Order P24-06

BGIS GLOBAL INTEGRATED SOLUTIONS CANADA LP

Ian C. Davis
Adjudicator

March 27, 2024

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Summary: An individual (the applicant) made a request under the *Personal Information Protection Act* (PIPA) to his former employer, BGIS Global Integrated Solutions Canada LP (BGIS), for access to his personal information. BGIS provided the responsive documents but withheld some information under ss. 23(3)(a) (solicitor-client privilege), 23(3)(b) (harm to competitive position), 23(4)(c) (another individual's personal information), and 23(4)(d) (disclosure would reveal the identity of an individual who provided personal information about another) of PIPA. The adjudicator found that the withheld information is the applicant's personal information. The adjudicator determined that ss. 23(3)(a) and 23(4)(c) apply to some of the personal information, but the other exceptions did not apply. The adjudicator ordered BGIS to remove the personal information that it is authorized or required to withhold and to provide the applicant with access to the balance of his personal information.

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

INTRODUCTION

[1] An individual (the applicant) made a request under s. 23(1) of the *Personal Information Protection Act* (PIPA) to his former employer, BGIS Global Integrated Solutions Canada LP (BGIS). Section 23(1) gives individuals a right of access to their personal information under the control of an organization, subject to the exceptions set out in ss. 23(3) and 23(4).

[2] BGIS provided the responsive documents to the applicant but withheld some information in them under ss. 23(3)(a) (solicitor-client privilege), 23(3)(b) (harm to competitive position), 23(4)(c) (personal information about another

individual), and 23(4)(d) (disclosure reveals the identity of an individual who has provided personal information about another individual) of PIPA.[1]

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review BGIS's decision to withhold his personal information. Mediation did not resolve the matter and it proceeded to this inquiry.

PRELIMINARY MATTER

[4] In his request for review to the OIPC, the applicant complained about the adequacy of BGIS's search for responsive information.[2] The applicant reiterates in his inquiry submissions that BGIS has "failed to disclose documents that should have been disclosed pursuant to the initial request for information."[3]

[5] BGIS submits in reply that it "has produced all documents requested" and "there is no basis to the allegation that the disclosure package was incomplete."[4]

[6] I decline to address the adequacy of BGIS's search for responsive documents as part of this inquiry.[5] The issues to be decided at inquiry are set by the OIPC Investigator's Fact Report and the Notice of Inquiry. Neither of those documents state that the adequacy of BGIS's search is an inquiry issue. I see no indication that the applicant advised the OIPC that these documents were incorrect. Also, the applicant did not make a request to the OIPC, as he was required to do, for permission to have the search issue added to the inquiry. In these circumstances, I do not consider it appropriate to decide the search issue raised by the applicant as part of this inquiry.

ISSUES

[7] The issues in this inquiry are:

1. Is BGIS authorized under ss. 23(3)(a) and 23(3)(b) to refuse access to the information it withheld under those sections?

2. Is BGIS required under s. 23(4)(c) and 23(4)(d) to refuse access to the information it withheld under those sections?

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[1] The OIPC Investigator's Fact Report at para. 2 only refers to ss. 23(3) and 23(4), but BGIS's submissions and the records clarify the subsections under which it withheld information. BGIS disclosed an initial package and then a revised package. The revised redactions are in dispute.
[2] Request for Review/Access Complaint Form dated 19 May 2021 at p. 2.
[3] Applicant's submissions at p. 1 (also p. 4).
[4] BGIS's reply submissions at p. 2.
[5] See, for example, Order P23-08, 2023 BCIPC 76 at paras. 8-11.

[8] The burden is on BGIS to prove on a balance of probabilities that the applicant has no right of access to the withheld information.[6]

BACKGROUND

[9] BGIS offers a variety of services, including facility management, real estate services, project delivery services, technical services, and energy-efficiency strategies.[7]

[10] The applicant is a former employee of BGIS. He worked as a facility manager. He went on leave[8] and BGIS later terminated his employment. The applicant then made the access request that is the subject of this inquiry.

INFORMATION IN DISPUTE

[11] The information in dispute relates to the applicant's employment with BGIS and the termination of that employment. There are 268 pages of responsive documents. BGIS has already disclosed a considerable amount of information in the documents.

[12] I specify below the information in dispute under each exception to disclosure. BGIS has withheld most of the information under multiple exceptions.

PERSONAL INFORMATION

[13] Before proceeding with my analysis, I note that neither party submitted affidavit evidence in support of their position. Both parties made submissions and BGIS provided the unredacted responsive documents to the OIPC for review. I base my analysis on that material.

[14] PIPA only grants individuals a right of access to their own "personal information."[9] Accordingly, the first question is whether the withheld information is the applicant's personal information.

[15] PIPA defines "personal information" and related terms as follows:

> "personal information" means information about an identifiable individual and includes employee personal information but does not include
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> (a) contact information, or
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> (b) work product information;

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[6] PIPA, s. 51.
[7] In this background section, I rely on BGIS's initial submissions at pp. 1-2 and the Applicant's submissions at pp. 1-3.
[8] The applicant discusses the details, which I have omitted, in his submissions at p. 2.
[9] PIPA, ss. 23(1)(a) and 27.

> "employee personal information" means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment;
>
> "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.[10]

[16] The withheld information consists of the following:

- BGIS's in-house counsel's name, title, and contact details;[11]
- the names and locations of two BGIS client organizations, one of which the applicant provided services to;[12]
- the names, positions, email addresses, and phone numbers of two BGIS employees in a form relating to the applicant's leave;[13]
- the entirety of a seven-page document setting out an annual incentive award plan that the applicant participated in as a BGIS employee (incentive plan document);[14]
- information in a performance review document, including dates, "objective descriptions," and "success indicators";[15]
- some "manager comments" in the applicant's performance review;[16]

[10] PIPA, s. 1.
[11] Responsive documents at pp. 1, 4, 7, 10-11, 15, 27, 34, 41, 44, 54, 72, 84, 98, 135, 146, 225, 227, 229, 231, 234, 237, 239, 244, 246, 249, and 260.
[12] Responsive documents at pp. 21-22, 39, 52, 62, 70, 82, 84-85, 98, 212-213, 230, 232, 235-237, 242, 252-253, and 264-265. The client name is also in some of the withheld emails and the performance review documents.
[13] Responsive documents at pp. 22, 39, 52, 62, 70, and 82. However, I note here and in my analysis below that BGIS disclosed all the same information in duplicates of the same form at pp. 236, 242, 253, and 265.
[14] Responsive documents at pp. 205-211. The name and existence of this document is disclosed in the responsive documents at p. 112, which is the applicant's employment offer letter.
[15] Responsive documents at pp. 216-219.
[16] Responsive documents at pp. 223-224.

- BGIS emails (mainly excluding the applicant) relating to the applicant's hiring,[17] leave,[18] termination,[19] and performance review;[20] and
- names of individuals involved in the applicant's background screening, and details about their relationships to the applicant.[21]

[17] BGIS submits that some of the withheld information "does not constitute personal information of the Applicant."[22] BGIS did not specify which specific portions of the withheld information it considers not to be the applicant's personal information. BGIS only says that "information about the aspects of certain compensation packages provided to employees" is not the applicant's personal information.[23]

[18] In support of its position, BGIS refers to decisions of the Alberta OIPC. One of those decisions states that information "about" an applicant is a "much narrower idea" than "related to" an applicant.[24] The order says that information "generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily 'about' that person."[25]

[19] The applicant submits that the withheld information is his employee personal information, as that term is defined in PIPA.[26] The applicant says that he does not seek compensation information that solely relates to other employees. Rather, he seeks information that is "directly related to him, which may overlap with compensation information that applies to other employees."[27]

[20] In reply, BGIS submits that "company-wide compensation plans" are not the applicant's personal information.[28]

[21] I begin by noting that the Alberta decisions that BGIS cites are not persuasive here. Former Commissioner Denham set out the approach to defining personal information under PIPA in Order P12-01.[29] Personal information is not limited to information that is "intimate" or that falls within a "personal zone of privacy." Information is about an identifiable individual if it is "reasonably capable

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[17] Responsive documents at pp. 106-109.
[18] Responsive documents at pp. 229 and 232.
[19] Responsive documents at pp. 44-46, 54-56, 64-65, 72-74, 75-77, 97, and 244-247.
[20] Responsive documents at pp. 225-228. These emails directly involve the applicant.
[21] Responsive documents at pp. 196-204.
[22] BGIS's initial submissions at p. 3.
[23] BGIS's initial submissions at p. 3.
[24] Order P2006-004, 2006 CanLII 80865 (AB OIPC), quoted in BGIS's initial submissions at p. 4.
[25] *Ibid*.
[26] Applicant's submissions at pp. 7-8.
[27] Applicant's submissions at p. 7.
[28] BGIS's reply submissions at p. 2.
[29] Order P12-01, 2012 BCIPC 25 at paras. 28-89.

of identifying a particular individual, either alone or when combined with other available sources of information."[30]

[22] I am satisfied that the withheld information is about the applicant. The documents name the applicant. The withheld information is generally about where the applicant worked, what he did or said in his work, how he was paid, which clients he worked with, who he interacted with, who handled his employment matters, how they handled his employment matters, and what people said or thought about matters relating to him.

[23] I am not persuaded by BGIS's argument that information in the incentive plan document is not about the applicant because it applies to other BGIS employees. The document names the applicant, so it is clearly about him. Whether the compensation information is also the personal information of other individuals is relevant under s. 23(4)(c).

[24] None of the withheld information is the applicant's contact information or work product information. The withheld information does not include the applicant's business contact information or information that he prepared or collected as part of his duties and responsibilities as a BGIS facility manager.

[25] I conclude that the withheld information is the applicant's personal information (specifically, his employee personal information) because it is about him, and it is not contact information or work product information.

[26] I turn now to whether BGIS is authorized or required to withhold any of the applicant's personal information under s. 23(3) or s. 23(4). BGIS withheld most of the personal information under multiple exceptions to disclosure, so I will consider the same information more than once, as necessary.

LEGAL ADVICE PRIVILEGE – SECTION 23(3)(a)

[27] BGIS withheld some of the applicant's personal information under s. 23(3)(a), which states that an organization is not required to disclose personal information that is protected by solicitor-client privilege. Section 23(3)(a) imports into PIPA the common law of legal advice privilege and litigation privilege.[31]

[28] BGIS claims both privileges. However, it did not specify which privilege(s) it says applies to each specific portion of the withheld information. BGIS says the responsive documents include "multiple instances" where each privilege applies.[32] Since BGIS did not specify, I will assume that it withheld all the s. 23(3)(a) information under both privileges. I start with legal advice privilege.

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[30] Order P12-01, 2012 BCIPC 25 at para. 85.
[31] Order P06-01, 2006 CanLII 13537 (BC IPC) at para. 53.
[32] BGIS's initial submissions at p. 5.

[29] For legal advice privilege to apply, there must be:

1) a communication between solicitor and client (or their agent),
2) that entails the seeking or giving of legal advice, and
3) that is intended by the solicitor and client to be confidential.[33]

[30] The confidentiality ensured by legal advice privilege allows clients to speak to their lawyers openly and honestly, which in turn allows lawyers to better assist their clients.[34] Given its functions, legal advice privilege is of fundamental importance to the legal system, and it must be as close to absolute as possible.[35]

[31] BGIS submits that legal advice privilege applies to "multiple instances" where BGIS's in-house counsel (the Lawyer) "was providing legal advice, where his advice was being discussed, and where the information was shared further to obtaining/providing legal advice."[36]

[32] The applicant submits that BGIS is interpreting legal advice privilege too broadly.[37] The applicant says that the privilege does not apply to all information relating to legal advice or to all instances in which legal advice is discussed. The applicant also suggests that the Lawyer might have represented his interests when he was a BGIS employee, resulting in "communications that should be disclosed as they were not intended to be confidential with respect to [the applicant] at the time they were created."[38]

[33] In reply, BGIS submits that it properly applied legal advice privilege.[39] BGIS rejects the applicant's suggestion that the Lawyer ever represented the applicant or that the applicant is entitled to any of BGIS's privileged documents. BGIS says it is "trite law to state that an in-house counsel's only client is the employer."[40]

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[33] *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821 at p. 837. See also *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at paras. 38-94 [*Minister of Finance*].
[34] *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 at para. 34. See also *General Accident Assurance Company v. Chrusz*, 1999 CanLII 7320 (ON CA) per Doherty J.A.
[35] *R. v. McClure*, 2001 SCC 14 at paras. 32 and 35.
[36] BGIS's reply submissions at p. 3.
[37] Applicant's submissions at p. 4.
[38] Applicant's submissions at p. 4.
[39] BGIS's reply submissions at p. 3.
[40] BGIS's reply submissions at p. 3.

[34] The information in dispute under s. 23(3)(a) is the Lawyer's name, title, email address and phone number,[41] and some BGIS emails.[42]

[35] I start with the Lawyer's name and contact details. The Lawyer's name appears at the top of various pages of emails, not in the emails themselves. With one exception,[43] the Lawyer is not the sender or recipient of the emails. It seems that the Lawyer's name appears at the top of email chains because BGIS collected the responsive documents through the Lawyer's email when it was processing the access request. The Lawyer's name and contact details also appear in BGIS policy documents.

[36] The Lawyer's name and contact details are not confidential solicitor-client communications that entail legal advice. There may be circumstances in which the identity of a lawyer is privileged, but this is not one of them.[44] The Lawyer's identity would not reveal any communications related to legal advice that BGIS sought or received. I also note that BGIS disclosed the Lawyer's name in its submissions, which undercuts BGIS's claim that the information is confidential. I am not persuaded that the information about the Lawyer is protected by legal advice privilege.

[37] I turn now to the emails that BGIS claims are privileged. I am satisfied that some, but not all, of these emails are protected by legal advice privilege.

[38] One email chain directly involves the Lawyer and is clearly privileged.[45] I accept that the Lawyer was in a solicitor-client relationship with BGIS and that BGIS sought, and the Lawyer provided, legal advice. I make these findings based on the contents of the emails themselves, which BGIS provided for my review. The emails are internal to BGIS and about sensitive legal matters, so I accept that they were intended to be confidential.

[39] The other emails do not directly involve the Lawyer. They are between BGIS employees. Some of these emails are privileged because they post-date the Lawyer's advice and refer to and follow up on the legal advice.[46] Internal client communications may be privileged if they would reveal legal advice.[47] I am

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[41] See *supra* note 11.
[42] Responsive documents at pp. 44-46, 54-56, 64-65, 72-74, 75-77, 97, 106-109, 225-228, 229, 232, and 244-247.
[43] Except for the email chain in the responsive documents at pp. 72-74.
[44] See, for example, *Sheldon Blank & Gateway Industries Ltd. v. Canada (Minister of Environment)*, 2001 FCA 374 at paras. 23-24; *632738 Alberta Ltd. v. The King*, 2023 TCC 117 at paras. 123-126; *Minister of Finance, supra* note 33 at para. 81; *McCaffrey v. Paleolog*, 2006 BCSC 69 at para. 22.
[45] Responsive documents at pp. 72-74.
[46] Responsive documents at pp. 44-46 (except the last two withheld emails on p. 46), 54-56 (except the last two withheld emails on p. 56), 64-65 (except the last two withheld emails on p. 65), 75-77 (except the last two withheld emails on p. 77), 97, and 244-247.
[47] *Bank of Montreal v. Tortora*, 2010 BCSC 1430 at paras. 11-12.

satisfied that the applicant could, given his knowledge of and experience with BGIS, accurately infer privileged information from these emails. The emails cannot be severed without the risk of revealing privileged information to the applicant.[48]

[40] I am not persuaded by the applicant's argument that he is entitled to the privileged emails because he was part of the solicitor-client relationship. The applicant was not involved in the emails and was not the Lawyer's client. The Lawyer was in solicitor-client relationship with BGIS. The applicant does not have a right to privileged emails between the Lawyer and BGIS management simply because he was a BGIS employee at the time.

[41] I turn now to the BGIS emails that I find are not protected by legal advice privilege. These are:

- two emails between BGIS employees that are about the applicant's request to return to work;[49]
- emails between BGIS employees about the applicant's hiring;[50]
- emails between the applicant and a BGIS employee;[51] and
- part of an email between BGIS employees about the applicant being on leave.[52]

[42] None of these emails directly involve the Lawyer. I am not persuaded, based on the emails themselves, that they discuss or would reveal legal advice. BGIS does not explain in evidence or submissions how they do, and it is not apparent from my review of the withheld information.[53] The emails pre-date the privileged email chain that indicates when BGIS sought and received legal advice from the Lawyer. Having regard to the emails themselves, viewed in context, and without explanation from BGIS, I conclude that these emails are not protected by legal advice privilege.

LITIGATION PRIVILEGE – SECTION 23(3)(a)

[43] I found above that information about the Lawyer and some BGIS emails are not protected by legal advice privilege. I now consider whether this information is protected by litigation privilege.

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[48] See, for example, *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at paras. 36-40.
[49] Responsive documents at pp. 46 (last two withheld emails), 56 (last two withheld emails), 65 (last two withheld emails), and 77 (last two withheld emails).
[50] Responsive documents at pp. 106-109.
[51] Responsive documents at pp. 225-228.
[52] Responsive documents at pp. 229 and 232.
[53] This may be because BGIS is only claiming litigation privilege and not solicitor-client privilege. However, as mentioned, BGIS did not specify its privilege claims.

[44] Litigation privilege protects a party's ability to effectively conduct litigation. Its purpose is to ensure the efficacy of the adversarial process.[54] It does so by creating a protected area in which parties to pending or anticipated litigation are free to investigate, develop and prepare their contending positions in private, without adversarial interference into their thoughts or work product and without fear of premature disclosure.[55]

[45] Litigation privilege protects a record from disclosure if the party asserting the privilege establishes that, at the time the record was produced:

1) litigation was "in reasonable prospect;" and
2) the "dominant purpose" for producing the record "was to obtain legal advice or to conduct or aid in the conduct of litigation."[56]

[46] Litigation privilege expires when the litigation it relates to ends unless related litigation remains pending or may reasonably be apprehended.[57]

[47] BGIS submits that some of the personal information withheld under s. 23(3)(a) is protected by litigation privilege. It says that the responsive documents include "multiple instances where there is information created further to the termination of the Applicant's employment and in anticipation of litigation by the Applicant."[58] BGIS says litigation was in reasonable prospect when it was contemplating terminating the applicant.

[48] The applicant submits that BGIS has not adequately explained the substantive basis for a claim of litigation privilege. He says that BGIS "must explain why the document was created and how that was for the dominant purpose of advancing or defending litigation."[59] The applicant notes that there was no threat of litigation from him until late November 2020, when his lawyer sent a letter to BGIS about resolving his claims.[60]

[49] Turning to my analysis, the Lawyer's name and contact details are not protected by litigation privilege. This information is not created for litigation purposes and does not appear as part of documents created for those purposes.

[50] With one exception, I am also not persuaded that the information in the emails is protected by litigation privilege. Based on my review of the documents, the emails were created at a time during the applicant's hiring and subsequent employment when BGIS did not reasonably contemplate litigation with the

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[54] *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at para. 27.
[55] *Ibid*. See also *Raj v. Khosravi*, 2015 BCCA 49 at paras. 7-20.
[56] *Raj*, *ibid* at para. 20.
[57] *Blank*, *supra* note 54 at paras. 8 and 34-41.
[58] BGIS's initial submissions at p. 5; BGIS's reply submissions at p. 3-4.
[59] Applicant's submissions at p. 5.
[60] Responsive documents at pp. 100-104.

applicant. Also, in my view, the dominant purpose of these emails was to manage the applicant's employment, not to prepare for litigation.

[51] The exception is one of the two emails about the applicant's request to return to work. I am satisfied that BGIS reasonably contemplated litigation with the applicant at the time this email was created and that the dominant purpose for the email was to prepare for litigation. The evidence before me does not establish that the dispute has been resolved, so litigation privilege applies. The other preceding email is short, non-substantive, and clearly not created for the dominant purpose of litigation. Litigation privilege does not apply to that email.

[52] To conclude, I find that some of the personal information withheld under s. 23(3)(a) is protected by either legal advice privilege or litigation privilege. However, for the reasons provided above, the Lawyer's name and contact details and some emails are not privileged.

HARM TO COMPETITIVE POSITION – SECTION 23(3)(b)

[53] BGIS withheld some of the applicant's personal information under s. 23(3)(b). That subsection states that an organization is not required to disclose personal information and other information if the disclosure "would reveal confidential commercial information that if disclosed, could, in the opinion of a reasonable person, harm the competitive position of the organization."

[54] BGIS submits that the responsive documents include:

> … redactions of confidential commercial information, such as the names of clients, discussions regarding the work performed for clients, the details of [BGIS's] confidential compensation structure, etc. If this information were disclosed, it would harm [BGIS's] competitive position in its various industries. It may result in [BGIS's] clients being upset about their identity and needs being publicly revealed.[61]

[55] The applicant questions BGIS's reliance on s. 23(3)(b).[62] He urges the OIPC to consider not only the express requirements of s. 23(3)(b) but also whether the withheld information is "generally accessible" or could be "known or inferred" by him, in which case he says the information should be disclosed. The applicant says he is not seeking "client lists" or "proprietary information" that could harm BGIS's competitive position. He submits that any conflict between the applicant's interests in his personal information and BGIS's interests in its competitive position should be resolved in his favour. He proposes, as an alternative to full disclosure, that BGIS disclose the withheld information to him pursuant to a confidentiality agreement.

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[61] BGIS's initial submissions at p. 6.
[62] All references in this paragraph are to the applicant's submissions at p. 6.

[56] In reply, BGIS submits that the applicant's interest in the withheld information does not defeat BGIS's interests and the application of s. 23(3)(b).[63] BGIS declined the applicant's suggestion to disclose the withheld information pursuant to a confidentiality agreement. BGIS is concerned about the effect of public disclosure on its competitive position.

[57] After the parties made their initial submissions, I invited further submissions on the issue of how to interpret the standard set by the statutory language in s. 23(3)(b).[64] To determine whether s. 23(3)(b) applies, I first need to know what the section means and requires. The few orders that deal with s. 23(3)(b) do not interpret the statutory language.[65]

[58] In response to my invitation, BGIS made further submissions,[66] but the applicant chose not to do so.[67]

[59] BGIS made two main points about the interpretation of s. 23(3)(b). First, BGIS cites *Merck Frosst Canada Ltd. v. Canada (Health)* [*Merck Frosst*][68] for the proposition that "potential harm is established, for the purposes of a commercial sensitiv[ity] exception under a privacy statute, if there is a 'reasonable expectation of probable harm'."[69] Second, BGIS notes that s. 21(1)(c)(i) of BC's *Freedom of Information and Protection of Privacy Act* [FIPPA][70] requires a public body to withhold confidential commercial information if disclosure could reasonably be expected to "harm significantly" the competitive position of a third party. BGIS submits that, since s. 23(3)(b) of PIPA does not require *significant* harm, it sets a lower standard than s. 21(1)(c)(i) of FIPPA.[71]

[60] BGIS also reiterated its position that s. 23(3)(b) applies. It says the withheld information is clearly commercial and confidential, so the issue is whether the harm requirement is met. BGIS submits that:

> If this information were disclosed, it would harm the BGIS' competitive position and would give BGIS' competitors an advantage. BGIS' competitors would then have access to information that would allow them to easily solicit BGIS' clients and employees, undermining BGIS' economic

[63] BGIS's reply submissions at p. 4.
[64] Letter from the OIPC to the parties dated January 24, 2024. In addition to the parties' submissions, I am also entitled to seek assistance on the interpretation of s. 23(3)(b) beyond what the parties provide. See, for example, *R. v. Badhesa*, 2019 BCCA 70 at para. 18.
[65] See Order P18-01, BCIPC 6 at paras. 17-18; Investigation Report P19-01, 2019 BCIPC 7 at p. 32.
[66] BGIS's further submissions dated February 23, 2024.
[67] Emails from the applicant to the OIPC and BGIS dated January 25 and February 29, 2024.
[68] 2012 SCC 3 at para. 139 [*Merck Frosst*].
[69] BGIS's further submissions dated February 23, 2024 at p. 2 (citing other cases as well).
[70] R.S.B.C. 1996, c. 165.
[71] BGIS's further submissions dated February 23, 2024 at pp. 3-5.

> position. The disclosure of this information would also result in harm [to] BGIS' relationship with its clients. BGIS' clients expect their identity and the services they receive to remain confidential. The confidentiality expectation is expressly confirmed in the agreements entered into between BGIS and its clients.[72]

[61] BGIS provided an example of provisions in an agreement with a client that discuss confidentiality. BGIS submits that if the withheld information is disclosed, the potential harm is "clear" because "it is reasonable to expect that BGIS' clients will be upset and may take their business elsewhere."[73]

Interpreting s. 23(3)(b)

[62] The starting point for any question of statutory interpretation is the modern principle: "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the legislature]".[74]

[63] Section 1 of PIPA sets out its purpose. It is to "govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances."

[64] With respect to the s. 23(1)(a) right of access, former Commissioner Loukidelis stated in Order P05-01 that its purpose is "to allow an individual to know what personal information of his or hers an organization has and to ensure that it is accurate and complete."[75]

[65] Keeping this purpose in mind, and looking to the scheme and text of PIPA, I interpret below the following three key parts of s. 23(3)(b):

1. "confidential commercial information;"

2. "if disclosed, could, in the opinion of a reasonable person, harm:" and

3. "competitive position of the organization."

[66] I consider it appropriate, as BGIS submits, to take interpretive guidance from s. 21(1) of FIPPA. When interpreting a statute, it is appropriate to seek

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[72] BGIS's further submissions dated February 23, 2024 at p. 5.
[73] BGIS's submissions dated February 23, 2024 at p. 7.
[74] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para. 21, quoting E. Driedger, *Construction of Statutes* (2nd ed. 1983) at p. 87.
[75] Order P05-01, 2005 CanLII 18157 (BC IPC) at para. 22.

guidance from the language and interpretation of other statutes that contain similar language and deal with similar subject matter.[76]

[67] Section 21(1) of FIPPA states, in relevant part, that:

> The head of a public body must refuse to disclose to an applicant information
>
> (a) that would reveal …
>
> (ii) *commercial*, financial, labour relations, scientific or technical information of or about a third party,
>
> (b) that is supplied, implicitly or explicitly, *in confidence*, and
>
> (c) the disclosure of which *could reasonably be expected to*
>
> (i) *harm significantly the competitive position* or interfere significantly with the negotiating position of the third party …[.][77]

[68] Section 21(1) of FIPPA and s. 23(3)(b) of PIPA deal with similar subject matter. They both aim to protect the competitive position of an entity, even though they do so in different ways. The similarities and the differences in the wording of these two provisions are instructive. I follow several OIPC orders that have sought guidance from FIPPA to interpret provisions of PIPA.[78]

"Confidential commercial information"

[69] Section 23(3)(b) requires that disclosure of the withheld information would reveal "confidential commercial information." PIPA does not define the terms "confidential" or "commercial". While the notion of confidentiality appears elsewhere in PIPA, the term "commercial" is only used in s. 23(3)(b).

[70] I start with the word "commercial." In *Merck Frosst*,[79] a majority of the Supreme Court of Canada stated that the term "commercial," in s. 20(1)(b) of the federal *Access to Information Act*,[80] should be given its ordinary dictionary meaning. The dictionary defines "commercial" to mean "of, engaged in, or

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[76] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada, 2014) at para. 13.25. See also, for example, *R. v. G.F.*, 2018 BCCA 81 at para. 65; *Ubah v. Canada*, 2022 FCA 129 at para. 15; *Blue Star Trailer Rentals Inc. v. 407 ETR Concession Company Limited*, 2008 ONCA 561 at paras. 33-35, leave to appeal ref'd 2008 CanLII 63493 (SCC).

[77] Emphasis added.

[78] See, for example, Order P20-01, 2020 BCIPC 6 at paras. 26-28; Order P19-03, 2019 BCIPC 42 at paras. 22-24; Order P12-01, 2013 BCIPC 4 at para. 31.

[79] *Merck Frosst*, *supra* note 68 at para. 139.

[80] R.S.C. 1985, c. A-1, s. 20(1)(b), which applies to "financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party."

concerned with, commerce" and "commerce" is defined as "financial transactions, esp. the buying and selling of merchandise, on a large scale."[81]

[71] Under s. 21(1) of FIPPA, the OIPC has adopted and applied a definition of "commercial" that is similar to the dictionary definition. Past orders have said that commercial information under s. 21(1)(a)(ii) must be "associated with the buying, selling or exchange of the entity's goods or services,"[82] and it "relates (by its specific nature, derivation or use) to a commercial enterprise."[83] Typical examples include price lists, fees, percentage commission rates, and descriptions of services.[84] The information does not need to be proprietary in nature or have an actual or potential independent market or monetary value.[85]

[72] I find that a similar definition is appropriate under s. 23(3)(b) of PIPA. Section 23(3)(b) uses the same term and deals with similar subject matter as s. 21(1) of FIPPA and s. 20(1)(b) of the federal *Access to Information Act*. I conclude that, for the purposes of s. 23(3)(b) of PIPA, "commercial" information relates to the buying, selling or exchange of an entity's goods or services, and it need not have independent market or monetary value.

[73] I turn now to the meaning of "confidential." Section 23(3)(b) requires that disclosure of the withheld information would reveal *confidential* commercial information. This term should have its ordinary meaning. It invokes notions of secrecy and privacy. According to the dictionary definition, confidentiality involves "the telling of private matters with mutual trust."[86]

> *"… if disclosed, could, in the opinion of a reasonable person, harm …"*

[74] Section 23(3)(b) also requires that disclosure of the information in dispute "could, in the opinion of a reasonable person, harm" the competitive position of the organization.

[75] I start with the term "reasonable person." The perspective of a reasonable person is central to the scheme of PIPA. It appears in multiple provisions, in addition to ss. 1 and 23(3)(b).[87] Section 4(1), for example, states that "[i]n meeting its responsibilities under this Act, an organization must consider what a reasonable person would consider appropriate in the circumstances."

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[81] *The Canadian Oxford Dictionary*, 2nd ed (Toronto: Oxford University Press, 2004) *sub verbo* "commercial" and "commerce."
[82] Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 63.
[83] Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 17.
[84] Order F08-03, *supra* note 82.
[85] Order 01-36, *supra* note 83.
[86] *The Canadian Oxford Dictionary*, *supra* note 81, *sub verbo* "confidence".
[87] See PIPA, ss. 1, 4(1), 8(1)(a), 11, 14, 17, 22(a), and 23(3)(b).

[76] Former Commissioner Loukidelis discussed the reasonable person standard in Order P05-01. That case dealt with s. 11 of PIPA, which states in part that an organization "may collect personal information only for purposes that a reasonable person would consider appropriate in the circumstances." The former Commissioner stated that the reasonable person standard is "an objective standard—the idiosyncrasies, likes, dislikes or preferences of a particular individual do not determine the outcome."[88]

[77] I consider next the phrase "could, in the opinion of a reasonable person, harm …" under s. 23(3)(b). As BGIS noted, the obvious difference between this language and s. 21(1)(c)(i) of FIPPA is that the latter requires *significant* harm to competitive position, while s. 23(3)(b) of PIPA only requires harm. The unqualified use of the word "harm" in s. 23(3)(b) is a telling indication of the Legislature's intention. The level of harm that an organization needs to prove under s. 23(3)(b) is less than what is required under s. 21(1) of FIPPA. Under s. 23(3)(b) of PIPA, an organization need only show harm to its competitive position and not significant harm.

[78] The next question concerns the degree of likelihood of harm that s. 23(3)(b) requires.[89]

[79] The wording of other provisions within the scheme of PIPA is instructive here, particularly the wording of the access exceptions in s. 23(4). For instance, s. 23(4)(a), like s. 21(1) of FIPPA, refers to disclosure that "could reasonably be expected to threaten… ." Section 23(4)(b) refers to disclosure that "can reasonably be expected to cause…harm." And ss. 23(4)(c) and (d) refer to disclosure that "would reveal" certain information, but they do not subsequently refer to disclosure that could, in the opinion of a reasonable person, cause harm, as is the case with s. 23(3)(b).

[80] Section 23(3)(b) is worded differently than the exceptions in s. 23(4). It is a presumption of statutory interpretation that the Legislature intends the same words to have the same meaning and different words to have different meanings.[90] Section 23(3)(b) could have said that an organization is not required to disclose personal information if the disclosure would reveal confidential commercial information that if disclosed *could reasonably be expected to* harm the competitive position of the organization. But since s. 23(3)(b) uses different language, the Legislature is presumed to have intended a different meaning.

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[88] Order P05-01, 2005 CanLII 18156 (BC IPC) at para. 55.
[89] This is how the Supreme Court of Canada put the issue in *Merck Frosst*, *supra* note 68 at para. 185.
[90] See, for example, *Nova Scotia (Minister of Community Services) v. D.S.*, 2023 NSCA 67 at para. 44, citing Ruth Sullivan, *The Construction of Statutes,* 7th ed, online (Markham: LexisNexis Canada, 2022) at s. 8.04.

[81] The question, then, is what that different meaning might be. It is helpful here to contrast s. 23(3)(b) with the "could reasonably be expected to" standard.

[82] First, the word "could," in isolation, has been interpreted by courts as typically connoting mere possibility.[91] As well, in *Merck Frosst*, the Supreme Court of Canada noted that the word "expected" derives from the word "to expect," a primary meaning of which is to "regard as likely."[92] The Court reasoned that the combination of the word "could" with the phrase "reasonably be expected to" creates a higher threshold than just the word "could" on its own. The Court concluded that the language "could reasonably be expected to" requires harm to be the "likely" result of disclosure. This threshold is considerably higher than mere possibility, but somewhat lower than "more likely than not."[93] The threshold occupies a "middle ground between that which is probable and that which is merely possible."[94]

[83] Section 23(3)(b) of PIPA does not combine the word "could" with the phrase "could reasonably be expected to." It does not use the language of "expectation." I infer from this that the Legislature did not intend for the "could reasonably be expected to" standard to apply to s. 23(3)(b). By omitting the language of expectation, I find that the Legislature intended a lower threshold.

[84] Section 23(3)(b) combines the word "could," which connotes mere possibility, with the phrase "in the opinion of a reasonable person." In my view, this indicates that the Legislature intended the threshold under s. 23(3)(b) to be a reasonable possibility, not a mere possibility. I conclude that there is a reasonable possibility of harm to an organization's competitive position under s. 23(3)(b) if a reasonable person considers that harm possible. This threshold is higher than a mere possibility, but lower than the "could reasonably be expected to" standard.

[85] Finally, I see nothing in this interpretation that conflicts with the purposes of PIPA and the objective of s. 23(1)(a), which is to provide a right of access to one's own personal information. In *Merck Frosst*, the Supreme Court of Canada stated that the objective of providing access to information, under federal access legislation, would be thwarted if a mere possibility of harm standard was adopted.[95] Although PIPA deals with the private sector, I find that a similar concern arises, and the right to protect and access personal information would be thwarted by interpreting the level of harm under s. 23(3)(b) as a mere possibility of harm. This lower standard of harm would too easily allow

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[91] *Pereira E Hijos S.A. v. Canada (Attorney General)*, 2002 FCA 470 at para. 14; *Chalk River Technicians and Technologists v. Atomic Energy of Canada Ltd.*, 2002 FCA 489 at para. 52; *Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at para. 22.
[92] *Merck Frosst*, *supra* note 68 at para. 201.
[93] *Merck Frosst*, *ibid* at para. 203.
[94] *Merck Frosst*, *ibid* at para. 201.
[95] *Merck Frosst*, *ibid* at para. 204.

organizations to prevent an applicant from accessing their own personal information. When the harm threshold under s. 23(3)(b) is interpreted as a "reasonable" possibility, rather than the lower "mere" possibility, then the concern about too easily restricting an individual's right to access their personal information is alleviated.

"Competitive position of the organization"

[86] Lastly, s. 23(3)(b) of PIPA requires harm to the "competitive position" of the organization. Section 21(1) of FIPPA also uses this term, but I am not aware of any well-established definition under PIPA. Under PIPA, I find that "competitive position" should be interpreted according to its ordinary meaning, which concerns the state of the organization's business and how it stands in relation to its competitors.

Applying s. 23(3)(b)

[87] The information in dispute under s. 23(3)(b), excluding the information that I already found is privileged under s. 23(3)(a), is:

- the names and locations of two BGIS client organizations;[96]
- the names, positions, email addresses, and phone numbers of two BGIS employees in a form relating to the applicant's leave;[97]
- BGIS emails about the applicant's employment with BGIS;[98]
- all the information in the incentive plan document;[99]
- parts of the applicant's performance review, including dates, objective descriptions, and success indicators;[100] and
- some manager comments in the applicant's performance review.[101]

[88] I conduct my analysis under s. 23(3)(b) recognizing that PIPA does not place any restrictions on an applicant's use of information received in response to an access request. Thus, the analysis must be conducted contemplating the possibility that disclosure to the applicant could result in disclosure to BGIS's competitors. By taking this approach, I do not mean to suggest that the applicant has no legal obligations whatsoever with respect to the information that he receives in response to his request. As an example, I can see from the responsive documents that the applicant's employment agreement restricts the applicant's use and disclosure of BGIS' confidential information.

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[96] See *supra* note 12.
[97] See *supra* note 13.
[98] Responsive documents at pp. 46 (last email), 56 (last email), 65 (last email), 77 (last email), 106-109, 225-228, 229, and 232.
[99] See *supra* note 14.
[100] See *supra* note 15.
[101] See *supra* note 16.

[89] For the reasons provided below, I am not persuaded that s. 23(3)(b) applies to the withheld information. BGIS relies on assertions that, in my view, are not adequately supported by explanation or evidence. Even recognizing that the disputed information itself is evidence, I find that BGIS has not discharged its burden to establish the requirements of s. 23(3)(b).

[90] Section 23(3)(b) requires that disclosure of the withheld information would reveal "confidential commercial information." BGIS submits that the withheld information is "clearly confidential and commercial,"[102] but does not sufficiently explain or support this assertion. BGIS does not discuss the meaning of those terms or how they apply to the specific information in dispute.

[91] Based on my own review of the withheld information, I am not satisfied that the withheld information is "commercial information." As discussed above, to be "commercial" the withheld information must relate to the buying, selling or exchange of BGIS's goods or services. It is not clear to me that the withheld information relates to the selling or exchange of BGIS's facility management services. I noted above that typical examples of commercial information include price lists, fees, percentage commission rates, and descriptions of services. This kind of information typically appears in, for example, commercial contracts between a contractor and client. The information in dispute here is different. It generally relates to the internal operations of BGIS rather than its external commercial offerings to clients.

[92] In any event, even if BGIS had proven that the withheld information is "confidential commercial information," I am not persuaded that disclosure could, in the opinion of a reasonable person, harm BGIS's competitive position, as required by s. 23(3)(b). In what follows, I provide general reasons and then discuss each specific category of information.

[93] Section 23(3)(b) is about harm to an organization's competitive position, but BGIS did not sufficiently support its s. 23(3)(b) claims with evidence or explanation about how the commercial industries it is involved in operate, the nature of its competition, or how its competitors could use the withheld information to its competitive detriment. Moreover, the information is mostly from 2020 and specific to the applicant. Therefore, without more from BGIS, I do not see how disclosure of somewhat dated and applicant-specific information could, in the opinion of a reasonable person, harm BGIS's competitive position.

[94] BGIS argues that disclosure of some of the information withheld under s. 23(3)(b) might "upset" its clients. But that is not the standard under s. 23(3)(b). Even if disclosing some of the information might upset BGIS's clients, BGIS has

[102] BGIS's further submissions dated February 23, 2024 at p. 1; also, BGIS's initial submissions at p. 6.

not established a reasonable possibility that this could harm its competitive position, which is the requirement under s. 23(3)(b).[103]

[95] I turn now to the specific information withheld under s. 23(3)(b). BGIS did not address how the harm requirement is established for each specific type of information at issue here. I am not persuaded that all the information is the same for the purposes of the harm analysis or that harm can simply be inferred from a review of the withheld information itself.

[96] *Incentive plan document* – BGIS asserts that this document is confidential and its disclosure satisfies the harm requirement under s. 23(3)(b), but does not adequately explain or support this claim. For example, there is no information before me about the nature of the labour market in BGIS's industries, the role of incentive plans in those industries, or how the disclosure of the applicant's incentive plan is of sufficient competitive value to BGIS's competitors today. BGIS treats the required harm as if it were obvious from the documents, but I am not persuaded that it is. I also note that BGIS already disclosed the applicant's incentive target in his employment letter,[104] so it is not apparent how harm of any kind, let alone harm to BGIS's competitive position, could result from disclosing this information again to the applicant in the incentive plan document.

[97] *Performance review* – The withheld information in this document is target dates, generally-stated descriptions of performance objectives, and information under the heading "success indicators." I do not see, and BGIS does not adequately explain, how disclosure of this information could harm BGIS's competitive position. The dates and descriptions seem innocuous. The "success indicator" information includes some detail and figures. However, BGIS does not explain what the information means or how its competitors could use it to harm BGIS's competitive position. I also note again that the information is somewhat dated, so I do not see what value it would have to BGIS's competitors.

[98] *Client organizations* – BGIS does not adequately explain how disclosure of the names and locations of the client organizations at issue here, which are public entities, could harm its competitive position. BGIS argues that disclosing this information would harm those business relationships because the clients expect their identities and the services that they receive from BGIS to remain confidential. However, BGIS does not adequately explain or adduce evidence to establish that this harm is a reasonable possibility or how it could impact their competitive position. Based on the materials before me, I am not satisfied there is a reasonable possibility that these clients would end their contract and

[103] At any rate, the information that I understand BGIS to be referring to here (for example, responsive documents at pp. 223-224, 225-228 (in part), 229, 232, and 244-247) is, for the reasons provided below, protected by s. 23(4)(c). See *infra* note 113.
[104] Responsive documents at p. 112.

business relationship with BGIS if it became known that the public entities were BGIS clients.

[99] To support its position, BGIS provided an example of some terms in a contract with an unidentified client that deals with confidentiality. I am unable to determine from this information whether those contractual terms apply to the clients and information at issue here, which are the names and locations of two specific public entities. At any rate, the contract does not override PIPA[105] and some of its provisions explicitly recognize that certain disclosures may be required by law. Therefore, without more from BGIS, I am not persuaded that s. 23(3)(b) applies to the information identifying two of BGIS's clients.

[100] *BGIS employee names and contact information* – I am not persuaded that disclosure of this basic personnel information could harm BGIS's competitive position. I also note BGIS already disclosed the same information in inconsistently redacted duplicate documents,[106] so I do not see how disclosing this information a second time could harm BGIS's competitive position in accordance with s. 23(3)(b).

[101] *Emails and manager comments* – I see nothing in these documents that could be of such value to BGIS's competitors that disclosure could harm its competitive position. BGIS does not adequately explain. Most of the withheld information is basic employment information about the applicant,[107] including his salary and incentive percentage, which is already disclosed elsewhere in the documents. I do not see how disclosing this information could harm BGIS's competitive position.

[102] In the result, I conclude that BGIS has not discharged its burden to establish that s. 23(3)(b) applies to the information it withheld under that section.

Personal information about another individual – s. 23(4)(c)

[103] BGIS also withheld some of the applicant's personal information under ss. 23(4)(c) and (d). The parties dealt with these two subsections together. BGIS did not specify which subsection(s) it applied to each portion of information, so I will assume it applied both subsections to all information withheld under s. 23(4). I will address the subsections separately starting with s. 23(4)(c).

[104] Section 23(4)(c) states that an organization must not disclose personal information and other information if the disclosure would reveal personal

[105] See, for example, Order P05-01, 2005 CanLII 18156 (BC IPC) at para. 90.
[106] Responsive documents at pp. 236, 242, 253, and 265.
[107] For example, responsive documents at pp. 106-109 and 225-228 (in part).

information about another individual. The term "another individual" means someone other than the applicant.[108]

[105] BGIS submits that its redactions under s. 23(4) should be upheld. BGIS says "there are some redactions that relate to discussions with other persons" about the applicant and these persons "have not consented to the disclosure of their personal information."[109]

[106] The applicant submits that:

> [Section 23(4)] does not provide BGIS with the ability to apply "blanket redactions with respect to communications or documents to which other individuals may have produced or have been included in. The fact that another employee may be involved in communications does not mean that their personal information would be disclosed. Personal information is information concerning another individual in their personal capacity. When acting as an agent of BGIS, their identity is not protected against disclosure. As a result, all communications should be disclosed save the narrow and expressly limited information afforded by PIPA that is actually required to protect the personal information of the other individual.[110]

[107] Excluding the information that I already found BGIS can withhold, the personal information in dispute under ss. 23(4)(c) and (d) is the following:

- the names and locations of the BGIS client organizations;
- the names, positions, email addresses, and phone numbers of two BGIS employees in a form relating to the applicant's medical leave;
- the information in the incentive plan document;
- names of individuals involved in the applicant's background screening, and details about their relationship to the applicant;
- some "manager comments" in the applicant's performance review; and
- the contents of some BGIS emails.[111]

[108] I found above that all the withheld information is the applicant's personal information. The issue here is whether any of it would also reveal the personal information of another individual.

[109] As discussed above, personal information is information about an identifiable individual and includes employee personal information but does not include contact information or work product information. The first question is whether the withheld information is about an identifiable individual other than the

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[108] Order P20-01, 2020 BCIPC 6 at para. 21.
[109] BGIS's initial submissions at p. 6 (reply submissions at p. 5).
[110] Applicant's submissions at p. 7.
[111] Including the emails I found are not protected by s. 23(3)(a): responsive documents at pp. 46 (last email), 56 (last email), 65 (last email), and 77 (last email), 106-109, 225-228, 229, and 232.

applicant. The second question is whether the withheld information is either contact information or work product information.

[110] Some of the withheld information is not about an identifiable individual other than the applicant; it is exclusively about the applicant. This information is the names and locations of BGIS client organizations, the information in the incentive plan document, minor bits of information in the manager comments, and some information in the emails. This information is not about any other individual who can be identified by the documents or through accurate inference.

[111] BGIS made specific reference to the incentive plan document. It says that this document is about other BGIS employees because it reveals "company-wide compensation plans."[112] Based on my review of this document, it is not about any other *identifiable* individual. The document itself, and the other responsive documents, do not reveal who else the compensation information might apply to. The document only refers to and identifies the applicant. Therefore, I find s. 23(4)(c) does not apply to this information.

[112] However, I am satisfied that the rest of the withheld information is about identifiable individuals other than the applicant. The names of individuals other than the applicant are clearly about them, and so is information like their job titles and contact details. Parts of the manager's comments and emails are about individuals involved in the applicant's work with BGIS. The applicant could identify who this information is about, given his background knowledge, so the information is about identifiable individuals.

[113] The next question is whether the withheld information that I found is about identifiable individuals other than the applicant is contact information or work product information. If it is, then it is not the other individual's personal information and BGIS is not authorized to withhold it under s. 23(4)(c).

[114] I find the information about these other identifiable individuals is not work product information because it is about individuals who did not prepare or collect the personal information, which is information excluded from the definition of "work product information" under PIPA. For example, BGIS withheld a manager's comments in a performance review that is about both the applicant and others involved in the applicant's work. Those other individuals did not prepare or collect the information in the performance review which was instead completed by the manager. Therefore, this information is not work product information because it fits within the exception to the definition.

[115] I also find most of the information about these other identifiable individuals is not contact information because it does not enable an individual to be contacted for business purposes.

[112] BGIS's reply submissions at p. 2.

[116] For these reasons, I conclude that s. 23(4)(c) applies to some of the withheld information because it is the personal information of individuals other than the applicant.[113] This information is in BGIS emails, the background screening document, and the manager comments for the performance review. BGIS must withhold this information.

[117] I am not persuaded by the applicant's argument that personal information is strictly limited to information about an individual in their "personal capacity." While I agree that mere involvement in a work-related communication does not make it someone's personal information, PIPA clearly contemplates that some information arising in an employment context can be personal information.

[118] There is, however, some information about individuals other than the applicant that I find qualifies as contact information, so this information is not personal information and cannot be withheld under s. 23(4)(c). This information is the names, emails addresses, and other contact details for BGIS employees acting in their business capacities, which primarily appears in BGIS forms and emails, in the headers (e.g., the "to" and "from" lines) and signature blocks. Section 23(4)(c) does not apply to the contact information of BGIS employees because it is not personal information.

Identity of individual who provided personal information – s. 23(4)(d)

[119] Section 23(4)(d) states that an organization must not disclose personal information and other information if the disclosure would reveal the identity of an individual who has provided personal information about another individual and the individual providing the information does not consent to disclosure of his or her identity. The purpose of this section is to protect the identity of an individual providing personal information about someone else.[114]

[120] I found above that some of the information that BGIS withheld under s. 23(4) is protected by ss. 23(3)(a) or 23(4)(c).[115] I now consider whether BGIS must withhold under s. 23(4)(d) the personal information that I found is not protected by the other sections. This information is:

- the information about the BGIS client organizations;
- the information in the incentive plan document;
- the contact information of BGIS employees, including their names;

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[113] Responsive documents at pp. 106-107 (some names), 196, 198-200, 223-224 (part), 225 (main paragraph of first email), 227 (main paragraph of second email), 229, and 232.
[114] Order P20-01, 2020 BCIPC 6 at para. 37.
[115] I already found above that the information withheld at pp. 72-74 and 244-247 is protected by s. 23(3)(a). However, I note here that, if it were necessary, I would also have found that s. 23(4)(d) applies to this information.

- a small amount of information in the manager comments;
- some dates and objective descriptions in the performance review; and
- the contents of some BGIS emails.

[121] For s. 23(4)(d) to apply, it must be the case that the withheld information would reveal the identity of an individual who provided personal information about another individual and does not consent to the disclosure of their identity.[116]

[122] I am not persuaded that s. 23(4)(d) applies to the information still in dispute (i.e., that is not protected by the other provisions). This information does not involve anyone providing personal information about another. For example, email communications between the applicant and another BGIS employee do not involve the employee "providing personal information about" the applicant or another person.[117] Likewise, internal BGIS emails and the incentive plan document set out facts about the applicant's hiring and employment, which does not involve "providing" personal information about the applicant.[118] There are some emails that clearly involve an individual providing personal information about the applicant to BGIS, but I already found that this information is protected under s. 23(3)(a).[119]

Section 23(5) severance

[123] Section 23(5) states that if an organization is able to remove the information to which ss. 23(3) or (4) applies 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 to which ss. 23(3) or (4) applies is removed.

[124] I am satisfied that it is possible for BGIS to redact the information protected by ss. 23(3)(a) and 23(4)(c) while disclosing to the applicant the balance of his personal information. I have indicated by way of red boxes, in a copy of the responsive documents that will be sent to BGIS with this order, the information that BGIS must provide to the applicant in accordance with s. 23(5).

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[116] See, for example, Order P22-06, 2022 BCIPC 54 at para. 69.
[117] Responsive documents at pp. 225-228.
[118] Responsive documents at pp. 106-109.
[119] Responsive documents at pp. 72-74 and 244-247; but see *supra* note 115.

CONCLUSION

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

1. I confirm, in part, BGIS's decision that it is authorized to refuse access to the personal information it withheld under ss. 23(3)(a).

2. I require BGIS to refuse the applicant access to the personal information to which I found ss. 23(4)(c) applies.

3. I require BGIS to give the applicant access to the personal information that I found it is not authorized or required to withhold under ss. 23(3)(a), 23(3)(b), 23(4)(c), or 23(4)(d) and that can be severed under s. 23(5), which is the information I have marked in red boxes in a copy of the responsive documents which will be provided to BGIS with this order.

4. BGIS must provide the OIPC registrar of inquiries with proof that it has complied with this order.

[126] Pursuant to s. 53 of PIPA, BGIS is required to comply with this order by **May 10, 2024**.

March 27, 2024

ORIGINAL SIGNED BY

Ian C. Davis, Adjudicator

OIPC File No.: P21-86160