



Order P22-06

HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA

Lisa Siew
Adjudicator

October 13, 2022

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Summary: An applicant requested access to her personal information under the control of the Health Employers Association of British Columbia (the Association). The Association provided access to some information, but refused to disclose other information to the applicant under ss. 23(3)(a), 23(4)(c) and 23(4)(d) of the *Personal Information Protection Act* (PIPA). The adjudicator determined the Association was required to refuse access to a small amount of information because it did not qualify as the applicant's personal information under PIPA. The adjudicator also found the Association was authorized or required to withhold some of the information at issue under s. 23(3)(a) since solicitor client privilege applied and under s. 23(4)(c) and s. 23(4)(d) as the disclosure would reveal personal information about another individual or the identity of an individual providing personal information about another person. The adjudicator found, however, that the Association was not required under s. 23(4)(c) and s. 23(4)(d) to withhold the rest of the information at issue and ordered the Association to disclose this information to the applicant.

Statutes Considered: *Personal Information Protection Act*, SBC 2003 c 63, ss. 1 (definition of "personal information", "contact information" and "work product information"), 23(1)(a), 23(3)(a), 23(4)(c) and 23(4)(d).

INTRODUCTION

[1] Section 23(1) of the *Personal Information Protection Act* (PIPA) gives individuals a right to access their personal information under the control of an organization, subject to any exceptions under ss. 23(3) and 23(4). An individual (applicant) requested access to her personal information from the Health Employers Association of British Columbia (Association) for a one-year date range.

[2] In response, the Association informed the applicant that it had previously provided the requested information when it responded to another access request the applicant made a few years before. It told the applicant there was no other

information responsive to the current access request. The parties disagreed on whether additional responsive information existed. They exchanged correspondence about the matter, but were not able to resolve their differences.

[3] The applicant complained to the Office of the Information and Privacy Commissioner (OIPC) that the Association failed to provide an accurate and complete response to her access request. The OIPC's mediation and investigation process resolved this complaint by identifying what further information the applicant was seeking and enabled the Association to search for any responsive information.

[4] As a result of that search, the Association provided the applicant with access to some information, but withheld other information under ss. 23(3)(a), 23(4)(c) and 23(4)(d) of PIPA. The applicant was dissatisfied with this response and requested the OIPC conduct a review of the Association's decision to withhold information under those exceptions to access. The OIPC's mediation and investigation process did not resolve the matters between the parties and the applicant requested this inquiry.

ISSUES AND BURDEN OF PROOF

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

1. Does the information at issue qualify as the applicant's "personal information" under PIPA?
2. Is the Association authorized to refuse to disclose the information in dispute under s. 23(3)(a)?
3. Does s. 23(4)(c) require the Association to refuse to disclose the information in dispute?
4. Does s. 23(4)(d) require the Association to refuse to disclose the information in dispute?

[6] Section 51(a) of PIPA places the burden on the Association, as the organization, to prove that the applicant has no right to access the information in dispute.

Additional matters in the applicant's submission

[7] The applicant's submission addresses issues not set out in the OIPC investigator's fact report or the notice of inquiry. For instance, the applicant's submission includes various allegations of wrongdoing against her former employer and union and about other named individuals. The applicant also

continues to challenge the adequacy of the Association's search for responsive information and she requests access to certain specific documents that she believes exists. As well, the applicant alleges the Association, as well as her former employer and union, inappropriately collected, used and disclosed her personal information without her knowledge and consent.

[8] The Association objects to the inclusion of these additional issues on the basis they are irrelevant to the issues to be determined at this inquiry or fall outside the scope of this inquiry. For instance, the Association says the adequacy of its search efforts was previously raised by the applicant and then resolved by the OIPC. It notes that the investigator's fact report explicitly excludes this issue from the inquiry.

[9] I conclude the additional matters raised by the applicant will not be considered in this inquiry. As the Commissioner's delegate, my role is limited to determining the issues identified in the notice of inquiry. It is not within my jurisdiction under PIPA to decide the applicant's other grievances involving her previous employer, her former union and other named individuals.

[10] I also conclude that it is outside the scope of this inquiry to address the applicant's complaint that her personal information was improperly collected, used and disclosed without her knowledge and consent. This issue was not set out in the investigator's fact report or the notice of inquiry. The notice of inquiry clearly states that the parties may not add new or additional issues without the OIPC's prior consent. The applicant did not seek permission to add this issue to the inquiry or explain why she should be permitted to do so at this late stage. As a result, I decline to consider this matter as part of this inquiry.

[11] I am also satisfied that the applicant's complaint about the adequacy of the Association's response to the access request was previously dealt with by the OIPC's mediation and investigation process. The investigator's fact report specifically states that this matter was resolved and does not form part of this inquiry.

[12] To be clear, the issues that I will decide in this inquiry are limited to those identified further above in paragraph 5 of this order. I have reviewed the applicant's entire submission, but I will only refer to those submissions where it is relevant to the issues in this inquiry.

DISCUSSION

Background

[13] The Association is a society formed and governed by the *Societies Act*¹ and qualifies as an “organization” that is subject to PIPA.² It is also an “employer’s association” under the *Public Sector Employer’s Act*³ that is responsible for coordinating the human resource and labour relations interests of publicly-funded health care employers in British Columbia.

[14] Health care employers that belong to the Association are referred to as “members”.⁴ The Association provides its members with a variety of services such as collective bargaining and assisting with employment grievances and arbitrations.

[15] The applicant was previously employed, in a number of union positions, by a provincial health authority (Health Authority). The Health Authority is a member of the Association.

Information at issue

[16] The Association provided the applicant with 386 pages of documents and the information at issue is located on approximately 75 of those pages.

[17] The Association refuses to provide the applicant with access to the following information:

- All of the information in documents described as “confidential communications”⁵ under s. 23(3)(a).⁶
- Information in emails, letters, notes, an employee seniority list and meeting notes under s. 23(4)(c).⁷
- Information in emails, letters and meeting notes under both s. 23(4)(c) and s. 23(4)(d).⁸

¹ SBC 2015, c. 18.

² Under s. 1 of PIPA, an “organization” includes a person, an unincorporated association, a trade union, a trust or a not for profit organization. The Association does not dispute that it is subject to PIPA (Association’s submission dated May 12, 2022 at para. 5).

³ RSBC 1996, c. 384 at section 1.

⁴ Association’s submission dated May 12, 2022 at paras. 4 and 6.

⁵ Affidavit of E.C. at para. 14.

⁶ Information located on pp. 25-49, 351-362 and 380-384 of the responsive documents.

⁷ Information located on pp. 24, 51, 106, 110, 111, 113-116, 154-155, 161, 194, 198, 223, 265, 272, 275, 337, 347 and 349 of the responsive documents.

⁸ Information located on pp. 15, 16, 163, 167, 171, 172, 182, 184, 187, 188, 211, 220-221 and 249 of the responsive documents.

[18] For some information, the Association applied both ss. 23(4)(c) and (d) to the same information. In those cases, if I find s. 23(4)(c) applies to that information, then it is not necessary to also consider whether s. 23(4)(d) applies.

Access to personal information – s. 23

[19] Section 23(1) of PIPA gives individuals a right to access their personal information under the control of an organization; however, this section also sets out several exceptions to an individual's right of access. Sections 23(3) and (4) protect other interests by placing limits on an individual's right to access their own personal information.

[20] The parts of s. 23 that are relevant in this case are follows:

23(1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following:

(a) the individual's personal information under the control of the organization;

...

(3) An organization is not required to disclose personal information and other information under subsection (1) or (2) in the following circumstances:

(a) the information is protected by solicitor client privilege;

...

(4) An organization must not disclose personal information and other information under subsection (1) or (2) in the following circumstances:

...

(c) the disclosure would reveal personal information about another individual;

(d) the disclosure would reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to disclosure of his or her identity.

(5) If an organization is able to remove the information referred to in subsection (3)(a), (b) or (c) or (4) from a document that contains personal information about the individual who requested it, the organization must provide the individual with access to the personal information after the information referred to in subsection (3)(a), (b) or (c) or (4) is removed.

[21] It is clear from the above-noted provisions that an applicant has no right of access under PIPA to another individual's personal information.⁹ Therefore, in

⁹ Order P06-02, 2006 CanLII 32980 at para. 41. Order P19-01, 2019 BCIPC 3 at para. 11.

determining whether the Association properly applied the above-noted provisions under s. 23, the question I must first address is whether the information at issue qualifies as the applicant's personal information.

Does the information qualify as the applicant's personal information?

[22] As noted, s. 23(1)(a) of PIPA only gives individuals a right to access their own personal information. As a result, the information at issue must qualify as the applicant's personal information for access to be considered under s. 23(1)(a).

[23] Section 1 of PIPA defines "personal information" as information about an identifiable individual and includes employee personal information, but does not include "contact information" or "work product information." Those terms are defined under s. 1 of PIPA as follows:

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

"work product information" means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

[24] Furthermore, information is about an identifiable individual if it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information, and is collected, used or disclosed for a purpose related to that individual.¹⁰

[25] With the exception of one page,¹¹ I find all of the information at issue qualifies as the applicant's personal information because it is about the applicant or collected and used for a purpose related to the applicant.

[26] For instance, the Association's evidence regarding the information withheld under s. 23(3)(a) (solicitor-client privilege) is that this information relates to a grievance filed by the Union on the applicant's behalf.¹² I accept that evidence and find this information is related to the applicant's grievance with her employer, the Health Authority, and the Association's involvement in that dispute.

[27] I can also see that the Association withheld information under ss. 23(4)(c) or under both ss. 23(4)(c) and (d) in documents that relate to the applicant.

¹⁰ Order P12-01, 2012 BCIPC 25 (CanLII) at para. 85.

¹¹ Page 275 of the responsive documents.

¹² Affidavit of General Counsel at para. 13.

These documents include correspondence between Association employees and Union representatives about the applicant, between the applicant and her employer and between other Health Authority employees related to matters involving the applicant and other individuals.

[28] I find none of the above-noted information about the applicant qualifies as “contact information” because it is not information to enable an individual to be contacted at their place of business. The information is also not “work product information” under PIPA since it was not collected or prepared by the applicant as part of her employment responsibilities or activities. As a result, with the exception of one page which I will discuss next, I am satisfied that the information withheld from the documents qualifies as the applicant’s personal information under PIPA.

[29] However, on page 275 of the documents, there is a small amount of information that the Association describes as “third party personal information identifying employees who were unable to work due to various causes.”¹³ The applicant is seeking access to this information because she understands it to be part of her personal information.¹⁴

[30] I can see that page 275 is a note written by another Health Authority employee which details why certain individuals were away from work and who was called in to work instead. The note does not mention the applicant. It is also not apparent, based on the materials before me, how any of the information in the note relates to matters involving the applicant. As a result, I conclude this information does not qualify as the applicant’s personal information and the applicant has no right of access to it under s. 23(1).

Section 23(3)(a): solicitor-client privilege

[31] The Association withheld some of the information that qualifies as the applicant’s personal information under s. 23(3)(a). Section 23(3)(a) authorizes an organization to refuse access if the information is protected by solicitor-client privilege. The term “solicitor client privilege” under s. 23(3)(a) encompasses both legal advice privilege and litigation privilege.¹⁵

[32] The Association says it is relying on legal advice privilege. Legal advice privilege applies to confidential communications between solicitor and client made for the purpose of obtaining and giving legal advice.¹⁶

¹³ General Counsel’s affidavit at para. 17(i).

¹⁴ Applicant’s submission, Section 7 at para. 18.

¹⁵ P06-01, 2006 CanLII 13537 at para. 53.

¹⁶ P06-01, 2006 CanLII 13537 at para. 53.

[33] An organization that is refusing to disclose information under s. 23(3)(a) must establish the following criteria to prove that legal advice privilege applies:

1. there must be a communication between a solicitor and client;
2. the communication must entail the seeking or giving of legal advice; and
3. the parties must have intended the communication to be confidential.¹⁷

[34] Legal advice privilege does not apply to all communications or documents that pass between a lawyer and their client.¹⁸ However, if the conditions set out above are satisfied, then legal advice privilege applies to the communication and the records relating to it.¹⁹

[35] The courts have also found that legal advice privilege extends to communications that are “part of the continuum of information exchanged” between the client and the lawyer in order to obtain or provide the legal advice.²⁰ A “continuum of communications” involves the necessary exchange of information between a lawyer and their client for the purpose of obtaining and providing legal advice such as “history and background from a client” or communications to clarify or refine the issues or facts.²¹

The parties’ submissions on s. 23(3)(a)

[36] The Association submits that it correctly applied s. 23(3)(a) to withhold the information at issue.²² It says the withheld information consists of confidential communications between an Association lawyer and the Health Authority, as the client, for the purpose of obtaining legal advice.

[37] The Association explains that part of the services that it provides to its members is to employ a team of in-house lawyers who provide legal advice and representation on a variety of issues, including labour and employment disputes. The Association submits the Health Authority utilized those legal services when the applicant’s union (Union) filed a grievance on her behalf with the Health

¹⁷ *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 838. The Association accepts and cites this legal test at para. 17 of its submission dated May 12, 2022.

¹⁸ *Keefer Laundry Ltd v. Pellerin Milnor Corp et al*, 2006 BCSC 1180 at para. 61.

¹⁹ *R. v. B.*, 1995 CanLII 2007 (BCSC) at para. 22.

²⁰ *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83; *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [*Camp Development*] at paras. 40-46.

²¹ *Camp Development* at para. 40.

²² Information withheld on pp. 25-40, 41-47, 48, 49, 351-362, 380-382 and 383-384 of the responsive documents.

Authority. It says the Health Authority consulted with an Association lawyer “in relation to the grievances and other matters arising in connection with the applicant’s employment.”²³

[38] The Association did not provide the information withheld under s. 23(3)(a) for my review. Instead, the Association provided an index which gives a brief description of the responsive documents. The index describes the documents containing the withheld information as five emails with each including a “document” and one letter with a “document.”²⁴

[39] The Association also provided an affidavit from its current in-house lawyer (General Counsel) to support its application of s. 23(3)(a). Where affidavit evidence is relied upon to support a claim of solicitor-client privilege, the evidence should specifically address the documents subject to the privilege claim.²⁵ In this case, General Counsel references and addresses the specific documents at issue in her affidavit. I find all of this information is sufficient for me to determine whether s. 23(3)(a) applies.

[40] General Counsel deposes the communications were between a former Association lawyer, who was acting in a legal capacity, and the Health Authority as the client. General Counsel attests the communications were confidential and “for the purposes of providing legal advice and related services” regarding an employment related-dispute involving the applicant.²⁶ General Counsel also says some of the communications do not expressly request or contain legal advice; however, she attests “they were all exchanged within the continuum of the solicitor client relationship and with the object of obtaining legal advice.”²⁷

[41] The applicant did not address the Association’s arguments about s. 23(3)(a), but generally asserts that she has a right to access the withheld information since it is her personal information.

Analysis and findings on s. 23(3)(a)

[42] For the reasons to follow, I accept the Association’s evidence that legal advice privilege applies to the information at issue. In terms of the nature of the documents, I am satisfied they are communications, specifically emails and a letter with attachments.

²³ Association’s submission dated May 12, 2022 at para. 7.

²⁴ Index located on p. 1 of the documents and provided to the applicant by the Association as part of its response to her access request in a letter dated July 3, 2019.

²⁵ *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para. 91.

²⁶ General Counsel’s affidavit at paras. 13-15.

²⁷ General Counsel’s affidavit at para. 15.

[43] I also accept that these communications were between a solicitor and a client. In terms of the client, neither General Counsel nor the Association identify who the former Association lawyer was communicating with from the Health Authority. However, I infer from this evidence and accept that the former Association lawyer was communicating with an employee or employees of the Health Authority.

[44] Regarding the former Association lawyer, solicitor-client privilege extends to in-house counsel provided they are acting in a legal capacity and not a business or management capacity. The Supreme Court of Canada has said, “owing to the nature of the work of in-house counsel, often having both legal and non-legal responsibilities, each situation must be assessed on a case-by-case basis to determine if the circumstances were such that the privilege arose.”²⁸

[45] In this case, the Association submits that it employs a team of in-house lawyers who provide legal advice and representation to its member clients. In support, General Counsel confirms that the former Association lawyer received the communications at issue in their capacity as legal counsel for the Health Authority.²⁹ Specifically, General Counsel deposes that the former Association lawyer “is a lawyer and acted as the lawyer and legal representative” for the Health Authority.³⁰ Taking all of this into account, I accept the former Association lawyer was acting in a legal capacity when they communicated with employee(s) of the Health Authority. As a result, I am satisfied the communications at issue were between a solicitor and a client.

[46] I also accept that these communications were intended to be confidential and were made for the purpose of obtaining legal advice. General Counsel says that she reviewed the withheld information and attests to the confidentiality of those communications.³¹ The parties also described the circumstances surrounding the communications and provided information about the dispute and the related proceedings.³² All of this evidence satisfies me there were confidential communications between the former Association lawyer and Health Authority employee(s) for the purposes of obtaining legal advice about the applicant’s employment related-dispute.

[47] Furthermore, as previously noted, courts have found that solicitor-client privilege extends to more than the individual document that actually communicates or proffers legal advice. It includes communications that are “part of the continuum of information exchanged” between the client and the lawyer in

²⁸ *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para. 20.

²⁹ General Counsel’s affidavit at para. 7.

³⁰ General Counsel’s affidavit at para. 16.

³¹ General Counsel’s affidavit at paras. 14-15.

³² General Counsel’s affidavit at paras. 6-7 and 13-14. Applicant’s submission at section 1.

order to obtain or provide the legal advice.³³ Therefore, I accept that some of the communications were for the purpose of providing information to the former Association lawyer in order for that lawyer to provide the Health Authority with legal advice regarding the applicant's employment related-dispute.

[48] To conclude, I accept the Association's evidence that the information it has withheld reveals confidential communications between a former Association lawyer and employee(s) of the Health Authority for the purpose of obtaining legal advice. I, therefore, find the Association has proven legal advice privilege applies to the withheld information and that it is authorized to withhold this information under s. 23(3)(a).

Section 23(4)(c): another individual's personal information

[49] Section 23(4)(c) requires an organization to withhold information that would reveal personal information about another individual. In considering what information may be withheld under s. 23(4)(c), I note that the term "another individual" under this provision refers to an individual other than the applicant.³⁴ Therefore, the purpose of s. 23(4)(c) is to protect the personal information of people other than the applicant. As a result, the first step under s. 23(4)(c) is to determine if the information at issue is "about an identifiable individual" other than the applicant.³⁵

Information about an identifiable individual

[50] I find the information at issue under s. 23(4)(c) consists of the following:

- The contents of an employee seniority list.³⁶
- One individual's name, personal health number, phone number and date of birth in a doctor's letter.³⁷
- The names of individuals in emails, letters and meeting notes.³⁸
- The entire contents of several emails and a letter.³⁹

³³ *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83; *Camp Development* at paras. 40-46.

³⁴ Order P14-03, 2014 BCIPC 49 (CanLII) at para. 13. Order P11-01, 2011 BCIPC 9 (CanLII) at para. 17.

³⁵ Order P13-01, 2013 BCIPC 23 at para. 16.

³⁶ Information located on pp. 113-116 of the responsive documents.

³⁷ Information located on p. 272 of the responsive documents.

³⁸ Information located on pp. 24, 51, 106, 110, 111, 154-155, 161, 163, 167, 171, 172, 182, 184, 187, 194, 198, 223, 249, 265, 337, 347 and 349 of the responsive documents.

³⁹ Emails located on pp. 188 and 211 and the letter is located on pp. 15-16 and 220-221 of the responsive documents.

[51] I am satisfied most of this information is about identifiable individuals that are not the applicant. I can see that the Association withheld the names of individuals and other identifying information in emails, letters, notes, an employee seniority list and meeting notes under s. 23(4)(c). I find the names are clearly about other identifiable individuals such as Health Authority employees, Association employees, union representatives and the applicant's son. I can also see there is identifying information about Health Authority employees in the seniority list, including their seniority level and other employment-related information specific to those individuals.⁴⁰

[52] In her affidavit, General Counsel also describes and discusses some of the information withheld under s. 23(4)(c).⁴¹ This evidence assists me in understanding how some of the withheld information is about identifiable individuals other than the applicant. For instance, I note that there is a letter written by an individual who has a similar name to the applicant.⁴² General Counsel attests to the circumstances surrounding this letter.⁴³

[53] Based on that evidence and other information disclosed in the responsive documents, I conclude the letter was written by someone with a name similar to the applicant and that the letter was incorrectly placed on the applicant's employment file.⁴⁴ Therefore, although the letter relates to the applicant since it was placed on her employment file, I conclude this letter is also about another identifiable individual.

[54] As a result, I find all of the information withheld under s. 23(4)(c) identifies individuals other than the applicant. The question then is whether this information qualifies as contact information or work product information. If so, then it is not personal information and the Association cannot withhold it under s. 23(4)(c).

Contact information - s. 23(4)(c)

[55] Contact information is defined under s. 1 of PIPA as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."

[56] Whether information is contact information under PIPA depends on the context in which the information appears in the responsive document.⁴⁵ For instance, an individual's name, mailing address, telephone number or email

⁴⁰ Pages 113-116 of the responsive documents.

⁴¹ General Counsel's affidavit at paras. 17 and 18.

⁴² Letter located on pp. 15-16 and 220-221 of the responsive documents.

⁴³ General Counsel's affidavit at para. 18(d).

⁴⁴ For example, information disclosed on pp. 14 and 338 of the responsive documents.

⁴⁵ Order P20-01, 2020 BCIPC 6 (CanLII) at para. 28.

address is contact information, and not personal information, where that individual is acting in a business capacity or communicating for business purposes.⁴⁶

[57] The Association withheld the name, job title, mailing address, work email address or work phone numbers of several Health Authority employees and the names of other individuals in some emails. This information was either withheld from the body of the email, the sender and recipient fields or the signature block of the email.⁴⁷ I can see that these employees and the other individuals are communicating for business-related purposes or being contacted in their professional capacity. I, therefore, find this information qualifies as “contact information.” As a result, I conclude the disclosure of this information would not reveal “personal information” about another individual and the Association cannot withhold it under s. 23(4)(c).

[58] As for the remaining information at issue under s. 23(4)(c), this withheld information consists of the names and other identifying information of other individuals. Based on the context in which the withheld information appears, I find none of this withheld information is being provided for business communication purposes. Although some of the withheld information is work-related, it does not enable an individual at a place of business to be contacted. For instance, the Association withheld the names of several people in emails where Health Authority employees or a Union representative is discussing matters related to those individuals.⁴⁸ None of this information is for business contact purposes. Instead, it is about employment matters related to those named individuals.

[59] To conclude, except for a small amount of information, I find most of the information withheld under s. 23(4)(c) does not qualify as contact information. I will next consider whether any of the information at issue qualifies as work product information. If so, then the Association cannot withhold it under s. 23(4)(c).

Work product information - s. 23(4)(c)

[60] Section 1 of PIPA defines “work product information” as “information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.”

[61] Previous PIPA orders have found that information will qualify as work product information when it comes into existence through the input or conscious,

⁴⁶ *Ibid.*

⁴⁷ Information located on pp. 188, 211 and 337 of the responsive documents.

⁴⁸ For example, information withheld on pp. 24, 110-11 and 154 of the responsive documents.

directed actions of individuals as part of their responsibilities or activities related to their employment.⁴⁹ However, as stated in the definition, if the information is about an individual who did not prepare or collect the information, then it does not qualify as work product information.

[62] As previously mentioned, the withheld information under s. 24(3)(c) consists mostly of the names of other individuals and other identifying information. Except for one email which I discuss further below, I find none of the information withheld under s. 24(3)(c) was prepared or collected by those named individuals. For instance, it is not apparent that the information compiled for the employee seniority list was prepared or collected by the individuals named in the list.⁵⁰ As another example, I can see that there are meeting notes written by an individual as part of their employment responsibilities or activities.⁵¹ The Association only withheld the names of two employees in this document and it is not apparent that those employees prepared or collected the information in the meeting notes. As a result, this information would not qualify as their work product information under PIPA.

[63] However, I find there is some information in an email on page 211 of the responsive documents that qualifies as the work product information of a named Health Authority employee. I conclude the withheld information in that email was created by a Health Authority employee as part of their employment responsibilities or activities.⁵² Although the email is related to a matter involving the applicant, I can see the email and its contents were prepared or collected by the employee as part of their job duties. Therefore, to the extent the withheld information is about this employee, it is not their personal information because it qualifies as their work product information.

Conclusion on s. 23(4)(c)

[64] Section 23(4)(c) requires an organization to withhold information that would reveal personal information about another individual. Except for a small amount of information that I found is contact information⁵³ and work product information,⁵⁴ I conclude the information at issue is the personal information of another individual that the Association is required to withhold under s. 23(4)(c).

[65] I note the Association withheld information under s. 23(4)(c) that is already known to the applicant since it was withheld from correspondence that the applicant wrote herself, received from the Association or that she obtained from

⁴⁹ Order P12-01, 2013 BCIPC 4 at para. 96. Order P14-03, 2014 BCIPC 49 at para. 19.

⁵⁰ Pages 113-116 of the responsive documents.

⁵¹ Page 161 of the responsive documents.

⁵² Information located in an email found on the bottom of p. 211 of the responsive documents.

⁵³ Information located on pp. 188, 211 and 337 of the responsive documents.

⁵⁴ Information located on the bottom of p. 211 of the responsive documents.

another source.⁵⁵ It is also clear that it would be easy for the applicant to infer some of the withheld information since she participated in the events related to the withheld information such as certain meetings or proceedings.⁵⁶

[66] The Association submits that it was required to withhold any personal information about these other individuals since s. 23(4)(c) “does not require proof that disclosure would be unreasonable or invade another person’s privacy or that the redacted information is otherwise unknown to the Applicant.”⁵⁷ As a result, the Association argues it was required to redact any personal information about these other individuals in response to the applicant’s access request even though the applicant may already know this information.

[67] I agree with the Association’s interpretation of s. 23(4)(c). Given the clear wording of this provision, s. 23(4)(c) is a mandatory exclusion to access under PIPA that does not take into account relevant factors and circumstances such as whether the applicant already knows or can easily determine the personal information that the Association has withheld about these other individuals. Under s. 23(4)(c), an organization must withhold information if it qualifies as the personal information of another individual even though the applicant may already know that information. Put another way, an applicant’s prior knowledge is not a consideration when applying s. 23(4)(c). Therefore, for the reasons given above, I find the Association has properly applied s. 23(4)(c) to the information that I find reveals the personal information of other individuals.

Section 23(4)(d): identity of an individual who does not consent

[68] I found above that s. 23(4)(c) did not apply to certain information because it qualified as contact information or work product information.⁵⁸ The Association also withheld this information under s. 23(4)(d).⁵⁹ Therefore, I will now consider whether that exception applies to this information.

[69] In order for an organization to withhold information under s. 23(4)(d), all of the following requirements must be satisfied:

- The information at issue would reveal the identity of an individual (Individual “A”);

⁵⁵ Information withheld on pp. 15, 16, 220, 221, 223, 249, 265 and 272 of the responsive documents.

⁵⁶ Information withheld on pp. 161, 194, 198, 347 and 349 of the responsive documents.

⁵⁷ Association’s submission dated May 12, 2022 at para. 23.

⁵⁸ Information located on pp. 188 and 211 of the responsive documents.

⁵⁹ The Association did not apply s. 23(4)(d) to the information that I found qualified as contact information on p. 337 of the responsive documents.

- Individual “A” provided personal information about another individual (Individual “B”),⁶⁰ and
- Individual “A” does not consent to the disclosure of their identity.

The parties’ submissions on s. 23(4)(d)

[70] The Association submits the requirements of s. 23(4)(d) have been fulfilled. In support of the Association’s position, General Counsel describes some of the withheld information as “the name and identifying information of an individual who supplied information in connection with the Applicant’s disability claim.”⁶¹

[71] General Counsel also submits that s. 23(4)(d) applies to other information because “it contains sensitive personal information of the sender and other individuals, and the contents of the record would allow the identity of the sender to be discovered or inferred.”⁶²

[72] General Counsel further attests that none of the individuals whose identity is being protected under s. 23(4)(d) have consented to the disclosure of their identity to the applicant.⁶³

[73] Based on the Association’s description of the withheld information, the applicant demands that this information be disclosed to her since it involves her “personal business.”⁶⁴

Analysis and findings on s. 23(4)(d)

[74] I find the information at issue under s. 23(4)(d) consists of the following:

- The name, job title, mailing address, work email address and/or work phone number of three individuals in two emails.⁶⁵
- The name and/or work email address of three individuals in an email.⁶⁶

⁶⁰ Individual “B” can be the applicant or another person.

⁶¹ General Counsel’s affidavit at para. 18(c) in reference to p. 188 of the responsive documents.

⁶² General Counsel’s affidavit at para. 18(d) in reference to p. 211 of the responsive documents.

⁶³ General Counsel’s affidavit at para. 19.

⁶⁴ Applicant’s submission, section 7 at paras. 28-32.

⁶⁵ Information located on pp. 188 and 211 of the responsive documents.

⁶⁶ Information located in an email found at the top of p. 211 of the responsive documents.

- All of the information in an email that was created by a Health Authority employee as part of their employment responsibilities or activities, which includes their name and work email address.⁶⁷

[75] I am satisfied some of the withheld information, such as their name, job title and work email address, would reveal the identity of a person. I can also see in one email that a Health Authority employee is providing personal information about several other people to another employee and to another individual.⁶⁸ As well, I can see in a different email that an individual from another organization is providing personal information about someone else to a Health Authority employee.⁶⁹ There is no evidence that the individuals who are providing the personal information about someone else consent to the disclosure of their identities. As a result, I conclude s. 23(4)(d) applies to any information in these emails that would reveal their identities such as their names and work email addresses.

[76] However, I find s. 23(4)(d) does not apply to the other information at issue under this provision. Some of this information does not reveal the identity of a person since it does not name any person nor does it disclose any other identifying information.⁷⁰ In other instances, the information withheld under s. 23(4)(d) reveals the identity of individuals who are not providing personal information about another person. For instance, the Association withheld the identity of the people receiving the emails; however, I find none of the email recipients are *providing* personal information about someone else as required under s. 23(4)(d). Instead, the information at issue only reveals that they are *receiving* personal information about other individuals. Therefore, I conclude s. 23(4)(d) does not apply to this information.

[77] Furthermore, I find s. 23(4)(d) does not apply to some of the contact information that the Association withheld under this provision, specifically an individual's work email address, contact number and other identifying information.⁷¹ The Association withheld this information from the body of an email where a Health Authority employee is providing this individual's information to an employee from another organization. I conclude s. 23(4)(d) does not apply to this information because the Health Authority employee is providing contact information and not personal information about someone else.

[78] To conclude, I find s. 23(4)(d) applies to some of the information at issue.⁷² However, I find the rest of the information at issue does not meet the

⁶⁷ Information located in an email found on the bottom of p. 211 of the responsive documents.

⁶⁸ Email located at the top of p. 211 of the responsive documents.

⁶⁹ Email located at the top of p. 188 of the responsive documents.

⁷⁰ Information located on pp. 188 and 211 of the responsive documents (e.g. handwritten notes).

⁷¹ Information withheld from an email located at the bottom of p. 188 of the responsive documents.

⁷² Information located on pp. 188 and 211 of the responsive documents.

requirements under s. 23(4)(d) since it does not reveal the identity of a person who is providing personal information about another individual.

Section 23(5) severance

[79] Section 23(5) requires the Association to provide the applicant with access to her personal information if it is able to remove the information to which ss. 23(3)(a), 23(4)(c) and (d) apply. It reads:

23(5) If an organization is able to remove the information referred to in subsection (3)(a), (b) or (c) or (4) from a document that contains personal information about the individual who requested it, the organization must provide the individual with access to the personal information after the information referred to in subsection (3)(a), (b) or (c) or (4) is removed.

[80] In terms of the information that is subject to solicitor-client privilege under s. 23(3)(a), I have considered whether it is possible to sever the applicant's personal information from the communications at issue and their attachments. The courts have emphasized that once solicitor-client privilege is established, it applies to all communications within the framework of the solicitor-client relationship and that severance of some of these communications can only occur when there is no risk of revealing legal advice provided by the lawyer to the client.⁷³ In the present case, I am unable to conclude there is no risk of revealing such privileged information. As a result, I conclude severance is not possible under s. 23(5) and legal advice privilege applies to all of the communications at issue and their attachments.

[81] Turning now to the information that the Association is required to withhold under ss. 23(4)(c) and 23(4)(d), I find the Association has, for the most part, already complied with s. 23(5) by providing the applicant with her personal information in these documents and no further information can be severed. I can see the Association only withheld the personal information of other individuals in these documents and disclosed the remainder to the applicant.

[82] I note that in one instance, the Association withheld an entire email chain containing both the applicant's and other people's personal information.⁷⁴ I find, however, that severance is not possible for some information in these emails because the applicant's personal information is too intertwined with the personal information of these other individuals. As a result, I conclude the Association is not required under s. 23(5) to provide the applicant with that information.

[83] However, I find there is a small amount of information in several emails that can be severed in accordance with s. 23(5). The Association withheld the

⁷³ *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at para. 51.

⁷⁴ Page 211 of the responsive documents.

subject line of several emails.⁷⁵ All of this information qualifies as the applicant's personal information and I find it possible in this case to sever the applicant's personal information in these emails from the information that must be withheld under ss. 23(4)(c) or 23(4)(d). As a result, under s. 23(5), the Association must provide the applicant with access to her personal information in these emails.

[84] For clarity, in a copy of the records that is being given to the Association along with this order, I have highlighted in green the information that the Association is required to provide to the applicant.

CONCLUSION

[85] For the reasons given above, under s. 52 of PIPA, I make the following order:

1. I require the Association to refuse the applicant access to a small amount of information that does not qualify as her personal information under PIPA.⁷⁶
2. I confirm the Association's decision to refuse access to the information withheld under s. 23(3)(a) because it is subject to legal advice privilege.
3. Subject to paragraph 2 below, I confirm in part the Association's decision to refuse access to the information withheld under ss. 23(4)(c) and 23(4)(d).
4. The Association is not required under ss. 23(4)(c) and 23(4)(d) to refuse access to the information highlighted in a copy of the relevant documents provided with this order. This information is located on pages 188, 211 and 337 of the responsive documents.
5. The Association must disclose to the applicant the highlighted information it is not required to withhold. The Association must also provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order, along with a copy of the relevant documents.

⁷⁵ Information located on p. 188 of the responsive documents.

⁷⁶ Information withheld on p. 275 of the responsive documents.

[86] Under s. 53 of PIPA, the Association is required to comply with this order by no later than November 25, 2022.

October 13, 2022

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: P19-81048