[30] In this case, I am not satisfied that one of the exclusive District-to-lawyer communications directly relates to the seeking, formulating or giving of legal

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[24] I use the word "representative" to describe District employees and elected officials (e.g. the District's mayor and councillors).

[25] Order No. 331-1999, 1999 CanLII 4253 (BC IPC) at p. 16-17.

advice or is otherwise part of the continuum of information exchanged in relation to that advice. This email contains information and business advice about the pricing of non-legal services offered by a third party.[26] The District has not explained how this email would reveal privileged communications and it is not clear to me. In my view, the District has not met its burden of establishing that legal advice privilege applies to this email, so s. 14 does not apply.

Internal District communications

[31] Some of the emails consist of internal District discussions that relate to legal advice the District received from its lawyers. In these types of emails, District representatives share legal advice with one another, comment on it and discuss its potential ramifications. I find that legal advice privilege extends to these communications wherever they explicitly contain, comment on, describe or could allow for accurate inferences as to privileged communications the District had with its lawyers. Section 14 authorizes the District to withhold this type of internal email.

[32] The District also withheld internal communications discussing the potential need to request legal advice. Previous orders have held that a statement in a record about the intent or need to seek legal advice at some point in the future does not, on its own, suffice to establish that a confidential communication between a client and solicitor actually occurred. In order to establish that legal advice privilege applies, the evidence must show that disclosure of the statement would reveal actual confidential communications between solicitor and client.[27]

[33] In this case, a thorough review of the totality of the records leads me to conclude that disclosing these internal emails would reveal confidential communications the District had with its lawyers. I make this finding because the emails in which District representatives wrote about their intentions to seek legal advice contain some of the same information as the communications in which the District actually sought legal advice as intended. Given this, I find that in this case, disclosing the internal client emails that express an intent or need to seek legal advice would reveal privileged communications between the District and its lawyers. Therefore, legal advice privilege protects this type of internal email and s. 14 applies.

[34] However, following a careful review of the records, I am not satisfied that every internal District email reveals privileged communications the District had with its lawyers. Where internal emails do not describe, comment on, share,

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[26] Inquiry document 304. As stated by the Supreme Court of Canada: “No solicitor-client privilege attaches to advice on purely business matters even where it is provided by a lawyer.” See *R v Campbell*, [1999] 1 SCR 565 at para. 50.
[27] Order F17-23, 2017 BCIPC 24 at paras. 46-50; Order F16-26, 2016 BCIPC 28 at para. 32.

discuss or in any way allow for accurate inferences as to legal advice the District received or intended to seek from its lawyers, legal advice privilege does not apply. Section 14 does not authorize the District to withhold these types of internal District emails.[28]

Communications that involve third parties

[35] The District claims legal advice privilege over communications that involve the following third parties:[29]

- The District's insurer, the Municipal Insurance Association of BC;
- Employees that work for Thurber Engineering (Thurber);
- An employee that works for Golder;
- An employee that works for Urban Systems;
- An individual the District did not include in its identification table;
- Concordia representatives; and
- Lawyers working for Concordia or Seawatch owners.

[36] I will begin by discussing the communications that involve the District's insurer.

[37] As described above, legal advice privilege extends to confidential communications between an insured, insurer and solicitor when those communications relate to legal advice because of the special, tripartite relationship between these parties. With this in mind, I find that some of the emails involving the District's insurer meet all four requirements for legal advice privilege to apply.

[38] These specific emails involve only District representatives, the District's insurer, and lawyers retained by the District (or some combination of these three parties). In these emails, the three parties discuss the legal and geotechnical issues occurring at Seawatch and either seek, give or talk about legal advice. I can tell from the content of these emails that the three parties have a shared interest and are not working in opposition. Additionally, in my view, these emails contain the type of information that lawyers, clients and insurers would discuss confidentially in the circumstances. Several of these emails also contain a strictly worded confidentiality proviso following the signature block. The confidentiality proviso paired with the nature, context, content and recipients of these emails indicates to me that these communications were intended to be confidential. For

[28] I note that the District decided to disclose several internal District emails to the applicant during the inquiry.
[29] The information as to where various individuals work comes from the District's identification table.

these reasons, I find that legal advice privilege applies to these emails, so s. 14 authorizes the District to withhold them.[30]

[39] The District also claims legal advice privilege applies to emails that involve Thurber (the Thurber communications). In some of the Thurber communications, both the District and its lawyers are involved. In others, only the District or its lawyers communicate with Thurber.

[40] The only aspect of the District's submissions that relates to the Thurber communications appears in the description spreadsheet. In it, the District describes some records as "communications between counsel and third party consultants retained by counsel for the purpose of advising client." While the District does not explicitly say this, my review of the records leads me to conclude that the third party consultant is Thurber.

[41] As mentioned above, legal advice privilege only extends to communications involving third parties in limited circumstances.[31] Briefly, legal advice privilege will apply if the communication meets the criteria for legal advice privilege and the third party either:

(a) serves as a channel of communication between client and solicitor; or

(b) performs a function integral to the solicitor client relationship.[32]

[42] A third party serves as a channel of communication if it acts as an "agent of transmission," carrying information between the solicitor and client, or if its expertise is required to interpret information provided by the client so that the solicitor can understand it.[33]

[43] A third party's function is integral to the solicitor client relationship if, for example, the third party has the client's authorization to either: (a) direct the solicitor to act on the client's behalf; or (b) seek legal advice from the solicitor on the client's behalf.[34] Conversely, a third party's function is not integral to the solicitor client relationship if, for example: (a) the third party gathers information from outside sources and passes it on to the solicitor so that the solicitor might

[30] I note that the District has claimed that some emails that involve the District's insurer are protected by litigation privilege. I will consider litigation privilege wherever appropriate based on the content and context of the emails considered in light of the District's submissions.
[31] *College of Physicians*, *supra* note 8 at para. 32.
[32] *College of Physicians*, *supra* note 8 at para. 47-48; *Bilfinger Berger*, *supra* note 21 at para. 27, item (c).
[33] *Bilfinger Berger*, *supra* note 21 at para. 27, item (b).
[34] *College of Physicians*, *supra* note 8 at para. 48 quoting with approval from *General Accident Assurance Company v. Chrusz*, 1999 CanLII 7320 (ON CA) at para. 121 [*Chrusz*].

advise the client; or (b) the third party acts on legal instructions from the solicitor.[35]

[44] In *College of Physicians*,[36] the BC Court of Appeal considered whether third party medical experts performed a function that was integral to the solicitor client relationship between the College and its lawyer. The College's lawyer had retained the medical experts to help her understand the medical basis of a complaint made about one of the College's members.[37] The Court found that the experts did not perform a function integral to the relationship between the College and its lawyer, so legal advice privilege did not apply to the third party communications. In coming to this conclusion, the Court said:

> The experts were not authorized by the College to direct the lawyer to act or to seek legal advice from her. The experts were retained to act on the instructions of the lawyer to provide information and opinions concerning the medical basis for the Applicant's complaint. While the experts' opinions were relevant, and even essential, to the legal problem confronting the College, the experts never stood in the place of the College for the purpose of obtaining legal advice. Their services were incidental to the seeking and obtaining of legal advice.[38]

[45] In *Bilfinger Berger*,[39] the BC Supreme Court considered whether a third party public relations firm retained by the solicitor to assist him in developing a strategy to address his client's issues was integral to the solicitor client relationship. The third party public relations firm provided information and analysis to the lawyer in order to assist him in providing legal advice to the client. The Court found that providing strategic public relations advice was not essential or integral to the solicitor client relationship, saying that the third party's role appeared to "have been no higher than that of the experts in the *College of Physicians* case."[40]

[46] Conversely, in *Camp Development*,[41] the BC Supreme Court found that a third party consultant retained to assist the client with property acquisitions was integral to the relationship between solicitor and client. The evidence in that case established that the third party was "a direct representative of the client" and that the client had authorized the third party consultant to seek legal advice from the lawyer on the client's behalf.[42]

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[35] *Ibid*; *Bilfinger Berger*, *supra* note 21 at para. 27, item (c); *Potash Corporation of Saskatchewan Inc. v. Mosaic Potash Esterhazy Limited Partnership*, 2010 SKQB 460 at para. 24 and 27.
[36] *Supra* note 8.
[37] *College of Physicians*, *supra* note 8 at para. 3.
[38] *College of Physicians*, *supra* note 8 at para. 51.
[39] *Supra* note 21.
[40] *Ibid* at para. 38.
[41] *Supra* note 22.
[42] *Camp Development, supra* note 22 at paras. 55 and 58.

[47] Applying these principles to the Thurber communications, I have considered whether Thurber acted as a channel of communications between the District and its lawyers. The District has not claimed that Thurber acted in this way and I see no evidence that it did. Nothing in the evidence or submissions indicates that Thurber's services were necessary to explain the District's information to the District's lawyers in order to enable the lawyers and the District to understand and communicate with one another. Furthermore, in the records I do not see Thurber acting as an "agent of transmission" by carrying information between the District and its lawyers. Therefore, I am not satisfied that Thurber acted as a channel of communication.

[48] I have also considered whether Thurber's function was integral to the relationship between the client and solicitor. As noted above, the District's description of some of the Thurber communications says that the District's lawyers retained Thurber "for the purpose of advising client." As *College of Physicians* establishes, the fact that a lawyer retains third party experts to assist her in advising her client does not, on its own, mean that legal advice privilege applies to the resulting third party communications. The courts have made it clear that "communications with a third party are not protected by [legal advice] privilege merely because they assist the solicitor in formulating legal advice to the client."[43]

[49] Based on the content of the records at issue, I am not satisfied that the District authorized Thurber to seek legal advice from, or direct, the District's lawyers. Nothing in the communications themselves or the District's submissions indicates that the District authorized Thurber to do either of these things. Rather, the facts indicate that Thurber was retained in order to provide its independent, expert assessment of the geotechnical engineering issues that arose at Seawatch. Given the content of the records, I conclude that Thurber collected, analyzed and provided information to the District's lawyers respecting various geotechnical events at Seawatch.[44] While Thurber's opinions were relevant, and perhaps even essential, to the legal problems confronting the District, nothing in the records suggests that Thurber stood in the place of the District for the purposes of obtaining legal advice.[45]

[50] In *General Accident Assurance Company v. Chrusz*, Doherty J.A. of the Ontario Court of Appeal said:

> … If the third party's retainer extends to a function which is essential to the existence or operation of the client-solicitor relationship, then the privilege

[43] *Bilfinger Berger*, *supra* note 21 at para. 27, item (a).
[44] For example, inquiry document 210 sets out the terms of the relationship between Thurber and the District's lawyers in 2015 clearly.
[45] *College of Physicians*, *supra* note 8 at para. 51.

> should cover any communications which are in furtherance of that function and which meet the criteria for client-solicitor [i.e. legal advice] privilege.[46]

In my view, the District has not shown that Thurber played a role that was "essential to the existence or operation of the relationship" between the District and its lawyers.

[51] For all these reasons, I find that legal advice privilege does not apply to the Thurber communications.[47] Where appropriate given the content and context of the records, I will consider whether litigation privilege applies to any of the Thurber communications.

[52] I will now consider the emails that include Concordia representatives, employees of Golder and Urban Systems, lawyers working for Seawatch owners or Concordia (opposing counsel[48]), and the individual the District did not include in its identification table. The emails I am discussing here involve District representatives, District lawyers *and* one of the third parties I just identified.

[53] In my view, the District has provided no evidentiary basis to establish that the emails that include the District, its lawyers and these third parties were intended to be confidential. The District did not proffer evidence about the subjective intentions of any of the individuals included in these emails, for example by providing an affidavit from someone involved. Furthermore, beyond quoting the four-part test for legal advice privilege, the District did not mention confidentiality anywhere in its initial submissions or subsequent correspondence respecting its s. 14 claims. In short, I have no submissions or evidence from the District that specifically relates to the confidentiality of the emails at issue other than the emails themselves.

[54] After carefully reviewing the emails and considering the general context of the issues that arose at Seawatch as I understand them, I fail to see how any of the communications described in paragraph 52 meet the confidentiality requirement necessary for legal advice privilege to apply. It does not make sense to claim that a communication that included a Concordia representative or opposing counsel, for example, would qualify as a confidential solicitor-client communication particularly given the context of the Seawatch litigation. Additionally, the District did not explain anything about what Golder or Urban Systems do or why employees from these two organizations were involved in some of the communications at issue. When it comes to the individual who the

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[46] *Chrusz*, *supra* note 35 at para. 120, quoted with approval in *College of Physicians* at para. 48.
[47] I note that the District decided to disclose some of the Thurber communications to the applicant during the inquiry.
[48] I have called these lawyers "opposing counsel" because they represent parties who have filed law suits against the District.

District did not identify in its identification table, I simply do not have sufficient evidence to find that the communications including this unidentified individual were confidential.[49]

[55] The District has not asserted that any of the third parties described in paragraph 52 acted as a channel of communications or performed a function integral to the relationship between the District and its lawyers. Nothing in the emails themselves suggests that they did. As described in detail above, legal advice privilege only extends to communications involving third parties when those parties acted as a channel of communications or performed a function integral to the relationship between client and solicitor.

[56] Ultimately, the District did not provide submissions or evidence to explain how these communications that include individuals other than the District and its lawyers meet the confidentiality requirement necessary for legal advice privilege to apply.[50] For all these reasons, I find that the District cannot withhold these communications under s. 14.

[57] There is one other type of communication that involves third parties. The District also claims legal advice privilege over emails in which *either* the District *or* its lawyers communicate with Concordia representatives or opposing counsel. The District did not make any submissions specifically related to these emails. It strikes me as obvious that legal advice privilege does not apply to either of these types of emails. Legal advice privilege protects confidential communications between solicitor and client. These communications are not between solicitor and client. Additionally, I do not see – and the District has not explained – how disclosing these communications would otherwise reveal privileged communications between the District and its lawyers. The District has not explained why legal advice privilege applies to these types of communications and I am not satisfied that it does.[51]

[58] I will now turn to the District's litigation privilege claim.

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[49] Inquiry document 187 contains an email that includes an individual name with the initials S.W. in the CC line. The District has not included this individual in the identification table and it is not obvious to me who this individual is based on the content of the email itself or any of the other evidence or submissions. I note that the District decided to release this specific email to the applicant where it appears elsewhere in the records during the inquiry process.
[50] I note that the District decided to disclose some of the emails that involve these third parties to the applicant during the inquiry.
[51] The District also decided to disclose some of these types of emails to the applicant during the inquiry.

Litigation privilege

[59] Litigation privilege protects materials created or collected as part of the process of preparing for and engaging in litigation.[52] Unlike legal advice privilege, litigation privilege "is not directed at, still less, restricted to, communications between solicitor and client" meaning that it can apply to communications between a solicitor and third parties.[53] Litigation privilege creates a "zone of privacy" in relation to pending or apprehended litigation to allow litigants to prepare for trial.[54] Once the litigation ends, the privilege ceases to exist.[55]
[60] In order for litigation privilege to protect a document, the party asserting privilege – in this case the District – must establish two facts:[56]

1) Litigation was ongoing or was reasonably contemplated at the time the document was created; and
2) The dominant purpose of creating the document was to prepare for that litigation.

Reasonably contemplated

[61] Litigation is reasonably contemplated if "a reasonable person, possessed of all pertinent information including that peculiar to one party or the other, would conclude it is unlikely that the claim for loss will be resolved without it."[57]

[62] The test for whether litigation was reasonably contemplated involves an objective assessment based on reasonableness. It does not require certainty but it is "not enough that litigation was simply considered a possibility."[58] A bare assertion that litigation is in reasonable prospect will not suffice.[59]

[63] To support its claim that litigation was in reasonable prospect, the District points to the notice served on the District under s. 286 of the *Local Government Act* in July 2012. The District says that these notices "are the basis of the District's position that after that time [July 2012] documents were prepared in contemplation of litigation."[60] The District also notes that litigation ultimately commenced in 2015 and is actively ongoing.

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[52] *College of Physicians*, *supra* note 8 at para. 28.
[53] *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at para. 27 [*Blank*].
[54] *Ibid* at para. 34.
[55] *Ibid*.
[56] *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2014 BCCA 259 at para. 32, quoting with approval from *Keefer Laundry Ltd. v. Pellerin Milnor Corp.*, 2006 BCSC 1180 at para. 96.
[57] *College of Physicians*, *supra* note 8 at para. 83, quoting with approval from *Hamalainen v. Sippola*, 1991 CanLII 440 (BC CA), at para. 20.
[58] *Fitzpatrick v. Wang et al.*, 2014 ONSC 4251 at para. 68.
[59] *Raj v. Khosravi,* 2015 BCCA 49 at para. 10.
[60] The District's March 25, 2019 letter to the OIPC.

[64] Based on the objective indicia in the evidence, I find that Seawatch is a 28-lot residential development at which serious geotechnical events occurred over a period of years. These geotechnical events impacted multiple parties, including a variety of private owners, the District's staff and elected officials, Concordia, and the engineering firms Concordia had hired. I also note that the events in 2012 led to the hiring of independent engineering experts to provide geotechnical input and make assessments of future risks. In short, the situation at Seawatch in 2012 was complicated and serious.

[65] As I see it, the impacts these events have had on the private owners in particular cannot be understated. The geotechnical issues at Seawatch affected (and continue to affect) newly built homes at a waterfront location. These are high value assets that are undoubtedly integral to the lives of the people who purchased them. Taking this into account, I find it more likely than not that private owners faced with unsafe or damaged homes would look to litigation in an attempt to recoup significant financial losses.

[66] Given the variety of potential legal and technical engineering issues involved in the events that occurred at Seawatch and the volume and motivation of potential plaintiffs, I find it unlikely that the issues that arose at Seawatch in 2012 would have been resolved without litigation. Additionally, the District received its first Seawatch-related s. 286 notice in the summer of 2012. Considering the totality of the evidence, I find that litigation was in reasonable prospect beginning in 2012.

Dominant Purpose

[67] To establish that the emails at issue pass the dominant purpose part of the test, the District must prove that the individuals who wrote them did so for the dominant purpose of seeking legal advice or aiding in the conduct of litigation.[61] When a document has dual or multiple purposes, including litigation, but none of the purposes are dominant, litigation privilege does not apply.[62] Similarly, litigation privilege does not apply to documents created for the substantial (but not dominant) purpose of litigation – only the dominant purpose will suffice to establish litigation privilege.[63] Additionally, the courts have made clear that an awareness of the possibility of impending litigation is distinct from the purpose for which a document was prepared.[64]

[68] The District says that some of the emails at issue were communications made for the "predominant purpose of preparing for" the Seawatch litigation. Beyond this statement, which appears in the description spreadsheet, the District

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[61] *Raj v. Khosravi*, *supra* note 59 at para. 12.
[62] *Ibid* at para. 16.
[63] *Blank*, *supra* note 53 at paras. 59-60; *Fitzpatrick v. Wang et al.*, 2014 ONSC 4251 at para. 68.
[64] *Grand Rapids First Nation v. Canada,* 2014 FCA 201 at para. 31.

has adduced no other evidence that specifically addresses the dominant purpose of any of the emails. For example, the District has not provided affidavit evidence from any of the individuals involved in the communications. That said, I have carefully reviewed each individual email in an effort to determine whether the contents of the documents themselves "establish that it is more likely than not that each document was prepared for the dominant purpose of seeking legal advice or aiding in the conduct of litigation."[65]

[69] My review of the records in light of the context of the Seawatch events as I understand them leads me to find that the dominant purpose of some of the communications was litigation. For example, I am satisfied that the purpose of some communications that involve the District's insurer and some of the Thurber communications was to aid in the conduct of the impending Seawatch litigation or seek legal advice. Litigation privilege applies to these emails.

[70] However, based on my review, I am not satisfied that other emails were created for the dominant purpose of litigation. In making this finding, I have kept the following words of the BC Court of Appeal in mind:[66]

> A finding of dominant purpose involves an individualized inquiry as to whether, and if so when, the focus of the investigation/inquiry shifted to litigation. This is a factual determination to be made based on all of the circumstances and the context in which the document was produced. As Wood J.A. explained in *Hamalainen*:
>
>> [24] Even in cases where litigation is in reasonable prospect from the time a claim first arises, there is bound to be a preliminary period during which the parties are attempting to discover the cause of the accident on which it is based. At some point in the information gathering process the focus of such an inquiry will shift such that its dominant purpose will become that of preparing the party for whom it was conducted for the anticipated litigation. <u>In other words, there is a continuum which begins with the incident giving rise to the claim and during which the focus of the inquiry changes.</u> <u>At what point the dominant purpose becomes that of furthering the course of litigation will necessarily fall to be determined by the facts peculiar to each case.</u>

[71] In this case, I find it clear that some of the emails were not written for the dominant purpose of litigation. Instead, the content of some emails indicates that the parties were attempting to discover and understand the cause(s) of the various geotechnical events at Seawatch. In some instances, the emails expressly indicate that the individuals involved were engaged in an information gathering process.

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[65] *Ibid* at para. 32.

[66] *Raj v. Khosravi*, supra note 59 at para. 17. Emphasis added by the Court of Appeal.

[72] Other emails relate solely to certain administrative matters. I do not understand how these specific administrative matters would aid in the conduct of litigation and the District has not explained.

[73] Lastly, in one email, I note that the writer explicitly states his purpose in sending the message and it was not to aid in the conduct of the Seawatch litigation or seek legal advice in relation to the Seawatch matters.[67] This email relates to multiple matters and I find it clear that the dominant purpose for creating the email was not to prepare for the Seawatch litigation. Therefore, I find that litigation privilege does not apply to this email.

Summary – section 14

[74] To summarize, the District can withhold much of the information in dispute under s. 14 because legal advice or litigation privilege applies to it. However, some of the information the District withheld under s. 14 does not pass either of the tests for solicitor client privilege. I have highlighted in pink the information that I find s. 14 does not apply to in a copy of the records that the District will receive with this order.

[75] Two of the emails (emails A and B[68]) that I find s. 14 does not apply to contain personal information. This triggers the potential application of s. 22.

Harm to third party privacy – section 22

[76] Section 22 requires public bodies to refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. This section does not guard against all invasions of personal privacy; instead, it explicitly aims to prevent only those invasions of personal privacy that would be unreasonable in the circumstances of a given case.[69]

[77] The analysis under s. 22 involves four steps:[70]

1) Determine whether the information in dispute is personal information.
2) Determine whether any of the circumstances described in s. 22(4) apply. If they do, then disclosure is *not* an unreasonable invasion of personal privacy.
3) Determine whether any of the presumptions listed in s. 22(3) apply. If they do, disclosure is *presumed* to be an unreasonable invasion of

[67] Inquiry document 305.
[68] Email A is the email sent Sept 25, 2012 at 11:51 AM in inquiry document 75. Email B is the email sent April 10, 2015 at 12:22 PM in inquiry document 305.
[69] Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 14.
[70] For example, see Order 01-53, 2001 CanLII 21607 (BC IPC) at paras. 22-24.

personal privacy. Presumptions may be rebutted by considering all relevant circumstances (the next step in the analysis).

4) Consider the impact that disclosure would have in light of all the relevant circumstances. Do the relevant circumstances weigh in favour or against disclosure?

Personal information

[78] Beginning with the first step, FIPPA defines personal information as recorded information about an identifiable individual other than contact information.[71] FIPPA defines contact information as information to enable an individual at a place of business to be contacted.

[79] Emails A and B contain the following information:

- Names of third parties;
- The home address of identifiable individuals;
- The personal email address of an identifiable individual; and
- Details about legal issues between identifiable individuals and the District.

[80] All this information qualifies as personal information because it is about identifiable individuals and it is not contact information.

Not an unreasonable invasion of privacy – section 22(4)

[81] The next step in the s. 22 analysis requires that I consider whether s. 22(4) applies to the information at issue. Section 22(4) lists situations in which disclosure of personal information is not an unreasonable invasion of personal privacy.

[82] In his submissions on s. 22, the applicant invokes s. 22(4)(b). That subsection states that disclosure of personal information is not an unreasonable invasion of personal privacy if "there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party." For the reasons that follow, I find that s. 22(4) does not apply in this case.

[83] In his submissions, the applicant describes the current situation at Seawatch, noting that the neighbourhood was evacuated under a provincial emergency order on February 15, 2019 and "remains behind locked gates with no end in sight."[72] Given this, the applicant asserts that emails A and B "may

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[71] Schedule 1 of FIPPA contains its definitions.

[72] Applicant's August 19, 2019 letter to the OIPC. All information relating to the applicant's s. 22 submissions comes from this letter.

contain information that is critical to the public safety." The applicant goes on to submit that if emails A and B contain third party information, then the District can mail notice of disclosure to the third parties at their last known addresses.

[84] In the most recent OIPC Order to consider the meaning of s. 22(4)(b), Adjudicator Lott found that s. 22(4)(b) does not apply when a public body has *refused* to disclose information to an applicant.[73] Rather, s. 22(4)(b) allows a public body to establish that its decision to *disclose* personal information is not an unreasonable invasion of third party personal privacy. In her extensive reasons on this point, she states that in order for s. 22(4)(b) to apply, a public body must have:

a) decided to disclose third party personal information because of compelling circumstances affecting someone's health or safety; and

b) mailed a notice to the third party at his or her last known address, advising that his or her personal information has been disclosed.[74]

[85] I agree with Adjudicator Lott's reasoning respecting s. 22(4)(b). In this case, the District has refused to disclose the information. Given this, s. 22(4)(b) does not apply.

[86] I have considered the remaining subsections of s. 22(4) and find that none of them apply here.

Presumed unreasonable invasion of privacy – section 22(3)

[87] The third step in the s. 22 analysis requires that I consider whether any of the presumptions in s. 22(3) apply to the personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

[88] Neither party refers to any of the specific presumptions listed in the subsections of s. 22(3) in their submissions. However, in its submissions on email B, the District asserts that "no circumstances exist to rebut *this* presumption" without specifying which presumption it means.[75] Despite this, I have carefully reviewed both emails with a view to the presumptions listed in s. 22(3). I find that nothing in email A triggers any of the presumptions in s. 22(3); however, some of the personal information in email B does.

[89] Specifically, some of the personal information in email B relates to the medical condition or treatment of an identifiable individual and the finances and

[73] Order F19-02, 2019 BCIPC 2 at paras. 21-24. For all of Adjudicator Lott's analysis on s. 22(4)(b), see paras. 20-29.

[74] *Ibid* at para. 27.

[75] The District's August 16, 2019 letter to the OIPC at p. 1-2. Emphasis added.

liabilities of identifiable individuals. Section 22(3)(a) creates a presumption against releasing a third party's medical information, and s. 22(3)(f) creates a presumption against releasing a third party's financial information. Therefore, the disclosure of both these types of personal information is presumed to be an unreasonable invasion of personal privacy.

Relevant circumstances – section 22(2)

[90] The last step in the s. 22 analysis requires a consideration of all relevant circumstances to determine whether disclosure of personal information constitutes an unreasonable invasion of personal privacy. Section 22(2) sets out some relevant circumstances to consider at this stage but does not contain an exhaustive list; other factors that do not appear in s. 22(2) may also merit consideration depending on the facts of the case.[76] At the end of this part of my analysis, I will decide whether the relevant circumstances rebut the presumptions discussed in the preceding paragraph.

[91] In its s. 22 submissions, the District says that most of the information in email B does not relate to the applicant's access request and is irrelevant.[77] The District also asserts that the information in email B "was supplied in confidence," "may damage innocent third party's [*sic*] reputations and may be inaccurate or unreliable at this time."[78]

[92] As described above, the applicant focusses his s. 22 submissions on the emergency situation at Seawatch and the potential that the information in emails A and B might be critical to public safety. He also says:

> For the past 4 years the District of Sechelt has used every method to refuse my access to the information I requested…
>
> My contention is that there may have been prior knowledge of issues on the [Seawatch] property or that had repairs been made as directed by the District's engineers then perhaps we would not find ourselves in this position…
>
> Given the magnitude of the circumstances and the roadblocks I have been subjected to, I sincerely believe that the public good would be served by a release of these documents and all documents I have asked for.[79]

[93] While he does not identify any of the subsections in s. 22(2) in his submissions, I understand the applicant to effectively argue that ss. 22(2)(a) and (b) are relevant circumstances that weigh in favour of disclosure in this case.

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[76] Order 00-53, 2000 CanLII 14418 (BC IPC) at section 3.5; Order F09-15, 2009 CanLII 58553 (BC IPC) at para. 32.
[77] The District's August 16, 2019 letter to the OIPC at p. 1.
[78] The District's August 16, 2019 letter to the OIPC, at p. 1-2.
[79] Applicant's August 19, 2019 letter to the OIPC.

[94] Taken together, I understand the parties to argue that the following parts of s. 22(2) apply in this case:

> (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
> >
> > (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
> >
> > …
> >
> > (f) the personal information has been supplied in confidence,
> >
> > (g) the personal information is likely to be inaccurate or unreliable,
> >
> > (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant…

Disclosure desirable for public scrutiny – section 22(2)(a)

[95] Section 22(2)(a) asks whether disclosure of personal information is desirable for the purpose of subjecting the activities of a public body to public scrutiny. In doing so, this section highlights the importance of fostering the accountability of public bodies.[80]

[96] After describing the emergency situation at Seawatch, the applicant contends that the District may have had prior knowledge of the issues at Seawatch and says that, if repairs had been made as directed by the District's engineers, then "perhaps we would not find ourselves in this position." From this, I understand the applicant to be saying that the disclosure of the personal information at issue is desirable for the purpose of subjecting the District's Seawatch-related activities to public scrutiny.

[97] In my view, the personal information contained in emails A and B is not the type of information that will improve or foster the accountability of the District in relation to Seawatch. I see no connection between disclosing the specific personal information at issue and fostering the public accountability of the District. I say this because the *personal* information in these two emails has nothing to do with the District's actions in relation to Seawatch. Rather, the information in these two emails that does relate to Seawatch is *not* personal information and therefore not the subject of my s. 22 analysis.

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[80] Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

[98] As stated earlier, the personal information in email A comprises an individual's name and personal email address. The personal information in email B consists of the names, home address and details about legal issues (*other than* Seawatch) that certain identifiable individuals had with the District. In my view, the disclosure of this specific personal information would add nothing to the public's ability to scrutinize the District's activities in relation to Seawatch. Therefore, despite the emergency situation at Seawatch, I am not satisfied that s. 22(2)(a) weighs in favour of disclosure in this case because of the specific personal information involved.

Disclosure likely to promote public health or safety – section 22(2)(b)

[99] Section 22(2)(b) asks whether disclosure is likely to promote public health and safety. The applicant states that emails A and B "may contain information that is critical to the public safety."[81]

[100] If disclosing the personal information in emails A and B would help to clarify what happened at Seawatch and why, I would be inclined to find that s. 22(2)(b) applies. I say this because, as I see it, any information capable of explaining the reason for the state of emergency at Seawatch could potentially promote public safety as contemplated by s. 22(2)(b). However, as described above, none of the specific personal information at issue relates to Seawatch. Therefore, I find that s. 22(2)(b) does not weigh in favour of disclosure in this case.

Information likely inaccurate or unreliable – section 22(2)(g)

[101] Section 22(2)(g) asks whether the personal information at issue is likely to be inaccurate or unreliable. The District claims that the information in email B "may be inaccurate or unreliable at this time."[82] The District did not aim its argument respecting s. 22(2)(g) at specific information and did not explain how the information might be unreliable or inaccurate. Therefore, I find that s. 22(2)(g) does not weigh against disclosure in this case.

Unfair damage to reputation – section 22(2)(h)

[102] Section 22(2)(h) relates to circumstances where disclosure may unfairly damage the reputation of a person referred to in the records. As noted, the District asserts that disclosure of the personal information in email B may damage innocent third parties' reputations. However, the District did not indicate whose reputation might be damaged or provide any specifics as to how the alleged damage would be unfair. My review of email B does not make this clear. Given this, I find that s. 22(2)(h) does not weigh against disclosure in this case.

[81] Applicant's August 16, 2019 letter to the OIPC.
[82] The District's August 16, 2019 letter to the OIPC at p. 2. Emphasis added.

Supplied in confidence – section 22(2)(f)

[103] The District submits that the personal information in email B was supplied in confidence, making s. 22(2)(f) a relevant factor weighing against disclosure in this case.

[104] I accept the District's submission that the personal information in email B was supplied in confidence for three reasons. First, email B contains private, sensitive personal information. Second, the author of email B sent this email only to individuals directly involved in the matters discussed in the email. Third, email B contains a strictly worded confidentiality proviso following the signature block. This proviso along with the nature, content and recipients of email B indicates to me that the information in email B was supplied in confidence. Therefore, I find that s. 22(2)(f) weighs against disclosure of the personal information in email B.

Other relevant circumstances

[105] In my view, none of the other relevant circumstances listed in s. 22(2) apply to the personal information in emails A or B. However, as I have said, s. 22(2) does not contain an exhaustive list. The following factors also merit consideration as relevant circumstances in this case:

- The relevancy of some of the personal information in relation to the applicant's access request;
- The applicant's knowledge of some of the personal information; and
- The sensitive nature of some of the personal information.

[106] In its s. 22 submissions, the District raises the irrelevancy of the personal information in email B as a circumstance that weighs against disclosure, noting that only one part of this email actually relates to the applicant's access request (i.e. Seawatch). I agree. The applicant's access request focusses exclusively on Seawatch. The personal information in email B does not relate in any way to Seawatch. In my view, this factor weighs against disclosure of the personal information in email B.

[107] I have also considered the fact that the applicant already knows some of the personal information at issue.[83] Specifically, the applicant already knows all the personal information contained in email A. As set out above, email A contains the name and personal email address of a third party individual. The applicant already knows the name of this individual because the District's submissions and affidavit evidence both mention this individual. Additionally, the applicant already

[83] Past orders have found that an applicant's awareness or knowledge of withheld information is a relevant circumstance that can weigh in favour of disclosure. For examples, see Order F19-02, 2019 BCIPC 02 at para. 73; Order F17-02, 2017 BCIPC 2 at paras. 28-30; Order F18-19, 2018 BCIPC 22 at paras. 74-77; and Order 04-33, 2004 CanLII 43765 (BC IPC) at para. 54.

received this third party's personal email address because the District disclosed it to the applicant elsewhere in the records. This factor weighs in favour of the disclosure of the personal information in email A.

[108] Past orders have also considered the sensitivity of the personal information at issue as a relevant circumstance. For example, if information is particularly sensitive or private in nature, this factor may weigh against disclosure.[84] In my view, the personal information in email B respecting legal issues between identifiable individuals and the District is sensitive and private in nature. This factor weighs against disclosure of the personal information in email B.

Presumptions not rebutted

[109] I found that email B contains personal information that triggers the presumptions against disclosing medical information and information that describes a third party's finances or liabilities. For the reasons outlined above, none of the relevant circumstances weigh in favour of disclosing the information in email B, but some of them weigh against disclosure. Therefore, the relevant circumstances do not rebut the s. 22(3) presumptions in this case.

Conclusion – section 22

[110] Emails A and B contain personal information in the form of names, email and home addresses and details about legal issues unrelated to Seawatch that identifiable individuals have had with the District.

[111] The District did not decide to disclose any of this personal information and has not sent a notice of disclosure to any of the third parties whose personal information is involved, so s. 22(4)(b) does not apply.

[112] The ss. 22(3)(a) and (f) presumptions against releasing medical information and information about finances and liabilities apply to some of the personal information in email B. I find this information sensitive in nature and note that it was supplied in confidence, circumstances that weigh against disclosure. None of the relevant circumstances rebut the applicable presumptions. Therefore, the District must refuse to disclose the personal information in email B to the applicant under s. 22(1).

[113] However, I find otherwise for the personal information in email A. None of the presumptions in s. 22(3) apply to this information and one relevant circumstance – the applicant's knowledge of all the personal information in email A – weighs in favour of disclosure. Specifically, I find that releasing the

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[84] For examples, see Order F17-39, 2017 BCIPC 43, at paras. 120-121; and Order F15-52, 2015 BCIPC 55 at para. 46.

individual's name and the personal email address that the applicant already knows would not constitute an unreasonable invasion of personal privacy under s. 22(1).

[114] In short, s. 22(1) requires the District to withhold the personal information in email B but not the personal information in email A. I have highlighted in green the personal information in email B that the District must withhold under s. 22(1) in a copy of the records the District will receive with this order.

CONCLUSION

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

1. Subject to item 2 below, I confirm in part the District's decision to refuse to disclose information to the applicant under s. 14.

2. The District is not authorized under s. 14 to refuse to disclose the information highlighted in pink in the copy of the records it receives with this order.

3. The District is required under s. 22(1) to refuse to disclose the information highlighted in green in the copy of the records it receives with this order.

4. The District must concurrently provide the OIPC Registrar of Inquiries with a copy of its cover letter and the records identified at item 2 above when it sends those records to the applicant.

[116] Pursuant to s. 59(1), the District must give the applicant access to the information described above in paragraph 115, item 2 by November 19, 2019.

October 4, 2019

ORIGINAL SIGNED BY

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Laylí Antinuk, Adjudicator

OIPC File No.: F16-65783