Order F23-06

MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY

David Goodis
Adjudicator

February 2, 2023

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Summary: An applicant asked the Ministry of Environment and Climate Change Strategy (Ministry) for access to records relating to an application to amend a specific environmental assessment certificate, including records of consultations with First Nations regarding the certificate. The Ministry provided access to some records but refused to disclose some information in the records under ss. 13 (policy advice and recommendations), 14 (solicitor-client privilege), 15(1)(l) (security of a communications system), 16 (intergovernmental relations), 18 (harm to the conservation of heritage sites) and 22 (personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found the Ministry was authorized to refuse access under ss. 14, 15(1)(l) and 16, the Ministry was required to withhold access under s. 22, and it was not necessary to decide if ss. 13(1) and 18 also applied.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13, 14, 15(1)(l), 16(1)(a)(iii), 16(1)(c), 18(a), 22(1), 22(2), 22(4), 22(3); *Freedom of Information and Protection of Privacy Amendment Act*, SBC 2021 c 39, ss. 8(a) and (b); *Environmental Assessment Act*, RSBC 2018, c 51, s. 2(2); *Oil and Gas Activities Act*, RSBC 2008, c 36; *Indian Act*, RSC 1985, c 1-5.

INTRODUCTION

[1] The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for access to records held by the Environmental Assessment Office (EAO), an agency of the Ministry of Environment and Climate Change Strategy (Ministry).[1]

[1] Applicant's request dated November 18, 2019.

[2] The Ministry gave the applicant access to some information but withheld other information under ss. 13 (advice and recommendations), 14 (solicitor-client privilege) and 16 (intergovernmental relations) of FIPPA. The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision to refuse him access to records.

[3] During mediation, the Ministry agreed to release additional records to the applicant but withheld some information under two new FIPPA exemptions, ss. 15(1)(l) (security of a communications system) and 22 (personal privacy).

[4] Mediation did not result in a full resolution of the matter, and it proceeded to inquiry.

Preliminary Issues

[5] Several matters arose during the inquiry, as described below.

Additional disclosure to the applicant

[6] The Ministry reconsidered its decision to withhold certain information. As a result, the Ministry provided the applicant with a revised record package that included additional information it had previously withheld.

New issue raised by the Ministry

[7] The Ministry sent several portions of the records to the Archeological Branch, Ministry of Forests, and asked that office for its views on whether an additional exemption, s. 18(a) of FIPPA, could apply. That section allows a public body to withhold information where disclosure could result in harm to the conservation of heritage sites. As a result of the consultation, the OIPC agreed to add s. 18(a) as an issue in this inquiry and I will consider whether this section applies, if necessary for me to do so.

New issue raised by the applicant

[8] The applicant asserted that the public interest override at s. 25 of FIPPA applied to require the Ministry to disclose the records and asked the OIPC to add s. 25 as an issue in the inquiry. However, in his submissions in the inquiry, the applicant stated that he is no longer claiming that s. 25 applies. Accordingly, I will not consider the application of s. 25 to the records.

Ministry's in camera *submissions*

[9] The OIPC agreed to the Ministry's request to provide some submissions to the OIPC *in camera* because disclosure of these submissions to the applicant

would reveal (i) information the Ministry would be required to withhold under the personal privacy exemption at s. 22 of *FIPPA* and (ii) information that is in dispute in the inquiry.

ISSUES AND BURDEN OF PROOF

Issues

[10] In this inquiry I must decide the following issues:

1. Is the Ministry authorized to withhold the information in dispute under ss. 13, 14, 15(1)(l), 16(1)(a)(iii) and 16(1)(c) and 18(a)?

2. Is the Ministry required to withhold the information in dispute under s. 22?

Burden of proof

[11] Under s. 57(2), the applicant must prove that disclosure of another individual's personal information would not be an unreasonable invasion of that person's privacy under s. 22. However, the Ministry bears the burden of showing that the information at issue under s. 22 is "personal information."

[12] Section 57(1) of FIPPA says it is up to the Ministry to prove ss. 13, 14, 15, 16 and 18 apply.

DISCUSSION

Background

[13] The EAO administers the environmental assessment process under the *Environmental Assessment Act*[2] and verifies and enforces compliance with the conditions of environmental assessment certificates.

[14] The EAO fulfills two purposes under the *Environmental Assessment Act*:[3]

- To promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities. This means:
    - carrying out assessments that are thorough, timely, transparent, and impartial;
    - facilitating meaningful public participation;

[2] RSBC 2018 c 51.
[3] RSBC 2018 c 51, s. 2(2).

  - using the best available science and Indigenous and local knowledge in decision making; and
  - coordinating assessments with other agencies and governments, including Indigenous nations, and

- To support reconciliation with Indigenous peoples in BC by

  - supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples,
  - recognizing the inherent jurisdiction of Indigenous nations and their right to participate in decision making, and
  - acknowledging Indigenous peoples' rights recognized and affirmed by s. 35 of the *Constitution Act, 1982*.

[15] The EAO assesses major projects in BC for potential environmental, social, economic, health and cultural effects as required under the *Environmental Assessment Act*. For a major project to proceed, an environmental assessment must be completed successfully, and the proposed project must be approved by two provincial government ministers.

[16] Many of the records in this inquiry relate to the EAO's consideration of an application to amend a specific environmental assessment certificate granted to the Coastal GasLink Pipeline Project (CGL Project). In its consideration of the amendment, the EAO consulted with 29 First Nations and two First Nation associations whose territories were crossed by CGL.

[17] Both the EAO and the Oil and Gas Commission (OGC) have distinct responsibilities regarding various application processes associated with the CGL Project and were in regular communication to coordinate consultation with Indigenous nations on the matter.

[18] The applicant in this inquiry acted as a representative of one of the First Nations involved in the consultation and dealt with several ministries. In this role, the applicant was included in many of the email communications with the various parties in this matter.

Records and information at issue

[19] There are a total of 30 records remaining at issue consisting of 826 pages. The records include emails, letters, ethnographic and historical reports, and meeting minutes. Many of the records relate to the certificate amendment application referred to above. The emails include discussions among

representatives of the Ministry, the OGC, Indigenous nations, and Ministry of the Attorney General legal counsel.

[20] The Ministry has provided a table of records that includes dates and general descriptions of each record and indicates which exemptions it is claiming for each of the records.

Disclosure to the world

[21] The Ministry says that in assessing whether or not disclosure could reasonably be expected to result in harm under FIPPA, a public body is entitled to assume disclosure under FIPPA is effectively disclosure to the world at large. The Ministry cites the following passage from Order 01-52:

> . . . With the exception of access by individuals to their own personal information, Part 2 of the Act is an instrument for public access to information and is not an instrument for selective or restricted disclosure. The idea of an applicant being bound to make only restricted use of non-personal information disclosed through an access request under the Act is inconsistent with the objective of public access articulated in s. 2(1) of the Act.[4]

[22] The applicant submits that he has "ample records" in his possession which he "could have sought the Court of public opinion on" but chose not to.

[23] I accept that the applicant has been given access to many of the relevant records both through this access request and otherwise through his role as a representative of a First Nation in the consultation process. However, I do not agree that this should lead to the conclusion that the exemptions should somehow not apply given his role and his access to some of the relevant records. In Order F22-31, the OIPC stated:

> I accept the Ministry's point that, under FIPPA, disclosure of information to an applicant in response to an access request is, in effect, disclosure to the world. This is a well-established principle. It is based on the fact that there are no restrictions in FIPPA prohibiting an applicant from disclosing the information publicly. Even if an applicant does not in fact disclose the information publicly, they could do so, so the FIPPA analysis assumes that disclosure is to the world and not just to the applicant.[5]

[4] 2001 CanLII 21606, para. 73.
[5] 2022 BCIPC 34, para. 80.

[24] The applicant has not provided me with a sufficient basis to depart from this principle. Accordingly, when considering the harms under the relevant exemptions, I will do so on the basis that the records could be disclosed to the world.

Security of a communications system, s. 15(1)(l)

[25] Section 15(1)(l) allows a public body to refuse to disclose information if the disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[26] The words "could reasonably be expected to" mean that the public body must establish a reasonable expectation of probable harm.[6] This language tries to mark out a middle ground between that which is probable and that which is merely possible.[7] In order to establish that there is a reasonable expectation of probable harm, the public body must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground.[8] There must be a direct link between the disclosure and the apprehended harm.[9]

[27] The information at issue under s. 15(1)(l) is an access code to a teleconference line phone number appearing on page 1313.

[28] The Ministry submits that a teleconferencing system is a "communications system" within the meaning of s. 15(1)(l) based on a previous OIPC order.[10] The Ministry also submits that disclosure of the teleconference information could allow an individual to gain unauthorized access to confidential teleconference calls. The Ministry points to past orders where the OIPC has found that s. 15(1)(l) applies to teleconference information. The Ministry says that the information at issue in this inquiry is materially indistinguishable from those orders.

[29] The Ministry also submits that access under FIPPA is access to the world at large, and, if disclosed under s. 15(1)(l), the Ministry can assume that the information would be shared with the world.

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[6] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Order F21-01, 2021 BCIPC 1.

[30] In Order F22-10, the OIPC found that s. 15(1)(l) applied to similar information. Adjudicator Syrotuck stated:

> I find that a teleconferencing system is a communications system within the meaning of s. 15(1)(l) and disclosing the teleconference line phone number and access code could reasonably be expected to harm the security of the system. I see no basis to depart from past orders, which have consistently found that a teleconference phone number and/or access code could reasonably be expected to harm the security of the teleconferencing system due to the risk of unauthorized access.
>
> In my view, whether the code could be changed is irrelevant. The issue I must decide is whether the information at issue, in its current form and context, if disclosed, could reasonably be expected to cause harm. In this case, I have found that it could, and therefore that s. 15(1)(l) applies.[11]

[31] Similarly, I see no basis to depart from past OIPC orders, and I find that the Ministry is authorized to withhold the access code on page 1313.

Solicitor-client privilege, s. 14

[32] The Ministry has withheld 15 pages of records (pages 227, 1067-1068, 1069-1072, 1073-1075, 1126-1130) under s. 14 of FIPPA. Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege.[12] Section 14 encompasses both legal advice privilege and litigation privilege. The Ministry is claiming legal advice privilege.

[33] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion or analysis.[13] In order for information to be protected by legal advice privilege it must be:

- a communication between solicitor and client (or their agent);
- that entails the seeking or providing of legal advice; and
- that is intended by the solicitor and client to be confidential.[14]

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[11] Order F22-10, 2022 BCIPC 10, paras. 70-71.
[12] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*], para. 26.
[13] Ibid, para. 31.
[14] *Solosky v. The Queen*, 1979 CanLII 9 (SCC), p. 837; *R. v. B.*, 1995 CanLII 2007 (BC SC), para. 22.

[34] Not every communication between a solicitor and their client is privileged. However, if the conditions above are satisfied, then legal advice privilege applies.[15]

[35] Courts have found that solicitor-client 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.[16] Legal advice privilege also extends to internal client communications that discuss legal advice and its implications,[17] as well as communications involving a lawyer's support staff, and communications dealing with administrative matters if the communications were made with a view to obtaining legal advice.[18] As stated by the Supreme Court of Canada:

> … a lawyer's client is entitled to have all communications made with a view to obtaining legal advice kept confidential. Whether communications are made to the lawyer himself or to employees, and whether they deal with matters of an administrative nature such as financial means or with the actual nature of the legal problem, all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attached to confidentiality.[19]

Evidentiary basis for solicitor-client privilege

[36] The Ministry did not provide me with a copy of the 15 pages withheld under s. 14 for review. Instead, it relied on affidavit evidence from a lawyer with the Ministry of Attorney General's Legal Services Branch, plus two senior officials with the Ministry's EAO.

[37] These three individuals say they reviewed the records at issue and describe how the records meet the elements needed to establish legal advice privilege.

[38] The Ministry says that its initial submission and affidavits provide sufficient evidence to decide if s. 14 applies.

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[15] Ibid, p. 829.
[16] *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83.
[17] *Bilfinger Berger (Canada) Inc. v Greater Vancouver Water District*, 2013 BCSC 1893 at paras. 22-24.
[18] *Oleynik v Canada (Privacy Commissioner)*, 2016 FC 1167 at para. 60.
[19] *Descôteaux et al v Mierzwinski*, [1982] 1 SCR 860, 1982 CanLII 22 (SCC) at pp. 892-893.

[39] Section 44(1) gives me, as the commissioner's delegate, the power to order production of records in order to review them during the inquiry. However, due to the importance of solicitor-client privilege to the proper functioning of the legal system, I would only order production of records being withheld under s. 14 when absolutely necessary to adjudicate the issues.

[40] In this case, I have sufficient evidence to decide if s. 14 applies. There is the lawyer's sworn affidavit evidence which establishes that she is a practicing lawyer and an officer of the court with a professional duty to ensure that privilege is properly claimed. I am also satisfied that she has reviewed the specific records at issue and she was directly involved in the communications. Her evidence is supplemented with the evidence of the two senior officials with the EAO who were involved in the CGL matter. Further, the Ministry's table of records gives some detail about the 15 records, and the remaining records that I am able to see also provide context.

Parties' submissions

[41] The Ministry submits the evidence it provided shows that the information withheld under s. 14 is subject to solicitor-client privilege because it reveals confidential communications among Ministry's EAO employees, the OGC and a specific legal counsel with the Ministry of the Attorney General's Legal Services Branch within the framework of a solicitor-client relationship between BC government staff and their lawyers. The Ministry states that these communications related to the EAO's and OGC's engagement with Indigenous nations, and the purpose of the communications was to keep legal counsel informed on consultation matters on which the legal counsel would be providing future advice, including the scope of the duty to consult.

[42] The Ministry submits that at the time of these communications, the legal counsel's clients were the EAO and the OGC, both of which are agents of the Province of British Columbia. The Ministry adds that the legal counsel's client is also Her Majesty the Queen in right of the Province of British Columbia as represented by the various ministries of government.

[43] The Ministry states that the "client" should not be defined restrictively or technically, and that the client is the person or entity who receives legal services from counsel. The Ministry asserts that while the various ministries are different organizations with the provincial government, they do not have any independent

legal personality for civil law purposes. The Ministry adds that the OGC is for all purposes an agent of government as set out in the *Oil and Gas Activities Act*.[20]

[44] The Ministry submits that all of the records withheld under s. 14 fall within the continuum of communications between the legal counsel and her government clients and cites a number of OIPC orders to support the application of s. 14 to these communications.[21]

[45] The Ministry concedes that some of the communications in question involve Ministry and OGC staff discussing the legal advice they had received. The Ministry argues that this information, too, should be protected, because its disclosure would allow the applicant and the public to infer the advice that was given by legal counsel. In the Ministry's view, these communications also fall within the continuum of privileged communications that qualify under s. 14.

[46] The applicant asserts that the legal counsel was "acting as a third party in the capacity of Executive Director of the EAO" at the time of the access request. In reply, the Ministry submits that this assertion is false and unsupported.

Analysis and findings, s. 14

[47] I accept the Ministry's sworn evidence and arguments in support of the s. 14 legal advice privilege claim. I am satisfied that the individuals providing the affidavit evidence have direct knowledge of the nature and content of the communications reflected in the records, as well a strong understanding of the scope and purpose of the s. 14 solicitor-client privilege exemption. The Ministry's evidence and arguments establish that the withheld records either (1) consist of communications between a lawyer and client for the purpose of giving or receiving legal advice in the context of the BC government's consultations with Indigenous nations on the CGL matter or (2) contain communications among government clients which form part of the continuum of communications in giving or receiving legal advice on these matters.

[48] In addition, I am satisfied that these communications were consistently treated as confidential among the various government representatives.

[49] There is no evidence before me to support the applicant's assertion that at the relevant times and in the context of these records the legal counsel in question had any role other than legal counsel who was providing advice to the BC government and its ministries and agents.

[20] RSBC 2008 c 36.
[21] Orders F20-16, 2020 BCIPC 18; F22-04, 2022 BCIPC 4.

[50] Accordingly, I find that the Ministry is authorized to withhold pages 227, 1067-1068, 1069-1072, 1073-1075, 1126-1130 under s. 14 of FIPPA.

Advice or recommendations, s. 13

[51] The Ministry relies on s. 13 to withhold page 1126 only. Because I found above that this page qualifies for exemption under the s. 14 solicitor-client privilege exemption, I need not consider whether this exemption also applies to page 1126.

Intergovernmental relations, s. 16

[52] Section 16 allows a public body to withhold information where disclosure could reasonably be expected to harm intergovernmental relations or negotiations.

[53] The Ministry relied on s. 16 to withhold 27 records. I found above that the Ministry was authorized to withhold four of these 27 (pages 1067-1068, 1069-1072, 1073-1075, 1126-1130) under the s. 14 solicitor-client privilege exemption. As a result, I need not consider whether those four records qualify for exemption under s. 16.

[54] This leaves 23 records for me to consider under this exemption (pages 3, 5-6, 7, 18-19, 20-21, 22-23, 230-418, 419-535, 536-575, 577-765, 766-882, 883-922, 1060-1066, 1082-1120, 1202-1206, 1207, 1208-1213, 1218-1219, 1310-1311, 1314-1315, 1340-1342, 1348-1349, 1350-1361). These records consist of emails, letters, ethnographic and historical reports, and meeting minutes.

[55] The Ministry made extensive submissions on the application of ss. 16(1)(a)(iii) and (c) and supported these submissions with affidavit evidence. The applicant mentions s. 16 in a number of places in his submissions but did not make specific arguments on the elements of this exemption.

Recent amendments to FIPPA s. 16

[56] The BC Legislature recently amended ss. 16(1)(a)(iii) and (c) of FIPPA, and the related definitions in Schedule 1 of FIPPA.[22] These amendments took effect on November 25, 2021.

[22] *Freedom of Information and Protection of Privacy Amendment Act*, SBC 2021 c 39, ss. 8(a) and (b).

[57] Before the amendment, and at the time the Ministry made its decision on the applicant's access request in this case, those sections read:

> **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:
> …
> (iii) an aboriginal government;
> …
> (c) harm the conduct of negotiations relating to aboriginal self government or treaties.

[58] The amendments replace the term "aboriginal government" with "Indigenous governing entity" in s. 16(1)(a)(iii), and the word "aboriginal" with "Indigenous" in s. 16(1)(c).

[59] Before the amendments, Schedule 1 of FIPPA said that "aboriginal government" "means an aboriginal organization exercising governmental functions". The recent amendments removed that definition and substituted the following:

> "Indigenous governing entity" means an Indigenous entity that exercises governmental functions, and includes but is not limited to an Indigenous governing body as defined in the *Declaration on the Rights of Indigenous Peoples Act*[23]

[60] As detailed below, I have decided whether ss. 16(1)(a)(iii) and (c) apply based on the language before it was amended since that was what was in effect at the time the Ministry made its decision in 2020. However, my analysis applies equally to the amended provisions.

[61] I will first decide whether s. 16(1)(a)(iii) applies, and if necessary, go on to consider s. 16(1)(c).

Harm to relations, s. 16(1)(a)(iii)

[62] Section 16(1)(a)(iii) has two parts and the Ministry must prove both. The first question is whether the information at issue relates to an "aboriginal government". Second, I must decide whether disclosure of the information in

[23] Ibid, s. 47(a).

dispute could reasonably be expected to harm the conduct of relations between the BC government and the "aboriginal governments."

Aboriginal government

[63] As mentioned above, before it was amended, Schedule 1 of FIPPA defined "aboriginal government" as "an aboriginal organization exercising governmental functions."

[64] Previous orders have found that an "aboriginal government" includes, at the very least, a "band" under the federal *Indian Act*[24] but is not limited to bands or groups that have concluded self-government agreements or treaties.[25]

[65] The Ministry submits that the various groups referred to in the records are "aboriginal governments" for the purpose of s. 16(1)(a)(iii).

[66] The Ministry explains that, in keeping with the province's commitment to reconciliation through negotiations with Indigenous groups and the principle of self-determination, the province has recognized a number of different Indigenous groups as exercising governmental functions. The Ministry says that where an Indigenous group has recognized an entity as having the authority to represent them and negotiate on their behalf, the province has followed suit and recognized that entity as an "Indigenous governing entity" for the purposes of FIPPA.

[67] Therefore, the Ministry says that, at minimum, where there is evidence that an Indigenous group has provided the province with notice that a particular representative body has the authority to negotiate on their behalf, that entity should be considered an "aboriginal government" under FIPPA. The Ministry says that the OIPC accepted this approach in Order F20-48.[26]

[68] Finally on this point, the Ministry states that the Indigenous groups referred to in the records at issue and in the Ministry's supporting affidavits should be considered "aboriginal governments" for the purpose of s. 16(1)(a)(iii).

[69] I am satisfied that the information the Ministry withheld from the 23 records in question under s. 16 relate to specific Indigenous groups. Further, the records clearly indicate that those Indigenous groups are exercising a representative function in the matter of the consultations on the CGL Project.

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[24] RSC 1985, c. 1-5.
[25] Order F20-48, 2020 BCIPC 57, para 190; Order F21-45, 2021 BCIPC 53, para 74; Order F22-34, 2022 BCIPC 38.
[26] 2020 BCIPC 57.

I accept that these groups are "aboriginal governments" for the purpose of s. 16(1)(a)(iii).

Harm

[70] Section 16(1)(a)(iii) applies if disclosure could reasonably be expected to harm the conduct of relations between the province and an aboriginal government.

[71] As I stated above under the s. 15 discussion, the words "could reasonably be expected to" mean that the public body must establish a reasonable expectation of probable harm. The Ministry must provide evidence "well beyond" or "considerably above" a mere possibility of harm. There must be a direct link between the disclosure and the apprehended harm.

[72] The Ministry explains that the records it withheld under s. 16 relate to the provincial government's involvement in its relationships with various Indigenous groups who are potentially affected by the CGL Project. The Ministry says the information in the records includes communications regarding the EAO consultation, potential project effects and potential mitigation measures, capacity funding, timelines and the environmental assessment process.

[73] More specifically, the Ministry states that the information at issue also includes ethnohistorical and historical information relating to Indigenous groups' presence in and around the project.

[74] By way of background, the Ministry provided extensive submissions about the history and the importance of the relationship between the Crown and Indigenous peoples. The Ministry explains that "these sometimes fragile relationships are the result of a history of mistrust, but are essential for the Province to fulfil its obligations to Indigenous peoples." The Ministry says that to build trusting relationships, Indigenous groups must have confidence in their communications with the province and must not see any indicia of bad faith. Further, the Ministry says it needs to be able to develop and assess its negotiating position without concerns that it will later be subject to public scrutiny or that the information could be released and compromise its relationship with an Indigenous group because there is a misinterpretation or misunderstanding.

[75] Regarding the specific information in dispute, the Ministry submits that much of the information in the records would reveal the subject matter of and specific positions taken in negotiations. The Ministry argues that disclosure of this information could reasonably be expected to harm the government's

relationship with other Indigenous groups (such as neighbouring groups) because the negotiation subject matter or positions could be incorrectly interpreted without sufficient context or background information to facilitate a full understanding.

[76] The six ethno-historical reports take up the vast majority of the pages at issue (pages 230-418, 419-535, 536-575, 577-765, 766-882, 883-922). The Ministry says that the information in these reports reflects the province's opinion on "certain historical events" which do not include any background details that explain how the province reached those conclusions. The Ministry says that this information, if disclosed, may be incorrectly interpreted.

[77] The Ministry says that other information in the records reflects confidential without prejudice discussions and negotiations respecting, among other things, possible accommodation measures entered into in good faith by the province and Indigenous groups. The Ministry explains that disclosure of this information could harm the provincial government's relationship with the Indigenous groups with whom it was negotiating by breaching the trust and confidence necessary to engage in meaningful and successful negotiations.

[78] I find that all of the information the Ministry withheld under s. 16 directly relates to the consultations and negotiations between the province and the Indigenous groups. Some of the withheld information reflects the specific negotiating positions of the province and the Indigenous groups. The information describes the parties' positions over time and would reveal the "give and take" between the parties during the negotiations. In Orders F20-48[27] and F22-34,[28] the OIPC found that disclosure of this kind of information would breach the trust and confidence necessary to engage in meaningful and successful negotiations. I make the same finding here.

[79] To conclude, the Ministry is authorized to withhold the 23 records at issue under the s. 16(1)(a)(iii) exemption. Because of this finding, it is not necessary for me to consider whether these records also qualify for exemption under s. 16(1)(c).

Harm to the conservation of heritage sites, s. 18

[80] I have found above that the Ministry is either authorized or required to withhold all of the records at issue under a combination of ss. 14, 15, 16 and 22.

[27] 2020 BCIPC 57.
[28] 2022 BCIPC 38.

As a result, I need not consider whether any of the records qualify for exemption under s. 18.

Personal privacy, s. 22

[81] The Ministry withheld email addresses of 17 individuals from pages 1030, 1031, 1032, 1036, 1037, 1057 and 1058 of the records, claiming the s. 22 personal privacy exemption.

[82] The Ministry made submissions on the s. 22 exemption. The applicant did not.

Personal information

[83] Section 22 applies only to personal information, so the first step in a s. 22 analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." Contact information is defined 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."[29]

[84] I have reviewed the email addresses the Ministry withheld from the records. I accept the Ministry's submission that this information does not qualify as contact information because they are those individuals' personal email addresses, and they do not enable the individuals to be contacted at a place of business.

[85] The Ministry further states that these email addresses qualify as personal information because they are about identifiable individuals who attended a CGL consultation meeting in their personal capacity during the certificate amendment process.

[86] The Ministry submits that the individuals shared their email addresses in their personal capacity. The Ministry cites OIPC Order F22-29[30] in which the adjudicator found that personal email addresses qualified as personal information.

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[29] See Schedule 1 of FIPPA for the definitions of personal information and contact information.
[30] 2022 BCIPC 32, para. 82.

[87] I find that the email addresses are clearly about identifiable individuals since they are listed next to the names of each individual. In addition, I accept the Ministry's submission that this information is about these individuals in their personal capacity. There is no evidence before me to suggest otherwise. As a result, and consistent with Order F22-29, I find that this information meets the definition of personal information.

Not an unreasonable invasion, s. 22(4)

[88] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If s. 22(4) applies, disclosure would not be an unreasonable invasion of the individuals' personal privacy. The Ministry submits that s. 22(4) does not apply.

[89] I find that s. 22(4) does not apply in this case. The email addresses clearly do not qualify under any of the nine categories listed in paragraphs (a) through (h) of s. 22(4).

Presumed unreasonable invasion of privacy, s. 22(3)

[90] The third step in the s. 22 analysis is to determine whether s. 22(3) applies to the personal information. If so, disclosure is presumed to be an unreasonable invasion of personal privacy. The Ministry submits, and I agree, that none of the paragraphs in s. 22(3) applies here.

Relevant circumstances, s. 22(2)

[91] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2).

[92] The Ministry submits that s. 22(2)(a) is the only listed factor that could conceivably be a relevant consideration in this inquiry. That section applies where "disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny." If s. 22(2)(a) applies, this would be a factor in favour of disclosing the email addresses.

[93] The Ministry submits, and I agree, that this factor does not apply here, because the email addresses would, at most, subject third parties to public scrutiny, and would not reveal anything meaningful about the Ministry's activities.

[94] In my view, none of the other remaining factors in paragraphs (b) through (j) of s. 22 applies.

Conclusion, s. 22

[95] I do not see any relevant circumstances that weigh for or against disclosing the email addresses. In addition, the applicant has not made any submissions on whether the email addresses should be disclosed. I find that disclosing this information would be an unreasonable invasion of the third parties' personal privacy. This is consistent with Order F22-29, and other OIPC orders referred to in that decision. Therefore, the Ministry must refuse to disclose the email addresses it withheld from pages 1030, 1031, 1032, 1036, 1037, 1057 and 1058 under s. 22(1).

CONCLUSION

[96] For the reasons given above, under s. 58(2) of FIPPA, I confirm the Ministry's decision that it is authorized or required to refuse access to all of the records in dispute under ss. 14, 15(1)(l), 16(1)(a)(iii) and 22 of FIPPA.

February 2, 2023

ORIGINAL SIGNED BY

David Goodis, Adjudicator

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