



Order F22-46

## OFFICE OF THE PREMIER

D. Hans Hwang  
Adjudicator

October 5, 2022

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**Summary:** A journalist requested records about driving in BC with a foreign driver's licence from China. The Office of the Premier provided records, withholding some information under ss. 13 (policy advice or recommendations) and 16 (disclosure harmful to intergovernmental relations or negotiations) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator determined that the Office of the Premier was authorized to refuse to disclose the disputed information under ss. 13 and 16(1)(a)(iv) of FIPPA.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13(1), 13(2), 13(3), and 16(1)(a)(iv).

## INTRODUCTION

[1] A journalist (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Office of the Premier (OOP) for access to records about driving in BC with a foreign driver's licence from the People's Republic of China (China).<sup>1</sup> In response, OOP provided the applicant with 25 pages of responsive records but withheld some information in them under ss. 13 (policy advice or recommendations), 16 (disclosure harmful to intergovernmental relations or negotiations), 17 (disclosure harmful to the financial or economic interest) and 22(1) (disclosure harmful to a third party's personal privacy) of FIPPA.<sup>2</sup>

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<sup>1</sup> Applicant's access request, December 28, 2019.

<sup>2</sup> OOP's letter, April 23, 2020.

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review OOP's decision.

[3] During the OIPC review process, OOP reconsidered its decision and it disclosed more information in the records to the applicant, and it dropped reliance on s. 17 and 22(1). However, it continues to apply ss. 13 and 16 to withhold some information.<sup>3</sup>

[4] Mediation failed to resolve the matter and the applicant requested that it proceed to an inquiry.

[5] Before the submission phase of this inquiry was closed, the OIPC found s. 22 was still in dispute, so it issued a revised notice of inquiry and set out deadlines for the parties' supplemental submissions on s. 22. However, before filing of any supplemental submissions, OOP released the information that it withheld under s. 22 to the applicant, so s. 22 is not an issue in this inquiry.

[6] OOP's evidence includes pre-approved *in camera* materials (i.e., material that a party submits for the OIPC to see, but not the opposing party).<sup>4</sup>

### ***Preliminary Matters – Late raising of Constitutional Challenge and s. 6(1) of FIPPA***

[7] In her response submission, the applicant suggests that denying her access to the information violates s. 2(b) the *Canadian Charter of Rights and Freedoms* (Charter).<sup>5</sup> Section 2(b) of the Charter states that everyone has the fundamental "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication". What the applicant says about this is vaguely worded and somewhat unclear. However, I believe she is saying that OOP must adhere to the principle of "freedom of the press and other media of communication" embedded in s. 2(b) of the Charter, and for that reason, it must give her access to the information.

[8] In addition, while the applicant does not specifically address s. 6(1) of FIPPA, she suggests that OOP did not make every reasonable effort to assist the applicant as required in s. 6(1).<sup>6</sup> Section 6(1) imposes a number of obligations on a public body. It is well established that s. 6(1) requires a public body to conduct

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<sup>3</sup> Investigator's fact report paras 4 and 6.

<sup>4</sup> OIPC's *in camera* decision dated May 26, 2022.

<sup>5</sup> Applicant's response submission at para. 37.

<sup>6</sup> Applicant's response submission at paras. 2-5.

an adequate search for records.<sup>7</sup> The applicant's complaint in this case is that: "It is very likely that a thorough search by [OOP] was not made of the applicants [sic] FOI request in addition to the withheld material that this inquiry is considering".<sup>8</sup>

[9] OOP submits that it objects to the OIPC adding s. 2(b) of Charter or s. 6(1) of FIPPA as inquiry issues.<sup>9</sup>

[10] I find that what the applicant says about s. 2(b) of the Charter or s. 6(1) of FIPPA was not listed as issues in the notice of inquiry. The OIPC's notice of inquiry and its *Instructions for Written Inquiries*, both of which were provided to the applicant at the outset of the inquiry, clearly explain that parties may not add new issues into the inquiry without the OIPC's prior consent. Past orders and decisions of the OIPC have consistently said the same thing.<sup>10</sup> Here, the applicant did not apply to the OIPC for permission to add s. 2(b) of the Charter or s. 6(1) of FIPPA as an issue in the inquiry, and she does not explain why she is only raising them at this late juncture in the process. Also, I can see no exceptional circumstances that warrant adding those new issues into this inquiry at this late point in the inquiry, especially when they are so vaguely worded.

[11] Therefore, I decline to add those issues or consider the applicant's arguments on s. 2(b) of the Charter or s. 6(1) of FIPPA any further.

## ISSUES

[12] The issues to be decided in this inquiry are:

1. Is OOP authorized to refuse to disclose the information at issue under s. 16(1)(a)(iv) of FIPPA?
2. Is OOP authorized to refuse to disclose the information at issue under s. 13 of FIPPA?

[13] Under s. 57 of FIPPA, the burden of proof is on OOP to show that ss. 13 and 16(1)(a)(iv) apply.

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<sup>7</sup> Order 02-18, 2002 CanLII 42443 (BCIPC) at para. 7

<sup>8</sup> Applicant's response submission at para. 5.

<sup>9</sup> OOP's reply submission at paras. 2-5.

<sup>10</sup> For example, see Order F12-07, 2012 BCIPC 10 at para. 6; Order F10-27, 2010 BCIPC 55 at para. 10; Decision F07-03, 2007 CanLII 30393 (BC IPC) at paras. 6-11; and Decision F08-02, 2008 CanLII 1647 (BC IPC).

## DISCUSSION

### ***Background***<sup>1</sup>

[14] OOP assists the Premier of BC in overseeing and leading the government as a whole. It articulates government's goals, commitments and priorities, and it works with ministries and Crown agencies to ensure communication of those goals, commitments, and priorities. OOP also facilitates effective policy coordination across the public service and works directly with the federal, provincial, and territorial heads of government, and with governments in other countries, to advance and protect BC's interests.

[15] As part of OOP, the Intergovernmental Relations Secretariat (IGRS) works to ensure BC is successful in achieving its priorities which require intergovernmental engagement, negotiations, and cooperation. IGRS provides advice on government to government interactions, and it works with ministries, government agencies, and other partners, including the federal government, governors' offices in the United States and in other countries, embassies, high commissions, consulates, and others to advance and protect BC's interests through enhanced economic, cultural, and diplomatic ties and programs.

[16] In 2012, the Insurance Corporation of British Columbia (ICBC) sent letters to representatives of the non-reciprocal jurisdictions with the highest BC driver's licence application volumes, including China (ICBC Letter). Non-reciprocal jurisdictions do not have a formal test-waiving agreement with BC for their driver's licence holders. The purpose of the ICBC Letter was to inform them about upcoming driver's licensing changes taking place in 2013 and to provide an option for those non-reciprocal jurisdictions to have surrendered driver's licences returned to their home licensing authority instead of securely destroyed by ICBC. The Consulate General of China in Vancouver (Chinese Consulate), as the official representative in BC of China, received the ICBC Letter.

[17] Further to the ICBC letter, the Chinese Consulate and IGRS discussed issues about surrendered driver's licences of Chinese nationals. Also, ICBC and IGRS began discussions about ICBC's requirements regarding surrendered driver's licences.<sup>12</sup>

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<sup>11</sup> The information in this background is based on the evidence, which I accept, in Affidavit #1 of Associate Deputy Minister, Intergovernmental Relations Secretariat, Office of the Premier at paras. 6-9.

<sup>12</sup> OOP's initial submission at paras. 13 c) and 13 d).

[18] The applicant has requested access to all records related to driving in BC with a Chinese driver's licence, specifically those that involved the following entities: OOP, the Ministry of Transportation, the Ministry of Trade, community organizations, non-government corporations, federal government departments and ministries, lobbyists, MLAs, MPs, ICBC, the RCMP, the Consulate for the Peoples Republic of China, the Chinatown Business Association and the Canadian Alliance of Chinese Association. The access requests cover the period January 1, 2009 to January 1, 2016.

### ***The Records and the Information at Issue***

[19] OOP provided me with 25 pages of records that contain the information in dispute.<sup>13</sup> The records are emails, letters, an ICBC briefing note and an ICBC table listing the contact information for foreign jurisdictions. I will discuss the specific information in dispute as it relates to each exception.

### ***Disclosure Harmful to Intergovernmental Relations, s. 16(1)(a)***

[20] Section 16(1) of FIPPA authorizes a public body to refuse access to information if disclosure could reasonably be expected to harm intergovernmental relations. OOP submits s. 16(1)(a)(iv) applies to most of the withheld information.<sup>14</sup> The section says:

16 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies: ...

(iv) the government of a foreign state; ...

[21] The information that OOP refused to disclose under s. 16(1)(a)(iv) ranges from small portions to entire pages of the following records:<sup>15</sup>

- an email that IGRS sent to the Chinese Consulate (page 4);
- an email that the Chinese Consulate sent to the Minister of Justice (page 11);
- a letter that the Chinese Consulate sent to the Minister of Justice (pages 12-13 and duplicate at pages 18-19);
- an email that ICBC sent to IGRS (page 14);

<sup>13</sup> OOP's initial submission, Tab 3.

<sup>14</sup> OOP's initial submission at paras 28-30.

<sup>15</sup> OOP's initial submission, Tab 3.

- ICBC Briefing Note (pages 16-17);
- an email that ICBC sent to the Chinese Consulate (page 21); and
- an ICBC table of the contact information of foreign jurisdictions (page 23).

*Harm to the conduct of relations between governments*

[22] Section 16(1)(a)(iv) applies if disclosure could reasonably be expected to harm the conduct of relations between the government of BC and the government of a foreign state. Therefore, the question that I must address here is whether disclosure of the withheld information could reasonably be expected to harm the provincial government's conduct of relations with China.

[23] It is well established that the phrase “could reasonably be expected to” means that the standard of proof is a “reasonable expectation of probable harm.” This means that a public body must show that the likelihood of the harm occurring is “well beyond” or “considerably above” a mere possibility.<sup>16</sup> The amount and quality of the evidence required to meet this standard depends on the nature of the issue and the “inherent probabilities or improbabilities or the seriousness of the allegations or consequences.”<sup>17</sup>

*Public body's submission*

[24] OOP submits “all the Section 16 Information relates in some way to the [Chinese] Consulate. The [Chinese] Consulate is the official representative in BC of the government of the People's Republic of China, a foreign state that BC has a relationship with.”<sup>18</sup> OOP says that it withholds the following three categories of information under s. 16: information that reveals sensitive diplomatic Consulate communications, information that could easily be misconstrued and information about a highly sensitive topic.<sup>19</sup>

[25] OOP also submits about the importance of the relationship between the BC government and the Chinese government and between the BC government and other foreign jurisdictions including those with regional offices in BC.<sup>20</sup> OOP says “[It] is always extremely careful about protecting its discussions with foreign

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<sup>16</sup> *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)* 2014 SCC 31 at para 54 citing *Merck Frosst v Canada (Health)* 2012 SCC 3 at paras 197 and 199.

<sup>17</sup> *Ibid* citing *FH v McDougall*, 2008 SCC 53 at para 40.

<sup>18</sup> OOP's initial submission at para. 30.

<sup>19</sup> OOP's initial submission at para. 34.

<sup>20</sup> OOP's initial submission at para. 30.

consulates because these discussions inherently involve a confidential, diplomatic exchange of information”.<sup>21</sup> OOP explains “the remaining Consulate communication information is sensitive, so disclosure would result in a risk of harm that goes well beyond the merely possible or speculative”.<sup>22</sup>

[26] In support of its submissions, OOP provides affidavit evidence from the Associate Deputy Minister, Intergovernmental Relations Secretariat, OOP (Associate Deputy Minister). The Associate Deputy Minister states that she has worked with IGRS for 20 years and as a senior executive at the Associate Deputy Minister’s level in IGRS for approximately 12 years. She oversees BC’s relations with the federal government, other provincial and territorial governments and international governments.<sup>23</sup>

[27] The Associate Deputy Minister attests that “To have effective intergovernmental relations, there must be mutual trust between governments” and “Government officials can only do this if they know their communications will be treated with respect and confidentiality”.<sup>24</sup> She also says “based on my experience, I believe that some of the Section 16 Information could be misconstrued in a manner that could reasonable be expected to harm the Provincial Government’s relations with the Chinese Government and with other governments that are members of the Consular Corps”.<sup>25</sup>

[28] In addition, the Associate Deputy Minister says the following about three key characteristics of the unique context in which intergovernmental relations operate:<sup>26</sup>

First, intergovernmental issues are rarely watertight, i.e., they are rarely looked at in isolation. So, the way a government like BC deals with an issue (e.g. the public release of diplomatic communications) tends to define the overall approach of that government in the eyes of another government (here, China).

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The second characteristic is reciprocity. In the conduct of diplomatic affairs, the principle of reciprocity is relied upon. It means that if BC publicly discloses diplomatic information or information communicated by a foreign consulate, representatives of that country would then behave the same way

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<sup>21</sup> OOP’s initial submission at para. 39.

<sup>22</sup> OOP’s initial submission at para. 37.

<sup>23</sup> Affidavit #1 of Associate Deputy Minister, Intergovernmental Relations Secretariat, Office of the Premier [Associate Deputy Minister] at paras. 2-3.

<sup>24</sup> Affidavit #1 of [Associate Deputy Minister] at para 15.

<sup>25</sup> Affidavit #1 of [Associate Deputy Minister] at para 20.

<sup>26</sup> Affidavit #1 of [Associate Deputy Minister] at paras 28, 30, and 31.

with the information they receive from the BC government – information that could be highly sensitive.

The third characteristic is precedent-setting. Precedent-setting in the intergovernmental context means two things. First, it means that government A's treatment of government B about one issue (e.g. driver's licences) tends to open the floodgates for government B to request similar treatment about a wide range of issues (e.g. vaccination passports or professional accreditation). It also means that governments C, D, E and F will all demand that government A treat them the same way it treated government B.

#### *Applicant's response submission*

[29] The applicant submits that “it can be assumed [the Associate Deputy Minister] in her capacity as Associate Deputy Minister, Intergovernmental Relations Secretariats, was involved in the very negotiations with the [Chinese Consulate] concerning foreign driver's licenses” and “This would place her in direct conflict with the decision to withhold information from the applicant”.<sup>27</sup>

[30] The applicant provides details about why she wants access to the requested records and what she hopes to find in them about the things that China does to provide remote licence renewal for its citizens abroad (remote renewal program).<sup>28</sup> She also provides many exhibits about that program.<sup>29</sup>

[31] Furthermore, the applicant argues:

[OOP] has not demonstrated with this evidence that disclosing the information would result in a reasonable expectation of probable harm. What they have demonstrated in their response is that the BC Government is scared of retaliation by China, so much so, that the decisions they make are not made in the best interests of the average British Columbian, but Beijing.<sup>30</sup>

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<sup>27</sup> Applicant's response submission at para. 33.

<sup>28</sup> Applicant's response submission at paras. 9a-9k; Applicant's addendum at paras 1-3.

<sup>29</sup> For example, Exhibits 1, 3 and 5 referred to in Applicant's response submission and Exhibits 2-5 referred to in Applicant's addendum are copies of news reports about the Chinese municipal vehicle management department's program that provides remote physical examination and expiration renewal business for overseas Chinese.

<sup>30</sup> Applicant's response submission at para. 24.



[OOP] has not mentioned any specific information on what current or future contracts, investigations, or decisions might be impacted by the release of the information sought by the applicant.<sup>31</sup>

[OOP] does not provide any tangible proof or even a suggestion that there may be harm to investigations or surveillance of intergovernmental relationships and agreements, by third parties like CSIS or the RCMP.<sup>32</sup>

[OOP] has failed to present a clear and direct connection between the disclosure of specific information and potential harm they are alleging.<sup>33</sup>

*Public body's reply submission*

[32] In its reply submission, OOP says that its affidavit evidence “establishes a clear, direct connection between the disclosure of the specific information withheld under section 16(1)(a)(iv) and the harms that exception protects against.”<sup>34</sup> OOP submits that it “did not consider any economic forecasts when it decided that disclosure of the information withheld under section 16(1)(a)(iv) could reasonably be expected to harm BC’s relationship with China.”<sup>35</sup> It also says that evidence from CSIS or the RCMP is not necessary to establish harm under section 16(1).<sup>36</sup>

[33] OOP provides a second affidavit from the Associate Deputy Minister in which she says: “I was not involved in any negotiations with the Consulate concerning foreign driver’s licenses. I was not in charge of negotiations concerning the issue the Applicant is seeking information on. I am not in a direct conflict with the decision to withhold information”.<sup>37</sup>

*Analysis and findings on s. 16(1)(a)(iv)*

[34] For the following reasons, I am satisfied that OOP’s submission and evidence establish that disclosure of the withheld information could reasonably be expected to harm the intergovernmental relations between BC and China, and BC and the governments of other foreign states.

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<sup>31</sup> Applicant’s response submission at para. 25.

<sup>32</sup> Applicant’s response submission at para. 26.

<sup>33</sup> Applicant’s response submission at para. 27.

<sup>34</sup> OOP’s reply submission at para. 12.

<sup>35</sup> OOP’s reply submission at para. 11.

<sup>36</sup> OOP’s reply submission at para. 9.

<sup>37</sup> Affidavit #2 of [Associate Deputy Minister] at para. 6.

[35] Having reviewed the submissions and evidence before me, I find that the withheld information on pages 4, 11-14, 16-19 and 21 reveals details of what the Chinese Consulate, IGRS, the Ministry of Justice and ICBC said to each other about how BC treats Chinese driver's licences. I also find that the severed information in dispute on page 23, which is the ICBC table of contact information for foreign countries, reveals the Province's strategy regarding how best to interact with that country.

[36] I accept the OOP's *in camera* evidence which it submits to show how disclosure of the information on pages 4, 11-14 and 18-19, if disclosed, can be misconstrued and how the potential misunderstanding could damage intergovernmental relations.<sup>38</sup> I am also persuaded by OOP's affidavit evidence from the Associate Deputy Minister that information on pages 16-17 and 21 could be misconstrued in a manner that would deteriorate relations between BC and China. In addition, I find that OOP's *in camera* evidence establishes why the withheld information in the table of foreign countries' contact details on page 23 is extremely sensitive and how disclosure of the information will likely harm intergovernmental relations between BC and China, and BC and the government whose information has been withheld.<sup>39</sup>

[37] I find OOP's evidence demonstrates that disclosure of the withheld information could reasonably be expected to set a bad precedent for how the government of BC is expected to treat China and other foreign states. OOP satisfactorily explains that disclosing the withheld information would define BC's overall approach in the eyes of China, would open the gate for China to request similar treatment about a wide range of issues, and would impact how the governments of other foreign states deal with BC on matters of joint interest in the future. In addition, OOP's *in camera* evidence demonstrates the sensitivity of both the withheld information and the diplomatic communications between OOP and the Chinese Consulate.

[38] I am not persuaded by the applicant's arguments that the Associate Deputy Minister may have been in charge of negotiations concerning the surrendered driver's licences and if not in charge, most likely aware, so she is in a conflict of interest with the decision to withhold the disputed information. What the applicant says about "conflict", in my view, is mere allegation, unsupported by clear and convincing evidence. She has not established a *prima facie* case that

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<sup>38</sup> Affidavit #1 of [Associate Deputy Minister] at paras. 16, 17, 19 and 21.

<sup>39</sup> Affidavit #1 of [Associate Deputy Minister] at paras. 23-25 and 33.

the Associate Deputy Minister was in a conflict with regards to the decision to withhold the information in dispute or that OPP improperly exercised its discretion to withhold the information.

[39] Also, I am not persuaded by what the applicant says about OOP failing to provide “any specific information on what current or future contracts, investigations, or decisions might be impacted by the release of the information sought by the applicant”.<sup>40</sup> What the applicant says about this is somewhat unclear and is not supported by any legal authorities or evidence, aside from her assertion. Furthermore, the applicant argues that “there is no mention of advice from [CSIS] or the RCMP” for withholding the information in dispute.<sup>41</sup> However, I do not see any legal authorities that require a public body to provide evidence obtained from specific third parties such as law enforcement agencies or intelligence agencies (e.g. RCMP or CSIS) to prove harm under s. 16(1).

[40] Further, the relevance of the information the applicant provides about what she perceives to be the problems in the remote renewal program is not apparent. I cannot see how the details and exhibits about the remote renewal program provide anything relevant in determining whether the information in dispute can be withheld under s. 16(1).

[41] For these reasons, I am satisfied that OOP provides sufficient evidence that the likelihood of the harm occurring from the disclosure of the withheld information is “well beyond” or “considerably above” a mere possibility. I therefore find that s. 16(1)(a)(iv) applies to the withheld information on pages 4, 11-14, 16-19, 21 and 23.

*Summary, s. 16(1)(a)(iv)*

[42] OOP has proven that disclosure of the information it withheld under s. 16(1)(a)(iv) could reasonably be expected to harm the intergovernmental relations between the government of BC and the governments of foreign states.

***Advice or Recommendations, s. 13***

[43] Section 13(1) authorizes a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister. The purpose of s. 13(1) is to allow full and frank

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<sup>40</sup> Applicant’s response submission at para. 25.

<sup>41</sup> Applicant’s response submission at para. 13.

discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny.<sup>42</sup>

[44] The analysis under s. 13 has two steps.<sup>43</sup> The first is to determine whether the disclosure of the information would reveal advice or recommendations developed by or for a public body. The second is to determine whether s. 13(2) applies. That subsection sets out various kinds of information that a public body “must not refuse to disclose” under s. 13(1).

[45] Order F19-28 summarizes the relevant legal principles established under s. 13, which I adopt here:

- A public body is authorized to refuse access to information under s. 13(1), not only when the information itself directly reveals advice or recommendations, but also when disclosure of the information would enable an individual to draw accurate inferences about any advice or recommendations.
- Recommendations include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be express or inferred.
- “Advice” usually involves a communication, by an individual whose advice has been sought, to the recipient of the advice, as to which courses of action are preferred or desirable.
- “Advice” has a broader meaning than the term “recommendations.” The Supreme Court of Canada in *John Doe v. Ontario (Finance)* found that “advice” includes a public servant’s view of policy options to be considered by a decision maker, including the considerations to take into account by the decision maker in making the decision.
- Advice also includes an opinion that involves exercising judgement and skill to weigh the significance of matters of fact, including expert opinion on matters of fact on which a public body must make a decision for future action.
- Section 13(1) does not automatically apply to a document simply because it is a draft. The fact that a record is a draft does not

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<sup>42</sup> *John Doe v. Ontario (Finance)*, 2014 SCC 36 at paras. 45-51.

<sup>43</sup> Order F15-61, 2015 OIPC 67 (CanLII) at para. 31.

necessarily make the entire record advice or recommendations under s. 13(1).

- Section 13(1) extends to factual or background information that is a necessary and integrated part of the advice. This includes factual information compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.<sup>44</sup>

[46] There was overlap between OOP's application of ss. 13 and 16 to the withheld information. I will only consider the information that I have not already found may be withheld under s. 16(1)(a)(iv).<sup>45</sup> The information that OOP exclusively refused to disclose under s. 13 ranges from small portions to several paragraphs of the following records:<sup>46</sup>

- an email that IGRS sent to ICBC (page 1); and
- an email that ICBC sent to IGRS (pages 1-2).

*The parties' submission on s. 13*

[47] OOP submits that it withheld a small amount of information in the two emails under s. 13. OOP says, "In the emails, the employees exchange their recommendations for the specific wording of correspondence to send to the [Chinese] Consulate"<sup>47</sup> and "the information withheld under section 13(1) does not fit into any categories listed in section 13(2)."<sup>48</sup>

[48] The applicant submits "[OOP] has relied on vague economic forecasts of harm to the economy and trade relations" and "The head of a public body must not refuse to disclose under subsection [2(e)] an economic forecast." She also submits "[OOP] fails to offer any tangible harm other than vague doom economic forecasting as a result of the information being released."<sup>49</sup>

*Analysis and findings on s. 13(1)*

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<sup>44</sup> Order F19-28, 2019 OIPC 30 (CanLII) at para. 14 (footnotes omitted).

<sup>45</sup> OOP refused to disclose an ICBC table of the contact information of foreign jurisdictions (page 23), under ss. 16(1)(a)(iv) and 13. I have already found s. 16(1)(a)(iv) applies to the withheld information in this record. So, it is not necessary for me to consider whether s. 13 also applies.

<sup>46</sup> OOP's initial submission, Tab 3.

<sup>47</sup> OOP's initial submission at para 21.

<sup>48</sup> OOP's initial submission at para 25.

<sup>49</sup> Applicant's response submission at para. 15.

[49] For the reasons to follow, I find the withheld information in the email that the ICBC employee sent to IGRS does not reveal advice or recommendations but the withheld information in the IGRS employee's response does.

[50] In the email that ICBC sent to IGRS, the ICBC employee shows the IGRS employee what ICBC is going to say in response to a question posed by the Chinese Consulate. He asks the IGRS employee to "please let me know if you have any questions or suggestions". I find OOP cannot withhold this information under s. 13(1) because it does not reveal advice or recommendations on a proposed course of action to be accepted or rejected by a decision maker. Based on the context provided by the records, it is clear that ICBC is the decision maker regarding what to say in its response to the Chinese Consulate's question. The ICBC employee's email does not provide advice or recommendations to IGRS. Rather, it invites IGRS to give feedback to ICBC.

[51] However, I find that the IGRS employee's reply reveals her recommendation on how ICBC should word its response to the Chinese Consulate.

*Section 13(2) and 13(3)*

[52] I turn now to s. 13(2), which sets out various kinds of information that a public body must not refuse to disclose under s. 13(1). The applicant submits that s. 13(2)(e) applies in this case.

[53] Section 13(2)(e) says that the head of a public body must not refuse to disclose "an economic forecast" under s. 13(1). In Order F11-19, Adjudicator Fedorak applied the following definition for "an economic forecast" from the provincial government's *Policy and Procedures Manual*, when considering s. 13(2)(e): "a report or other record predicting trends in the economy".<sup>50</sup> I agree that is the appropriate definition here. I find that the information in the email the IGRS employee sent to the ICBC employee is not that kind of record and it has nothing to do with such matters, so s. 13(2)(e) does not apply.

[54] I find that none of the other exceptions in s. 13(2) apply to the information that I have found would reveal advice or recommendations.

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<sup>50</sup> Order F11-19, 2011 BCIPC 25 at para. 18.

[55] I also find that the records have not been in existence for 10 or more years. The email that IGRS sent to ICBC was created in 2014. Consequently, s. 13(3) does not apply.

*Summary, s. 13*

[56] Given my findings respecting ss. 13(1), (2) and (3), I conclude that s. 13(1) authorizes OOP to withhold only the information in the email the IGRS employee sent to the ICBC employee on page 1 of the records.

**CONCLUSION**

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

1. I confirm OOP's decision that it is authorized to refuse to disclose the information in dispute under s. 16(1)(a)(iv).
2. Subject to item 3 below, I confirm, in part, OOP's decision that it is authorized to refuse to disclose the information in dispute under s. 13(1).
3. OOP is not authorized under s. 13(1) to refuse access to the information in the email the ICBC employee sent to the IGRS employee, which is on pages 1-2 of the records. OOP is required to give the applicant access to that information.

Under s. 59(1) of FIPPA, OOP is required to comply with this order by November 18, 2022.

October 5, 2022

**ORIGINAL SIGNED BY**

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D. Hans Hwang, Adjudicator

OIPC File No.: F20-82650