



Order P24-08

SOLUS TRUST COMPANY LIMITED

Elizabeth Vranjkovic
Adjudicator

June 13, 2024

CanLII Cite: 2024 BCIPC 59
Quicklaw Cite: [2024] B.C.I.P.C.D. No. 59

Summary: An applicant requested access to her personal information from Solus Trust Company Limited (Solus) under the *Personal Information Protection Act* (PIPA). In response, Solus provided access to some information but refused to disclose other information under several PIPA exceptions. The adjudicator found that the applicant is not entitled to access some information under PIPA because it is not her personal information. The adjudicator also found that Solus was authorized to refuse to disclose most of the information that it withheld under s. 23(3)(a) (solicitor-client privilege) and was required to refuse to disclose some of the information that it withheld under ss. 23(4)(c) (personal information about another individual) and 23(4)(d) (identity of an individual who provided personal information about another individual). Given the finding that s. 23(3)(a) does not apply to some information, the adjudicator ordered Solus to produce that information so the adjudicator could decide if ss. 23(4)(c) and/or (d) applied. The adjudicator also found that s. 23(5) required Solus to disclose some portions of the information in dispute to the applicant.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003], c. 63, ss. 1 (definitions of “personal information”, “contact information”, “work product information”), 23(3)(a), 23(4)(c), 23(4)(d), 23(5) and 38(1)(b). *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s. 4(2).

INTRODUCTION

[1] An applicant requested her personal information from Solus Trust Company Limited (Solus) under the *Personal Information Protection Act* (PIPA). The applicant specified that she was seeking access to statements and communications about the applicant made by certain named individuals.

[2] In response, Solus provided the applicant with access to some information but refused to disclose other information under ss. 23(3)(a) (solicitor-client privilege), 23(4)(c) (personal information about another individual) and 23(4)(d)

(identity of an individual who provided personal information about another individual) of PIPA.¹ Solus also refused access to some information on the basis that it was not the applicant's personal information.

[3] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review Solus' decision to refuse access. Mediation by the OIPC did not resolve the issues in dispute and the matter proceeded to inquiry.

PRELIMINARY MATTERS

Duty to assist, s. 28

[4] The applicant says that at least one document is missing from the responsive documents.² The applicant also says that Solus has said there are approximately 1,000 pages of "corollary communications with her" which are not included in the responsive documents.³ This relates to the issue of whether Solus complied with its duty to assist under s. 28.

[5] The OIPC Investigator's Fact Report and the Notice of Inquiry (notice) set out the issues to be decided at inquiry. Neither of those documents state that s. 28 is an inquiry issue.

[6] Additionally, the notice clearly states that a party may not add new issues without the OIPC's prior consent. The applicant did not seek permission to add this new issue to the inquiry or explain why she should be permitted to do so at this stage. For these reasons, I will not decide the s. 28 issue raised by the applicant as part of this inquiry.

In camera material

[7] Prior to filing its submissions in this inquiry, Solus requested permission from the OIPC to submit parts of its evidence *in camera*, including almost all of the information in its table of records (the initial table of records). A delegate of the Commissioner considered the request and granted Solus permission to submit this material *in camera*.

[8] During the course of the inquiry, I determined that keeping all of this material *in camera* would hamper my ability to provide clear and intelligible

¹ From this point forward, unless otherwise specified, whenever I refer to section numbers I am referring to sections of PIPA.

² Applicant's response submission at page 7.

³ Applicant's response submission at page 6.

reasons and impact the fairness of the inquiry. As a result, I contacted Solus and asked it to consider openly disclosing information in one column of the initial table.⁴ Solus reconsidered its position and provided an updated table of records which openly disclosed to the applicant the information in one column as I had requested.

ISSUES

[9] At this inquiry, I must decide:

1. Is the information at issue the applicant's personal information?
2. Is Solus authorized to refuse access to the applicant's personal information under s. 23(3)(a)?
3. Is Solus required to refuse access to the applicant's personal information under ss. 23(4)(c) or (d)?

[10] Section 51(a) places the burden on Solus, as the organization, to prove that the applicant has no right of access to her personal information.

DISCUSSION

Background

[11] Solus is a professional trust company that provided services to an individual (Client).

[12] In 2013, the applicant was named as the Client's power of attorney. In August 2015, the Client revoked the applicant's power of attorney and appointed Solus as his power of attorney. Solus acted as the Client's power of attorney until his death and is now the executor of the Client's estate.

Information at issue

[13] The responsive documents total 224 pages, with 207 pages containing the information in dispute. The disputed information consists of 186 pages of emails withheld in their entirety, portions of 17 pages of emails, some information in a letter and most of the information in a log of telephone calls. The emails withheld in their entirety are between individuals other than the applicant while the partially withheld emails were either sent to or authored by the applicant.

⁴ February 23, 2024 letter to the organization.

[14] In some instances, Solus applied more than one PIPA exception to the same information. In going through my analysis, if I found that one exception applied, I did not consider the other exceptions.

Emails authored by or sent to the applicant

[15] During the inquiry, I questioned whether there was any practical effect in deciding whether s. 23(4)(c) (personal information about another individual) applies to the information at issue in emails authored by or sent to the applicant.

[16] As a result, I wrote to the parties and advised that I was considering not deciding whether s. 23(4)(c) applies to the information at issue in those emails. I invited the parties to provide a submission on why I should or should not do so.

[17] The organization did not provide any submissions. The applicant responded that she did not have copies of many of the emails, confirmed her interest in obtaining the disputed information in those emails, and took the position that I do not have the discretion to decline to decide whether s. 23(4)(c) applies to this information.

[18] I will decide whether s. 23(4)(c) applies to the information at issue in those emails because the applicant says that she does not have copies of many of the emails authored by or sent to her and has confirmed that she is seeking access to the information at issue in those emails.

Is the information at issue the applicant's personal information?

[19] Under s. 23(1), applicants have the right to access their own personal information under the control of the organization, subject to some exceptions set out in ss. 23(3) and 23(4). The information at issue must qualify as the applicant's personal information for access to be considered under s. 23(1)(a). Therefore, the first question I must answer is whether the information at issue is the applicant's "personal information" as defined in PIPA.

[20] Under s. 1, "personal information" means information about an identifiable individual and includes employee personal information but does not include "contact information" or "work product information."

[21] I will first consider whether any of the information at issue is about an identifiable individual, namely the applicant. I will then consider whether any of that information is not personal information because it is contact information or work product information.

Is the information at issue about an identifiable individual, namely the applicant?

[22] Information is about an identifiable individual if it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.⁵

[23] I find that some of the information at issue is about the applicant because it mentions her by name or it is clear from the context that it is about her. For example, Solus withheld email communications between other individuals where the applicant is not named but I can see from the context of the emails that the other individuals are talking about the applicant.⁶

[24] However, I find that a significant amount of the information at issue is not about the applicant. For example, much of the information at issue is in emails between individuals other than the applicant and does not relate to the applicant in any way. Additionally, for one email to the applicant, the part of the email communication at issue is not about the applicant and does not relate to matters involving the applicant. Instead, it is about the relationship between Solus and the Client.⁷ The applicant has no right of access to any of this information under s. 23, so I will not consider it any further.

[25] I turn now to consider whether the information that is about the applicant is not personal information because it is work product information or contact information.

Is the information about the applicant contact information or work product information?

[26] Under s. 1, “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.

[27] None of the withheld information is the applicant’s contact information.

[28] Under s. 1, “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.

⁵ Order P12-01, 2012 BCIPC 25 at para 85.

⁶ For example, information on page 29 of the responsive documents.

⁷ Information on pages 194 and 202 of the responsive documents.

[29] Solus submits that where the information relates to the applicant's performance of her responsibilities as the Client's power of attorney, the information is work product information.⁸ Solus says that acting in her capacity as power of attorney, the applicant engaged in various business activities such as administering email accounts and facilitating payment of invoices to third party providers.⁹

[30] The applicant says that none of the information is work product information because she never "served" as the Client's power of attorney. Instead, she says that she only "held" the Client's power of attorney.¹⁰

[31] All of the responsive documents were created after the Client revoked the applicant's power of attorney. Therefore, I am not persuaded that any of the information about the applicant relates to the performance of her responsibilities as the Client's power of attorney. I do not see any other basis for finding that the applicant prepared or collected any of the information at issue in relation to her responsibilities or activities related to her employment or business. For these reasons, I find that none of the information at issue is the applicant's work product information.

Findings, applicant's personal information

[32] To summarize, I find some of the information withheld in the responsive documents is not about the applicant, so she has no right to access that information under s. 23(1). However, I find that all of the information that is about the applicant is her personal information under PIPA.

[33] Solus submits that where personal information relates to the applicant's performance of her duties as the Client's power of attorney, the information is the Client's personal information and not the applicant's personal information.¹¹

[34] As previously discussed, all of the responsive documents were created after the Client revoked the applicant's power of attorney. Therefore, I am not persuaded that any of the information about the applicant relates to her performing her duties as the Client's power of attorney. In any event, Solus has not identified, and I am not aware of, any legal authority in support of its position that the applicant's personal information is actually the Client's personal information when it relates to the performance of her duties as power of attorney.

[35] I turn now to consider whether Solus is required to withhold the applicant's personal information under ss. 23(3)(a), 23(4)(c) or 23(4)(d).

⁸ Organization's initial submission at para 35.

⁹ Organization's initial submission at para 34.

¹⁰ Applicant's response submission at page 8.

¹¹ Solus' initial submission at para 36.

Solicitor-client privilege, s. 23(3)(a)

[36] Solus withheld the entirety of 13 emails and portions of 55 emails under s. 23(3)(a), which states that an organization is not required to disclose personal information that is protected by solicitor-client privilege. The term “solicitor-client privilege” includes both legal advice privilege and litigation privilege.¹² Only legal advice privilege is at issue in this inquiry.

Sufficiency of evidence to substantiate the s. 23(3)(a) claim

[37] Solus did not provide most of the information it withheld under s. 23(3)(a) for my review. Instead, it provided sworn affidavit evidence from Solus’ President/CEO (the CEO) and the initial table of records to support its claims that the information is protected by legal advice privilege.

[38] Section 38(1)(b) gives me, as the Commissioner’s delegate, the power to order production of documents to review them during the inquiry. However, given the importance of solicitor-client privilege, and in order to minimally infringe on that privilege, I would only order production of documents being withheld under s. 23(3)(a) when it is absolutely necessary to decide the issues in dispute.

[39] After reviewing Solus’ submissions and evidence, I determined that I did not have enough information to decide if s. 23(3)(a) applies to the disputed information. Given the importance of solicitor-client privilege, I provided Solus an opportunity to submit additional evidence in support of its claim of solicitor-client privilege. In response, Solus provided an affidavit from a lawyer (the lawyer) and the updated table of records.

[40] I also provided the applicant an opportunity to respond to Solus’ supplemental evidence on legal advice privilege and the applicant provided a response submission.¹³ The applicant says the lawyer’s affidavit evidence is inadequate for several reasons, including that:

- The lawyer cannot have personal knowledge of the circumstances in which the communications arose;¹⁴
- The lawyer’s affidavit did not indicate who prepared the updated table of records, which was prepared before she was called to the bar;¹⁵
- The lawyer does not say that she believes solicitor-client privilege applies to the disputed information;¹⁶ and

¹² Order P20-01, 2020 BCIPC 6 at para 14.

¹³ After the applicant responded to Solus’ additional privilege submissions, she requested the opportunity to redo her response to those submissions with the assistance of counsel and I permitted her to do so.

¹⁴ Applicant’s additional privilege submission at para 20.

¹⁵ Applicant’s additional privilege submission at para 21.

¹⁶ Applicant’s additional privilege submission at para 23.

- The lawyer does not say that the descriptions in the updated table of records are accurate and complete.¹⁷

[41] I can see that the lawyer affirms that she reviewed the relevant documents. Although she does not assert that privilege applies to the information at issue, I find that the descriptions in the updated table of records are sufficient for me to assess Solus' claims of privilege. Considering all of the above, I am now satisfied that I have a sufficient evidentiary basis on which to make my s. 23(3)(a) decision.

Legal advice privilege

[42] Legal advice privilege applies to communications that:

1. are between solicitor and client,
2. entail the seeking or giving of legal advice and
3. are intended to be confidential by the parties.¹⁸

[43] In addition, legal advice privilege extends to other kinds of documents and communications that do not strictly meet the above test. For example, legal advice privilege applies to the "continuum of communications" between lawyer and client that do not specifically request or offer advice but are "part of the necessary exchange of information between solicitor and client for the purpose of providing advice."¹⁹

Parties' positions, legal advice privilege

[44] Solus submits that the withheld information consists of communications between Solus, acting for and as the Client, and the Client's legal advisors for the purposes of seeking or giving legal advice, that were intended to be confidential. Solus says that the withheld information forms part of a continuum of information exchanged by the Client, his legal counsel and other third parties in order for the Client's legal counsel to be able to provide him with legal advice about various matters.²⁰

[45] The applicant submits that Solus has not established that the relevant communications are subject to solicitor-client privilege.²¹ The applicant also says that any communications with the Client's care aides were not intended to be confidential.²²

¹⁷ Applicant's additional privilege submission at para 24.

¹⁸ *Solosky v The Queen*, 1979 CanLII 9 (SCC) at p 847.

¹⁹ *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 42.

²⁰ Organization's initial submission at para 64.

²¹ Applicant's additional privilege submission at para 31.

²² Applicant's response submission at page 9.

Analysis and findings, legal advice privilege

[46] Based on the descriptions in the updated table of records, I find that the information at issue under s. 23(3)(a) is as follows:

- Emails and parts of emails between Solus employees and the Client's legal counsel;²³
- Parts of emails between Solus employees;²⁴ and
- Parts of emails between Solus employees, the Client's legal counsel and other individuals.²⁵

[47] I will consider each category of emails below.

Emails and parts of emails between Solus employees and the Client's legal counsel

[48] Solus withheld some emails and parts of emails between Solus employees and the Client's legal counsel under s. 23(3)(a).

[49] None of these emails are between the Client and his legal counsel. Despite this, the law recognizes that, in some circumstances, legal advice privilege will apply to communications between clients or their lawyers and third parties.²⁶ Legal advice privilege will apply to third party communications if the third party serves as a channel of communication between the client and solicitor or performs a function integral to the solicitor-client relationship.²⁷

[50] A third party serves as a channel of communication if it acts as an "agent of transmission" carrying information between the solicitor and client, or if its expertise is required to interpret information provided by the client so that the solicitor can understand it.²⁸

[51] A third party's function is integral to the solicitor-client relationship if, for example, the third party has the client's authorization to either: (a) direct the solicitor to act on the client's behalf; or (b) seek legal advice from the solicitor on

²³ Information on pages 4-5, 12-13, 25, 36-37, 44-45, 49-50, 53, 58, 60-61, 64-66, 75-80, 93, 98-99, 104-106, 111-116, 121-123, 126-127, 129-131, 136, 141-142, 147-149, 152-159, 162, 166-172, 176-181 and 185 of the responsive documents.

²⁴ Information on pages 88 and 143-144 and 146 of the responsive documents.

²⁵ Information on pages 2 and 6 of the responsive documents.

²⁶ *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at paras 43-51 [*College of Physicians*]; *General Accident Assurance Co v Chrusz*, 1990 CanLII 7320 (ON CA) [*Chrusz*].

²⁷ *Greater Vancouver Water District v Bilfinger Berger AG*, 2015 BCSC 532 [*Bilfinger*] at para 27 [*Bilfinger*].

²⁸ *Ibid* at para 27, item b.

the client's behalf.²⁹ Conversely, a third party's function is not integral to the solicitor-client relationship if, for example: (a) the third party gathers information from outside sources and passes it on to the solicitor so that the solicitor might advise the client; or (b) the third party acts on legal instructions from the solicitor.³⁰

[52] Solus submits that its employees were "within the scope of privilege" because they acted as the Client's power of attorney and agent.³¹ The CEO's evidence is that in its capacity as the Client's power of attorney, Solus was responsible for aspects of the Client's legal affairs.³² The lawyer confirms Solus communicated with legal counsel on behalf of the Client in its capacity as his power of attorney.³³

[53] I can see from the parties' submissions and evidence and the responsive documents that the Client required assistance communicating about legal matters. I am also satisfied from what I can see in the responsive documents that the Client's lawyers considered their communications with Solus employees to be privileged in the same way as they would be if they were communicating directly with the Client.

[54] Considering all of the above, I find Solus was authorized by the Client to seek legal advice from the Client's legal counsel on the Client's behalf, and that Solus performed a function essential to the operation of the solicitor-client relationship.

[55] The updated table of records establishes that the emails between Solus employees and the Client's legal counsel were for the purposes of giving and seeking legal advice or fall within the continuum of information exchanged by Solus employees and the Client's legal counsel in order for the Client's legal counsel to be able to provide him with legal advice.

[56] I can see from the unredacted portions of the emails containing the disputed information and the updated table of records that no one outside the solicitor-client relationship was included in those emails, so I am satisfied that they were intended to be confidential.

[57] For these reasons, I find that legal advice privilege applies to the withheld information in the emails between Solus employees and the Client's legal counsel.

²⁹ *College of Physicians*, *supra* note 26 at para 48, quoting with approval from *Chrusz*, *supra* note 26 at para 121.

³⁰ *Ibid*; *Bilfinger*, *supra* note 27 at para 27, item c.

³¹ Additional submissions at para 10.

³² CEO's affidavit at paras 18 and 19.

³³ Lawyer's affidavit at para 4.

Parts of emails between Solus employees

[58] Some of the information in dispute under s. 23(3(a) is in emails between Solus employees.

[59] Some of the redacted information is in an email described in the updated table of records as an “email between [power of attorney] summarizing legal advice sought from counsel.”³⁴ Legal advice privilege extends to communications between employees of the client which transmit or comment on privileged communications with the client’s lawyers.³⁵ I find that this principle also applies in the context of communications between employees of a third party performing a function essential to the operation of the solicitor-client relationship. Otherwise, the disclosure of this information would reveal privileged communications between a lawyer and a client’s agent. Applying this principle, I find that legal advice privilege applies to the disputed information in this email.

[60] Solus also withheld portions of four emails, which it describes in the updated table of records as “emails between [power of attorney] summarizing advice to be sought from legal counsel with respect to strategy and handling complaint from former attorney.”³⁶ I understand Solus is arguing this information is protected by legal advice privilege because it would reveal an intention to seek legal advice.

[61] Typically, the fact that there is information that reveals the intent or need to seek legal advice at some point in the future does not suffice on its own to establish that privilege applies. There must be evidence that disclosure of those communications would reveal actual confidential communications between legal counsel and the client.³⁷

[62] To establish such a claim, previous OIPC orders accept evidence that the client did eventually seek and receive legal advice about the particular matter revealed in the withheld information.³⁸ I agree with that approach as the disclosure of this information would then reveal confidential communications that later occurred between a lawyer and client.

[63] Solus openly disclosed to me, but withheld from the applicant under ss. 23(4)(c) and (d), portions of the disputed emails. I can see from those portions of the disputed emails that the legal advice to be sought relates to a complaint, as described in the updated table of records. I can also see from the portions of the responsive documents withheld from the applicant under ss. 23(d)(c) and (d) but visible to me that Solus employees subsequently sought

³⁴ Information on page 88 of the responsive documents.

³⁵ *Bank of Montreal v Tortora*, 2010 BCSC 1430 at para 12.

³⁶ Information on page 143-144 and 146 of the responsive documents.

³⁷ Order F17-23, 2017 BCIPC 24 at para 49.

³⁸ Order F17-23, 2017 BCIPC 24 at para 50; Order F21-63, 2021 BCIPC 72 at para 41.

and received legal advice from the Client's legal counsel in respect of that complaint.³⁹ Therefore, I accept that the disclosure of this redacted information would reveal or allow accurate inferences about Solus' subsequent request for legal advice.

[64] For these reasons, I find that s. 23(3)(a) applies to the disputed information in the emails between Solus employees.

Parts of emails between Solus employees, the Client's legal counsel and other individuals

[65] Solus withheld parts of:

- an email between Solus employees, the Client's legal counsel, and the Client's real estate agent;⁴⁰ and
- an email between Solus employees, the Client's legal counsel, and the Client's care aide.⁴¹

[66] Solus submits that the real estate agent acted as an agent on behalf of the Client.⁴² In its submission, Solus describes the email as "regarding the Client's real estate holdings."⁴³ The updated table of records describes that email as being "for the purpose of providing notice of the appointment of new POA for future legal matters."

[67] The applicant says that the description of the email in the updated table of records is inconsistent with how Solus describes the communication in its submission.⁴⁴ The applicant also says that Solus has not provided any evidence that the real estate agent was performing a function on the Client's behalf that was integral to the solicitor-client relationship.⁴⁵

[68] As I previously discussed above, the courts have said legal advice privilege will apply to third party communications if the third party serves as a channel of communication between the client and solicitor or performs a function integral to the solicitor-client relationship.

[69] I find the real estate agent is a third party in these communications because they are not the solicitor or the client. Considering the third-party analysis set out by the courts, Solus has not claimed or provided any evidence that the real estate agent acted as a channel of communications between the

³⁹ Information on pages 147-149 of the responsive documents.

⁴⁰ Information on page 2 of the responsive documents.

⁴¹ Information on page 6 of the responsive documents.

⁴² Organization's additional privilege submissions at para 18.

⁴³ Organization's additional privilege submissions at para 18.

⁴⁴ Applicant's additional privilege submissions at para 28.

⁴⁵ Applicant's additional privilege submissions at para 29.

solicitor and client or was performing a function integral to the solicitor-client relationship. While Solus generally submits that the client acted as an “agent”, it does not say that the real estate agent acted as an agent of transmission carrying information between solicitor or client. In my view, given the lack of sufficient explanation or evidence, I find Solus has not shown that the real estate agent served as a channel of communication between the client and solicitor or performed a function integral to the solicitor-client relationship. As a result, I find that legal advice privilege does not apply to the redacted information in the email to the real estate agent.

[70] With respect to the email to the Client’s care aide, Solus says that the care aide communicated with legal counsel on behalf of the Client and was acting as agent of the Client as his trusted aide.⁴⁶

[71] The applicant says that there is no evidence that the care aide was authorized by the Client to speak with legal counsel on his behalf. The applicant also questions why the Client would require both Solus and the care aide to correspond with counsel. The applicant says that the care aide did not perform an integral function to the solicitor-client relationship.⁴⁷

[72] The updated table of records describes the email as an email from legal counsel to both the Client’s care aide and Solus “regarding updates for [the Client] on Health care Representatives and legal counsel’s activities on [the Client’s] business and property affairs.”

[73] Solus openly disclosed part of the email to me but withheld it from the applicant under ss. 23(4)(c) and (d). From the part of the email that I can see, it is clear to me that the care aide was tasked with obtaining information from the Client’s legal counsel and passing it along to the Client. As previously discussed, I am satisfied that the Client required assistance communicating about legal matters. Considering all of the above, I find that the care aide was acting as a channel of communication between the Client and his legal counsel when she received the email from the Client’s legal counsel.

[74] Considering the part of the email that I can see and the description of the email in the updated table of records, I am also satisfied that the information at issue in the email to the care aide relates to legal advice and was intended to be confidential.

[75] For these reasons, I find that legal advice privilege applies to the information at issue in the email to the care aide.

⁴⁶ Further submissions at para 17.

⁴⁷ Applicant’s additional privilege submissions at para 30.

Conclusion, s. 23(3)(a)

[76] To summarize, I find Solus is permitted to withhold most of the information at issue under s. 23(3)(a). However, it may not withhold the information at issue in the email to the real estate agent because it is a third party communication that does not satisfy the requirements established by the courts for the protection of such a communication.⁴⁸

Ordering production of the information for which I found s. 23(3)(a) does not apply

[77] Solus did not apply ss. 23(4)(c) and (d) to the information withheld under s. 23(3)(a) that I found is not protected by solicitor-client privilege (the redacted information).⁴⁹ However, in my view, ss. 23(4)(c) and/or (d) may apply to the redacted information. To ensure completeness and since ss. 23(4)(c) and (d) are mandatory exceptions to disclosure, I find it necessary to consider whether those exemptions apply to the redacted information. However, since Solus has withheld the redacted information from me, I am unable to review it to conduct the necessary analysis.

[78] I do not think it is appropriate for me to decide whether ss. 23(4)(c) or (d) apply to the redacted information in the absence of that information. Sections 23(4)(c) and (d) do not have the same significance as solicitor-client privilege and cannot be dealt with only on affidavit evidence. Those provisions require detailed line-by-line analysis that I cannot conduct without reviewing the disputed information.⁵⁰

[79] Section 38(1)(b) allows the commissioner to order a person to produce for the commissioner a document in the custody or under the control of the person, including a document containing personal information. I find it necessary in this case to order Solus to produce the document containing the redacted information for the purpose of deciding whether ss. 23(4)(c) and/or (d) apply to that information. For added clarity, that information is on page two of the responsive documents. Once Solus provides that document for my review, I will decide whether ss. 23(4)(c) and/or (d) apply to the redacted information in a separate and subsequent order.

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

[80] Section 23(4)(c) says that an organization must refuse to disclose information if the disclosure would reveal personal information about another

⁴⁸ Information on page 2 of the responsive documents.

⁴⁹ May 23, 2024 letter from the organization to the OIPC.

⁵⁰ See also Order P23-06, 2023 BCIPC 63 at paras 113-114.

individual. The term “another individual” refers to an individual other than the applicant.⁵¹

[81] Solus withheld most of the applicant’s personal information that remains in dispute under s. 23(4)(c). However, while reviewing the responsive documents, I found that it was apparent that s. 23(4)(c) possibly applies to some of the information that Solus only withheld under s. 23(4)(d).⁵² Because s. 23(4)(c) is a mandatory exception to disclosure, I have considered in my analysis below whether s. 23(4)(c) applies to that information.

Parties’ positions, s. 23(4)(c)

[82] Solus says that the information at issue is the about the Client, the individuals named in the applicant’s access request, and the Client’s third party service providers.⁵³ Solus says that the information at issue is reasonably capable of identifying those individuals because it directly identifies or enables one to draw an accurate inference about their identity.⁵⁴

[83] Solus says that it does not matter whether or not the applicant was once entitled to or previously in possession of some or all the disputed information. Solus says that the only relevant analysis is whether a record contains the personal information of another individual, in which case it must not be disclosed.⁵⁵

[84] The CEO says that given the applicant’s knowledge and the limited number of professional advisors identified in her access request, he believes the applicant would be able to discern the identity of the individuals making statements in the responsive documents.⁵⁶

[85] The applicant says that she is simply seeking transparency about statements referencing her. She says that information that she already knows cannot be “revealed” to her.⁵⁷

Analysis and findings, s. 23(4)(c)

[86] The applicant’s personal information at issue under s. 23(4)(c) is the following:

⁵¹ Order P14-03, 2014 BCIPC 49 at para 13; Order P11-01, 2011 BCIPC 9 at para 17.

⁵² For example, information on pages 74 and 155 of the responsive documents.

⁵³ Organization’s initial submission at paras 41-42.

⁵⁴ Organization’s initial submission at para 48.

⁵⁵ Organization’s initial submission at paras 46-47.

⁵⁶ CEO’s first affidavit at para 21.

⁵⁷ Applicant’s response submission at page 9.

- Emails and portions of emails between other individuals that are about the applicant;
- Information about the applicant in a letter from Solus to the applicant's legal counsel;
- A summary of a telephone call between a Solus employee and the applicant;
- Information summarizing what Solus employees and other individuals said about the applicant in telephone calls; and
- Information about other individuals in emails authored by the applicant.

[87] The issue here is whether any of this information would also reveal the personal information of another individual.

[88] 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. Therefore, the first question under the s. 23(4)(c) analysis is whether the withheld information is about an identifiable individual other than the applicant. The second question is whether the withheld information is either contact information or work product information.

[89] I find some of the withheld information is not about another identifiable individual. For example, information about a variety of organizations, including a law firm, a telecommunications company and a company in which the applicant was a director.⁵⁸ Solus also withheld information about invoices the applicant submitted to Solus that, with one exception, are not about any other individuals.⁵⁹ Finally, Solus withheld information about an action taken by a law firm.⁶⁰ None of this information is about any identifiable individual other than the applicant.

[90] However, I find that the rest of the withheld information is about identifiable individuals other than the applicant because the individuals are identified by name or the withheld information is so specific that it would enable the applicant to identify those individuals.

[91] 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 under PIPA and Solus is not authorized to withhold it under s. 23(4)(c).

⁵⁸ Information on pages 9, 10 and 155-157 of the responsive documents.

⁵⁹ Information on page 18 of the responsive documents.

⁶⁰ Information on page 174 of the responsive documents.

[92] As previously noted, “contact information” is defined under s. 1 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.”

[93] I find that some of the information about other individuals is contact information. Solus withheld the names, work email addresses, work phone numbers and work fax numbers of several individuals who sent emails containing the applicant’s personal information. This information appears in email signatures and the “from” lines of emails. I find that this information is contact information because it appears in the responsive documents to enable those individuals to be contacted at their place of business and the communications were for business-related purposes. As a result, I conclude the disclosure of this information would not reveal “personal information” about another individual so Solus cannot withhold it under s. 23(4)(c).

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

[95] I find none of the redacted information about other individuals is work product information for the following reasons:

- I am not persuaded that what other individuals said about the applicant in emails qualifies as personal information “prepared” or “collected” by those individuals as part of their employment responsibilities or activities. For example, some of this information is their personal opinions about the applicant that they shared in informal conversations.
- The withheld information in the letter from Solus to the applicant’s legal counsel is about the Client, who did not prepare or collect the personal information in the letter.
- The withheld information in the telephone call summaries is not work product information because it is about the telephone callers, who did not prepare or collect the personal information in the summaries.
- The information about other individuals in emails authored by the applicant is not work product information because the applicant did not prepare or collect that information as part of her responsibilities or activities related to her employment or business.

[96] For these reasons, I conclude that s. 23(4)(c) applies to most of the applicant’s personal information because it would reveal the personal information of individuals other than the applicant. However, s. 23(4)(c) does not apply to a small amount of the applicant’s personal information because it is contact information.

[97] I am not persuaded by the applicant's position that s. 23(4)(c) does not apply to information that she already knows because it cannot be "revealed" to her. Section 23(4)(c) is a mandatory exclusion to access under PIPA that does not take into account relevant factors and circumstances such as whether the applicant already knows or can easily determine the information at issue.⁶¹ Under s. 23(4)(c), an organization must withhold information if it reveals the personal information of another individual even though the applicant may already know that information.⁶² I find this approach is consistent with the purpose of s. 23(4)(c), which is to protect the personal information of people other than the applicant.⁶³

Identity of an individual who provided personal information about another individual, s. 23(4)(d)

[98] Section 23(4)(d) requires an organization to refuse to disclose information that would reveal the identity of the individual who has provided personal information about another individual and the individual providing the personal information does not consent to the disclosure of their identity.

[99] The information at issue under s. 23(4)(d) consists of:

- The contact information of individuals who sent emails about the applicant that I found could not be withheld under s. 23(4)(c); and
- Information in emails between other individuals.

[100] Solus says that the emails include third parties describing the applicant's conduct and interactions with third party service providers and Solus personnel.⁶⁴ Solus says that there is no evidence that any of the third parties have consented to disclosure of their identities, and that certain individuals have expressly advised that they do not consent to disclosure of their identities.⁶⁵

[101] The applicant says that professional service providers should consent to acknowledging themselves as the source of statements made about her.⁶⁶

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

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

⁶¹ Order P22-06, 2022 BCIPC 54 (CanLII) at para 67.

⁶² *Ibid.*

⁶³ Order P20-01, 2020 BCIPC 6 at para 21.

⁶⁴ Organization's initial submission at para 49.

⁶⁵ Organization's initial submission at para 52.

⁶⁶ Applicant's response submission at page 9.

- Individual “A” provided personal information about another individual (Individual “B”) who can be the applicant; and
- Individual “A” does not consent to the disclosure of their identity.⁶⁷

[103] Solus withheld the names, work email addresses, work phone numbers and work fax numbers of several individuals who sent emails containing the applicant’s personal information. I am satisfied that this information would reveal the identity of those individuals, especially considering the applicant’s knowledge of the service providers who were involved in the Client’s affairs.

[104] I can also see from the responsive documents that those individuals provided personal information about another individual, specifically the applicant. There is no evidence that any of those individuals who provided personal information about the applicant consent to the disclosure of their identity. Instead, as noted by Solus, I can see that several of those individuals have expressly withheld their consent. As a result, I conclude s. 23(4)(d) applies to any information in the emails at issue that would reveal their identities such as their names and work email addresses.

[105] However, Solus also withheld information about other organizations and invoices under s. 23(4)(d).⁶⁸ I do not see how disclosing that information would reveal the identity of an individual who provided personal information about another individual, so s. 23(4)(d) does not apply to that information. There is also some information that is so general that I am not persuaded it would reveal the identity of an individual who provided personal information about another individual.⁶⁹

[106] For these reasons, I find that s. 23(4)(d) applies to some but not all the information that Solus withheld on that basis.

Severance, s. 23(5)

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

[108] Solus says that it is not possible to sever the information at issue.⁷⁰ Solus says that to the extent the third party service providers’ personal information refers to the applicant, it is inextricably linked with the personal information of

⁶⁷ Order P22-06, 2022 BCIPC 54 (CanLII) at para 69.

⁶⁸ Information on pages 9, 10, 16, 18, 108, 155-157 and 174 of the responsive documents.

⁶⁹ Information on pages 3, 13, 20-21, 23, 57, 58, 65, 69, 91, 100, 102-103, 105, 108, 110-112, 115, 117, 123, 126, 135, 137, 146, 148, 167, 176 and 185 of the responsive documents.

⁷⁰ Organization’s initial submission at para 68.

those third parties such that severing is impossible.⁷¹ Solus also says that it is not possible to remove the personal information of other individuals and leave any intelligible information to disclose.⁷²

[109] The applicant says that severing information is possible, and that she can determine what information is intelligible to her.⁷³

[110] I have found that ss. 23(3)(a), 23(4)(c) and 23(4)(d) each apply to some of the information in dispute in this inquiry. I will consider whether any information can be severed without revealing any information that Solus is required or authorized to withhold under those provisions.

[111] First, I have considered whether Solus is able to remove any of the information that I found is protected by legal advice privilege under s. 23(3)(a) and provide the applicant access to the remainder of her personal information in those documents.

[112] Courts have repeatedly cautioned against severing because of the risk of revealing privileged information. For example, in *British Columbia (Attorney General) v Lee*, the BC Court of Appeal said that “severance should only be considered when it can be accomplished without any risk that the privileged legal advice will be revealed or capable of ascertainment.”⁷⁴ In my view, none of the information to which I have found s. 23(3)(a) applies can be severed without any risk of revealing the privileged information.

[113] Next, I have considered whether anything further can be disclosed from the responsive documents without revealing any information that Solus is required to withhold under ss. 23(4)(c) or (d). In my view, most of the applicant’s personal information is so intertwined with the information that Solus must withhold under ss. 23(4)(c) and (d) that it is not possible to provide the applicant with the vast majority of her personal information.

[114] However, I find that some portions of the applicant’s personal information can be disclosed without revealing the personal information of another person or the identities of individuals who provided personal information about another individual. For example, there are several instances where the applicant’s name can be disclosed.

[115] I have considered whether s. 23(5) requires Solus to give the applicant small amounts of her personal information that may not reveal much, if anything, about the nature of the responsive documents.

⁷¹ Organization’s initial submission at para 45.

⁷² Organization’s initial submission at para 70.

⁷³ Applicant’s response submission at page 10.

⁷⁴ 2017 BCCA 219 at para 40.

[116] Section 4(2) of the *Freedom of Information and Protection of Privacy Act*⁷⁵ requires reasonable severing. Previous OIPC orders have clarified that the phrase “can reasonably be severed” under s. 4(2) means the remaining information after a record is severed should be intelligible, responsive and meaningful, and if it is not, then that information cannot be reasonably severed under s. 4(2).⁷⁶ PIPA contains no such provision requiring reasonable severing and s. 23(5) contains no language qualifying the nature or amount of information that the organization must provide. Therefore, I conclude that PIPA requires an organization to provide all the applicant’s personal information that it can without revealing information that it is required to withhold under ss. 23(4)(a), (b), (c) or (4).

CONCLUSION

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

1. I require Solus to refuse the applicant access to the information that I found does not qualify as her personal information under PIPA.
2. I confirm Solus’ decision to refuse the applicant access to all the information withheld under s. 23(3)(a) except for the information on page two of the responsive documents.
3. I require Solus to refuse the applicant access to the personal information to which I found ss. 23(4)(c) and (d) apply.
4. I require Solus to give the applicant access to the information that I have found it is not required to withhold under ss. 23(4)(c) or (d) and the information that can be severed under s. 23(5). I have highlighted this information in green on pages 1, 3, 7-10, 13, 15-16, 18, 20-23, 26, 28, 29, 32, 35, 38, 41, 51, 54, 57-59, 62, 65, 67, 69, 71, 73-74, 76-77, 79-82, 84-86, 88, 91-94, 96, 98-105, 107-108, 110-112, 115, 117-118, 120-126, 129, 132-135, 137-138, 140, 146, 148, 150-153, 155-158, 160-161, 163-165, 167, 173-174, 176, 178, 183, 185-186 and 188-190 of the copy of the responsive documents that will be provided to Solus with this order.
5. Solus must provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order, along with a copy of the pages described at item 4 above.

⁷⁵ RSBC 1996, c 165.

⁷⁶ For example, Order F24-40, 2024 BCIPC 48 at para 58.

[118] Pursuant to s. 53(1), Solus is required to comply with the above orders by no later than **July 26, 2024**.

[119] Under ss. 38(1)(b) and 38(5), I require Solus to produce for my review a copy of page two of the responsive documents by **June 27, 2024** so that I may determine whether Solus is required to withhold this information under ss. 23(4)(c) or (d).

June 13, 2024

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: P20-82886