Order P24-10

BC SOCIETY FOR THE PROTECTION OF ANIMALS

Allison J. Shamas
Adjudicator

August 28, 2024

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Summary: An individual (the applicant) made a request under the Personal Information Protection Act (PIPA) to the British Columbia Society for the Protection of Animals (SPCA) for access to his personal information. The SPCA provided the responsive records but withheld some information and records under ss. 3(2)(h) (documents related to a prosecution), 3(3) (solicitor-client privilege), 23(3)(a) (solicitor-client privilege), 23(3)(b) (harm to competitive position), 23(3)(c) (collected without consent for investigation and associated proceedings and appeals not complete), 23(4)(d) (identity of individual who provided information about another) and on the basis that the information was not the applicant's personal information. The adjudicator also considered the application of s. 23(4)(c) to the information in dispute. The adjudicator found that the applicant had no right to access some of the information because it was not his personal information. With respect to the applicant's personal information, the adjudicator determined that the SPCA was authorized or required to withhold some information under ss. 23(3)(a), 23(4)(c), and 23(4)(d), and that some other information could not be severed from the documents containing privileged information under s. 23(5). The adjudicator ordered the SCPA to disclose the balance of the withheld information to the applicant.

Statutes Considered: *Personal Information Protection Act*, SBC 2003 c 63 ss. 1 (definition of "contact information", "employee personal information", "personal information" and "work product information"), 3(2)(h) and 3(3), 23(3)(a), 23(3)(b), 23(3)(c), 23(4)(c), and 23(4)(d); *Criminal Code*, R.S.C., 1985, c. C-46, s. 579.

INTRODUCTION

[1] An individual (the applicant) made a request under the *Personal Information Protection Act* (PIPA) to the British Columbia Society for the Protection of Animals (SPCA) for access to his personal information. The SPCA provided the responsive records but withheld some information and records under ss. 3(2)(h) (documents related to a prosecution), 3(3) (solicitor-client privilege), 23(3)(a) (solicitor-client privilege), 23(3)(b) (harm to competitive

position), 23(3)(c) (collected without consent for investigation and associated proceedings and appeals not complete), 23(4)(d) (identity of individual who provided personal information) and on the basis that the information was not the applicant's personal information.

[2] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the SPCA's decision. The OIPC's mediation process did not resolve all the issues in dispute, and the applicant requested that the matter proceed to inquiry.

Preliminary Issues

[3] Upon reviewing the records at issue, I determined that some of the information in dispute might be personal information about other individuals. Section 23(4)(c) of PIPA provides that an organization must refuse to disclose information if the disclosure would reveal personal information about another individual. While the SPCA did not rely on s. 23(4)(c) to withhold any information in dispute, as it is a mandatory exception to disclosure, I decided to consider it as an issue in this inquiry and I offered the parties an opportunity to make submissions about its application to the information in dispute. The SPCA provided additional submissions. The applicant did not. I will consider the SPCA's submissions about s. 23(4)(c) in my analysis below.

ISSUES

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

1. Does s. 3(2)(h) apply to any of the responsive records?
2. Is the SPCA authorized to refuse access to the applicant's personal information under ss. 3(3), 23(3)(a), 23(3)(b), or 23(3)(c)?
3. Is the SPCA required to refuse access to the applicant's personal information under ss. 23(4)(c) or 23(4)(d)?

[5] Section 51(1) of PIPA places the burden on the SPCA to prove that the applicant has no right of access to their personal information.[1]

DISCUSSION

Background

[6] The SPCA is a statutory society, created and continued pursuant to the *Prevention of Cruelty to Animals Act* (the Cruelty Act).[2] Its powers and duties are

[1] PIPA s. 51.
[2] RSBC 1996, c. 372.

set out in the Cruelty Act, and include conducting inspections for the purpose of determining compliance with its provisions.[3]

[7] The applicant is an animal rights activist who provided evidence of an alleged violation of the Cruelty Act to the SPCA (the Report) and asked the SPCA to conduct an inspection.[4]

[8] The SPCA commenced an inspection into the Report. However, Crown Counsel for the Province of BC (Crown Counsel) did not lay charges in relation to the alleged violation of the Cruelty Act.

[9] After the applicant made the Report, the Abbotsford Police Department (the APD) commenced an investigation into the manner in which the applicant obtained the evidence submitted to the SPCA in support of the Report. Crown Counsel laid charges against the applicant for the manner in which they obtained the evidence, and the charges came before the Supreme Court of British Columbia. However, Crown Counsel entered a stay of proceedings with respect to those charges on April 29, 2022.

[10] The applicant requested copies of all email communications that referred to him by name sent to or from the SPCA representative responsible for the inspection in connection with the Report.

Documents and information in dispute

[11] The responsive documents are 113 pages of email communications, organized into 31 distinct email chains. They are:

- emails between the applicant and an SPCA employee about the Report,
- emails between SPCA employees and APD Officers about the Report and the APD's investigation into the manner in which the applicant obtained the evidence in support of the Report,
- emails between SPCA employees and Crown Counsel, and
- emails amongst SPCA employees and SPCA Board members about SPCA communications strategy, the Report, and the communications with Crown Counsel.

Some of the email chains also include information about individuals' personal lives and health information.

[3] Cruelty Act s. 15.
[4] The manner in which the evidence and request to inspect came before the SPCA is more complex than what is described above. However, as these nuances are not relevant to the PIPA issues before me, I have not recorded them here.

Personal Information

[12] Section 23(1) of PIPA gives an individual the right to access their own personal information under the control of an organization, subject to the exceptions set out in ss. 23(3) and (4). Therefore, the first issue to be determined is whether the information in dispute is the applicant's "personal information" as defined in PIPA.

[13] Section 1 of 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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> "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;
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> "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;
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> "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.

[14] Information is about an identifiable individual if it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information, and is collected, used, or disclosed for a purpose related to that individual.[5]

[15] The SPCA withheld information from 13 email chains[6] on the basis that the information was not the applicant's personal information.

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[5] Order P12-01, 2012 BCIPC 25 (CanLII) at para. 85 and Order P22-06, 2022 BCIPC 54 (CanLII) at para 24.

[6] The information the SPCA says is not the applicant's personal information is found in the email chains located at pages 10-12, 13-15, 16-18, 20-23, 52-60, 61-68, 69-74, 75-80, 81-83, 84-86, 103-105, 106-108, 109-110 of the documents.

[16] Six of those email chains are communications amongst SPCA officials about the organization's communications strategy.[7] I find that the substance of these emails is about the SPCA as an organization, not about the applicant. While these email chains contain occasional references to the applicant, these references are incidental to the substance of the emails and comprise a very small proportion of them.[8] I find that the only information that is about the applicant in these email chains is the specific references to the applicant. Therefore, excepting the small amount of information about him, I find that the applicant has no right to access the information in these emails under PIPA.

[17] The remaining seven email chains are communications among SPCA officials about the facts surrounding and resulting from the applicant's Report.[9] Many of these email chains discuss questions posed to the SPCA by the applicant. They also describe the applicant's actions, and discuss the evidence submitted to the SPCA by the applicant. I find that in substance, the information in these email chains is about the applicant. While they also include some information about other individuals' personal lives and health information, I find that this information is incidental to and comprises a small part of these email chains. For this reason, I find that with the exception of the small amount of information about other individuals, the information in these email communications is about the applicant.

[18] I also find that the information described above is not the applicant's contact information or work product information because it does not relate to the applicant's place of business or employment. Therefore, I find that the information in these email chains is the applicant's personal information.

[19] There is no dispute between the parties that the information withheld from the remaining 18 email chains is the applicant's personal information. Furthermore, having reviewed the remaining email communications, I find that they all relate to the applicant's Report and that they are not contact or work product information. Accordingly, I find that the information withheld from the remaining 18 email chains is the applicant's personal information.

[20] I turn now to the question of whether the SPCA is authorized or required to withhold any of the applicant's personal information under ss. 23(3) or 23(4). As the SPCA's application of the provisions in ss. 23(3) and (4) overlap, where I find that the SPCA is authorized or required to withhold information under one

[7] Pages 10-12, 13-15, 16-18, 20-23, 81-83, 84-86, and 106-108 of the documents.
[8] The SPCA has already disclosed some of the references to the applicant. Other specific references to the applicant found in these email chains are found at pages 10, 13, 16, 17, 20, and 21 of the records.
[9] Pages 52-60, 61-68, 69-74, 75-80, 103-105, and 109-110 of the documents.

provision, I will not consider the application of other provisions to that same information.

Solicitor-Client Privilege – ss. 23(3)(a) and 3(3)

[21] The SPCA withheld some information that qualifies as the applicant's personal information under ss. 3(3) and 23(3)(a).

[22] Section 23(3)(a) authorizes an organization to refuse access to information protected by solicitor-client privilege.

[23] Section 3(3) states "[n]othing in this Act affects solicitor-client privilege." The OIPC has previously considered the language of s. 3(3) and held that it functions as an interpretive guide whose purpose is to ensure that none of PIPA's provisions impinge on, or diminish, solicitor client privilege.[10] I agree with this interpretation and adopt it here. Accordingly, in considering the SPCA's decision to withhold information under ss. 23(3)(a) and 3(3), I will consider the application of s. 23(3)(a) interpreted in accordance with s. 3(3).

[24] The term "solicitor-client privilege" under s. 23(3)(a) encompasses both legal advice privilege and litigation privilege.[11] The SPCA claims legal advice privilege.

[25] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion, or analysis.[12] For information to be protected by legal advice privilege it must be:

1. A communication between solicitor and client (or their agent),
2. that is intended by the solicitor and client to be confidential, and
3. that entails the seeking or providing of legal advice.[13]

[26] Not every communication between solicitor and client is protected by legal advice privilege. However, if the conditions set out above are satisfied, then legal advice privilege applies.[14]

[27] Legal advice privilege is not limited to records that communicate or proffer legal advice. It also extends to information that does not satisfy the test set out

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[10] 2020 BCIPC 21 (CanLII) at para. 44 and 45.
[11] P06-01, 2006 CanLII 13537 at para. 53.
[12] *Ibid* at para. 26.
[13] *Solosky v The Queen*, 1979 CanLII 9 (SCC) [Solosky]; *R v B*, 1995 CanLII 2007 (BCSC) at para 22
[14] *R. v B., ibid* at para. 22; *Solosky ibid* at page 13; *R. v McClure*, 2001 SCC 14 [*McClure*] at para. 36, *Festing v Canada (Attorney General)*, 2001 BCCA 612 at para. 92.

above, where disclosure of the information would reveal or allow an accurate inference to be made about privileged communications. For example, legal advice privilege extends to internal client communications that discuss legal advice and its implications.[15]

Parties' arguments

[28] The SPCA states that the withheld information is discussions among SPCA staff about the legal advice sought and received from Crown Counsel, and that disclosing this information would reveal the legal advice provided by Crown Counsel.[16]

[29] To support its position, the SPCA provided affidavit evidence from an SPCA employee who it asserts is a Special Provincial Constable appointed under the *Police Act*[17] (Special Constable). Discussing their communications with Crown Counsel, the SPCA asserts that each of the three criteria are met in this case. Addressing the first requirement, it asserts that the communications at issue were between Crown Counsel and the Special Constable. With respect to confidentiality, it submits that both the SPCA and Crown Counsel intended for the communications to be confidential. Regarding Crown Counsel's intention, the SPCA refers to an email from Crown Counsel stating that their communications with the SPCA that involve legal advice are privileged. Finally, it states that the withheld information is conversations among SPCA staff about the legal advice that the Special Constable sought from Crown Counsel.

[30] The SPCA also relies on an affidavit from the Special Constable in which the Special Constable states that they requested and received legal advice from Crown Counsel about the admissibility of the evidence submitted to the SPCA by the applicant.[18]

[31] The applicant states that they do not challenge the SPCA's assertion of solicitor-client privilege to the extent the privilege claims relate to communications between the SPCA and Crown Counsel for the purpose of obtaining legal advice. However, the applicant also notes that because of the redactions they cannot confirm what information the SPCA redacted based on privilege and asks that the OIPC review all redactions to ensure that they meet the three-part test for legal advice privilege.

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[15] Solosky *supra* note 13 at para. 12 citing *Mutual Life Assurance Co. of Canada v Canada (Deputy Attorney General)* [1988] OJ No. 1090 (Ont. SCJ). See also Order F22-34, 2022 BCIPC 38 (CanLII), at para. 41, Order F22-53, 2022 BCIPC 60 (CanLII), at para. 13, and Order F23-07, 2023 BCIPC 8 (CanLII), at para. 25.

[16] While the documents include communications between SPCA officials and Crown Counsel, the SPCA did not withhold those communications under s. 23(3)(a).

[17] [RSBC 1996] c 367.

[18] Initial submission of the SPCA, affidavit of the Special Constable, at paras. 3 and 5.

Findings and analysis

[32] The SPCA provided the information it withheld under s. 23(3)(a) for my review. In arriving at the findings below, I have considered the records, the affidavit evidence of the Special Constable, and the parties' submissions.

[33] The SPCA asserts privilege over information found in five email chains between SPCA employees. It is:

- the Special Constable saying that they requested legal advice from Crown Counsel about two specific issues,[19]
- a detailed summary of the legal advice the Special Constable received from Crown Counsel;[20] and
- background information an SPCA employee provides to other SPCA employees that relates to the legal advice.[21]

[34] In *R v Campbell*[22] the Supreme Court of Canada (SCC) held that a consultation by a police officer with a Department of Justice lawyer over the legality of a proposed investigation was subject to legal advice privilege, reasoning that it was important that police officers were able to obtain professional legal advice in connection with criminal investigations without the potential disclosure of their confidences in subsequent proceedings.[23] In *Campbell,* the SCC stated that the question of whether a communication between a law enforcement officer and a government lawyer is protected by solicitor client privilege must be decided on a case-by-case basis.[24] Providing further guidance, the SCC stated that the issue of whether or not solicitor-client privilege attaches depends on the nature of the relationship, the subject matter of the advice, and the circumstances in which it is sought and rendered.[25]

[35] The BC Court of Appeal and this office have followed *Campbell*, recognizing that communications between law enforcement officials and government lawyers concerning advice about law enforcement investigations are privileged in certain circumstances.[26]

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[19] Documents pages 54, 55, 106, 107, 109, and 112.
[20] Documents pages 54, 62.
[21] Documents page 53, 54, 55, 61, 62, 63.
[22] 1999 CanLII 676 (SCC) [*Campbell*].
[23] *Ibid* at para 50. See also *R v Creswell*, 2000 BCCA 583[*Creswell*] at para 32; and Order F24-52, 2024 BCIPC 61 at paras 26-30.
[24] *Ibid.*
[25] *Descôteaux v Mierzwinski*, 1982 CanLII 22; *Campbell* at para 50; and Order F24-52, 2024 BCIPC 61 at paras 26-30.
[26] *Campbell* at para 49, citing *R v Gruenke,* 1991 CanLII 40 (SCC) at p. 289; *Creswell* at para 32; and Order F24-52, 2024 BCIPC 61 at paras 26-30. I note that Order F24-52 is currently under judicial review, but the judicial review does not concern the approach to s. 14.

[36] In this case, I find that the communications over which the SPCA asserts privilege were between the Special Constable and Crown Counsel. I also accept that at the relevant time, the Special Constable was appointed as a special provincial constable under the Police Act and was conducting an inspection of an alleged violation of the Cruelty Act. I also accept that both the SPCA and Crown Counsel intended those communications to be privileged. Finally, having reviewed the communications, I find that they were directly relevant to the Special Constable's inspection under the Cruelty Act and obligations as a special provincial constable. Therefore, I find that the communications between Crown Counsel and the Special Constable satisfy the test for legal advice privilege.

[37] However, the information in dispute is not the actual communications between the Special Constable and Crown Counsel, but rather communications between the Special Constable and other SPCA employees about the privileged communications.

[38] As discussed above, privilege extends to information that does not technically satisfy the test for legal advice privilege, where disclosing the information would reveal or allow an accurate inference to be made about privileged communications. I find that disclosing the information in which the Special Constable discusses their request for legal advice and the legal advice they received from Crown Counsel would directly reveal privileged communications between the Special Constable and Crown Counsel. As a result, I find that this information is subject to legal advice privilege.

[39] I come to the opposite conclusion about the background information the Special Constable provides to other SPCA employees. There is no indication on the face of the records that this information was ever the subject of communications between the SPCA and Crown Counsel, or that disclosing it would reveal or allow accurate inferences about privileged communications. The SCPA does not explain how this information relates to or could reveal or allow accurate inferences about privileged communications. Therefore, I find that it is not subject to legal advice privilege.

Waiver

[40] Privilege belongs to and can only be waived by the client.[27] Once privilege is established, the party seeking to displace it has the onus of showing it has been waived.[28]

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[27] *Canada (National Revenue) v Thompson*, 2016 SCC 21 at para 39; *Lavallee, Rackel & Heintz v Canada (Attorney General)*, 2002 SCC 61 at para 39.
[28] *Le Soleil Hotel & Suites Ltd. v Le Soleil Management Inc*., 2007 BCSC 1420 at para 22; *Maximum Ventures Inc v De Graaf*, 2007 BCSC 1215 at para 40.

[41] The disclosure of privileged information to individuals outside of the solicitor-client relationship may amount to a waiver of privilege.[29] Waiver of privilege is ordinarily established where it is shown that the privilege holder knows of the existence of the privilege and voluntarily shows an intention to waive that privilege.[30] Waiver may also occur in the absence of an intention to waive, where fairness and consistency so require.[31]

[42] For the following reasons, I find that the SPCA intentionally waived privilege over some of the information withheld under s. 23(3)(a).

[43] In its submissions, the SPCA acknowledges that it disclosed the fact that it sought advice from Crown Counsel regarding the permissible use of the video submitted by the applicant to the applicant and the public at large.[32]

[44] The applicant states that the Special Constable also told them that Crown Counsel had deemed the evidence provided to the SPCA inadmissible in court.[33]

[45] In my view, the records support the applicant's claim. In an email to other SPCA employees (which the SPCA disclosed to the applicant), the Special Constable wrote:

> I spoke with [the applicant] for about 20 minutes I informed him that … the Crown had advised me that the evidence was inadmissible. I do not recall giving him [Crown Counsel's] name but might have told him it was the same Crown he had work with previously. I never told him that the investigation file had been sent to Crown.[34]

[46] In the circumstances, I find that it is more probable than not that the Special Constable told the applicant, not only that the SPCA had sought legal advice about the admissibility of the evidence the applicant had submitted to the SPCA, but also that Crown Counsel's advice was that the evidence would be inadmissible in court.

[47] In addition, information the SPCA withheld from the records includes statements from an SPCA employee which, in my view, suggests that the SCPA chose to knowingly waive privilege.[35] As the SPCA withheld the information on which this finding is based, I cannot provide details without revealing information that is in dispute. However, I find the statements compelling because they were

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[29] S*&K Processors Ltd. v Campbell Ave Herring Producers Ltd*., 1983 CanLII 407 (BCSC) at para 6.
[30] *Ibid.*
[31] *Ibid.*
[32] SPCA's reply submission at para. 13.
[33] Applicant's submission at para 59. See also documents page 59 where the applicant made a similar statement. The SPCA disclosed this information to the applicant.
[34] Documents page 54.
[35] Documents pages 81-82 and 84-85.

made by an SPCA employee whose title suggests they were in a decision-making position at the time of the potential waiver. As a result, I accept that they reflect the SPCA's actions. Based on this information, I find that the SPCA disclosed Crown Counsel's advice that the evidence submitted by the applicant would not be admissible in court to the public despite a reminder from Crown Counsel that the information was privileged.

[48] In the circumstances, I find that the SPCA knowingly decided to waive privilege over the Special Constable's request for legal advice about the admissibility of the evidence submitted by the applicant[36] as well as Crown Counsel's advice that the evidence submitted by the applicant would not be admissible in court.[37] For this reason, the SPCA is not authorized to withhold this information under s. 23(3)(a).

[49] Not all the s. 23(3)(a) information in the records was part of the waiver. I will now consider the effect of the partial waiver on the remaining s. 23(3)(a) information in dispute.

Partial waiver

[50] In some circumstances, a waiver of privilege respecting part of a communication may, where fairness dictates, require waiver in respect of the whole communication. In a case involving a partial waiver, the preferred approach is to look at all the circumstances of the case and ask whether disclosing part of a privileged communication is likely to mislead the other party or the court. This approach to partial disclosure is consistent with the principles that solicitor-client privilege must be as close to absolute as possible and that disclosure of information, which is properly subject to solicitor-client privilege, is only ordered when it is absolutely necessary to achieve the ends of justice.[38]

[51] The SPCA argues that it did not waive privilege over the "full scope" of advice provided by Crown Counsel and that there is no basis on which to extend the waiver of some of the privileged communications to permit disclosure of the full extent of the Crown's advice.[39] In this regard, the SPCA distinguishes the

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[36] Documents pages 54, 55, 62, 107, 109, and 112.
[37] Documents page 55.
[38] Order F15-67, 2015 BCIPC 73 (CanLII) at para. 19 citing *S&K Processors Ltd. v. Campbell Ave. Herring Producers Ltd*., 1983 CanLII 407 (BCSC) at para. 6 and 10; *Power Consol. (China) Pulp Inc. v. B.C. Resources Invt. Corp*., 1988 CanLII 3214 (BCCA) at para. 10, adopting *Lowry v. Canadian Mountain Holidays Ltd*. 1984 CanLII 378 (BC SC), para. 18; *Gill v. Canada (Attorney General)*, 2012 BCSC 1807 (CanLII) at para. 32; *R. v. Basi*, 2009 BCSC 777 (CanLII) at para. 22; *Chapelstone Developments Inc. v Canada*, 2004 NBCA 96 (CanLII), para. 58; *Descôteaux v. Mierzwinski,* 1982 CanLII 22 (SCC) p. 13; *and Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61 (CanLII) at para. 36.
[39] SPCA correspondence dated August 2, 2024 at para 12.

legal advice that it did disclose,[40] from that which it did not (which it describes as "regarding an investigation of a third party)."[41]

[52] There is nothing before me to suggest that proceedings between the parties are ongoing, or that fairness otherwise requires disclosure of the full extent of the legal advice at issue. Although the partial waiver offers only a summary of the legal advice, in my view, it is an accurate statement of that advice, and it is not misleading just because it omits further specifics and other information.

[53] Solicitor-client privilege is integral to the legal system, and it is not to be interfered with lightly. In the circumstances, I am not satisfied that fairness necessitates disclosure of any information other than that over which the SPCA specifically waived privileged – that is, the Special Constable's request for legal advice and Crown Counsel's advice that the evidence submitted by the applicant would not be admissible in court. Accordingly, I find that the SPCA is authorized to withhold the balance of the information over which it asserts privilege under s. 23(3)(a).[42]

Harm to Competitive Position – s. 23(3)(b)

[54] Section 23(3)(b) provides that an organization is not required to disclose information where "the disclosure of the information would reveal confidential commercial information that if disclosed, could, in the opinion of a reasonable person, harm the competitive position of the organization."

[55] In the responsive records, the SPCA indicated that it was withholding one piece of information[43] under s. 23(3)(b). It did not, however, provide submissions to support its position. The applicant did not address s. 23(3)(b).

[56] The information at issue can be described as a statement of expectations from an SPCA board member to an SPCA employee. On its face, it is not clear to me how the information at issue satisfies any of the elements of s. 23(3)(b). In particular, I can see no way the information could be characterized as "commercial information." As the SPCA has not explained, I find that s. 23(3)(b) does not apply to the information in dispute.

Proceedings have not been Completed – 23(3)(c) and s. 3(2)(h)

[40] *Ibid* at para 13.
[41] *Ibid.*
[42] The information the SPCA is required to withhold under s. 14 is found on pages 54 and 62 of the documents.
[43] The same information is duplicated in the documents and is found on pages 58, 65, 71, and 77 of the documents.

[57] Section 3(2)(h) provides that PIPA does not apply to "a document related to a prosecution if all proceedings related to the prosecution have not been completed."

[58] Section 23(3)(c) provides that "an organization is not required to disclose personal information and other information … where the information was collected or disclosed without consent, as allowed under section 12 or 18, for the purposes of an investigation and the investigation and associated proceedings and appeals have not been completed."

[59] While ss. 3(2)(h) and 23(3)(c) have different requirements, a commonality between them is that both provisions apply only where there is a proceeding (or, in the case of. 23(3)(c), an appeal) that has not been completed. In this inquiry, the parties' primary dispute with respect to these sections concerns whether proceedings against the applicant have been completed. As this issue may be determinative as to the application of both sections, I will consider this question first, before determining whether the SPCA has met the other requirements of ss. 3(2)(h) and 23(3)(c).

[60] The SPCA withheld information from two email chains under s. 3(2)(h) and 23(3)(c).[44]

[61] The relevant background facts are not in dispute. The parties agree that Crown Counsel laid charges against the applicant in connection with how the applicant obtained the evidence submitted to the SPCA. They also agree that the charges came before the Supreme Court of British Columbia, and that Crown Counsel stayed those charges on April 29, 2022. I will refer to the court process related to the charges as the Proceeding.

[62] The SPCA made its initial decision about what information to release to the applicant in March of 2022, and decided to release additional information to the applicant in May of 2022. The OIPC issued the Notice of Inquiry in this inquiry on February 15, 2024.

[63] The SPCA argues that the Proceeding has not been completed because Crown Counsel still has the right to re-open it. In support of this position, the SPCA states that Crown Counsel can re-open the investigation within two years of the stay being entered.

[64] The applicant submits that the Proceeding is completed because the deadline for Crown Counsel to recommence the Proceeding has passed. In this regard, the applicant states that s. 579(2) of the *Criminal Code*[45] limits the right of Crown Counsel to recommence stayed proceedings to one year after the entry of

[44] Documents pages 52-60 and 61-68.
[45] R.S.C., 1985, c. C-46.

the stay. As such, according to the applicant, the Crown could have recommenced the Proceeding by no later than April 29, 2023, and the Crown did not do so.

[65] The SPCA did not cite any authority for its position that Crown Counsel could re-open the Proceeding for two years after the stay was entered. It also did not address the applicant's argument that the deadline expired after one year.

[66] I have reviewed the decision confirming the stay of proceedings[46] and the relevant sections of the Criminal Code. Section 579(2) of the Criminal Code states as follows:

> Recommencement of proceedings
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> (2) Proceedings stayed in accordance with subsection (1) may be recommenced, without laying a new information or preferring a new indictment, as the case may be, by the Attorney General or counsel instructed by him for that purpose giving notice of the recommencement to the clerk of the court in which the stay of the proceedings was entered, but where no such notice is given within one year after the entry of the stay of proceedings, or before the expiration of the time within which the proceedings could have been commenced, whichever is the earlier, the proceedings shall be deemed never to have been commenced.

[67] In my view, s. 579(2) clearly provides that if Crown counsel does not give notice to recommence proceedings within one year after entry of the stay of proceedings, the proceedings shall be deemed never to have been commenced.[47] As the stay was entered on April 29, 2022, I find that the deadline for Crown Counsel to recommence the Proceeding expired on April 29, 2023. Therefore, pursuant to s. 579(2) of the *Criminal Code*, I find that the Proceeding was deemed never to have commenced on April 29, 2023.

[68] The parties did not make submissions about the relevant date for assessing whether there are proceedings (or appeals) that "have not been completed" (for instance, the date the SPCA made its decisions to withhold the information—March and May of 2022, the date the OIPC issued the Notice of Inquiry—February 15, 2024, the date the first submissions were filed in the inquiry—March 13, 2024, or the date this decision is issued). However, as the parties' arguments focused on whether the Proceeding could be reopened until

[46] The decision is attachment 5 to the applicant's response submissions. Statements about the stay are found in the footnote on page 5. I have not cited the decision as doing so would reveal the applicant's identity.

[47] See also the definition of Attorney General in s. 2 of the *Criminal Code* which provides, in part, that "with respect to proceedings to which this Act applies, means the Attorney General or Solicitor General of the province in which those proceedings are taken." For clarity, I find that Crown counsel for the province of BC are the counsel instructed by the Attorney General described in s. 579(2).

April 29, 2023 or 2024, it is clear that both parties accept that the relevant date is sometime after May of 2022 when the SPCA made its decision about what information to withhold. Given the use of the present tense in the words "have not been completed" in both provisions, I agree. Further, as all the remaining dates are after April 29, 2023 when the deadline expired for Crown Counsel to recommence the Proceeding.

[69] As the Proceeding was deemed never to have been commenced on April 29, 2023, I find that there are no proceedings or appeals that "have not been completed" within the meaning of ss. 3(2)(h) or 23(3)(c). Therefore, I conclude that ss. 3(2)(h) and 23(3)(c) do not apply to the records or information in dispute and that the SPCA is not authorized to withhold any information based on these provisions.

Personal Information about another Individual – s. 23(4)(c)

[70] Section 23(4)(c) requires an organization to withhold information that would reveal personal information about another individual. The term "another individual" in this provision refers to an individual other than the applicant.[48]

[71] As discussed above, personal information is information about an identifiable individual and includes employee personal information but not contact information or work product information. Therefore, the first step in the s. 23(4)(c) analysis is to determine whether the information in dispute is "about an identifiable individual" other than the applicant. The second step is to determine whether the information is excluded from the definition because it is contact information or work product information.

[72] The information that remains at issue is:

- Names, titles, badge numbers, email addresses, telephone numbers, and names of pets of SPCA employees found in professional email signature blocks, to and from lines of email messages, and the body of email messages,
- Organizations' names, addresses, and mission statements found in professional email signature blocks,
- Generic email subject lines, salutations, and dates on which email messages were sent
- Health information and information about the personal lives of SPCA employees,
- Information about the applicant's words and conduct,

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

- A discussion of the steps taken by individuals in relation to the applicant's report,
- Individuals' thoughts and opinions,
- Information about the request for legal advice from Crown Counsel and legal advice provided by Crown Counsel, and
- Information about internal SPCA matters related to the applicant's Report.

[73] I find that the names, titles, badge numbers, email addresses, telephone numbers, and names of pets is identifiable information about an individual other than the applicant. A name is the most direct means of identifying an individual.[49] The email addresses include the individuals' names, and the remaining information is unique identifiers that, in my view, could be used by someone familiar with affected individuals to identify them.

[74] The health and personal life information is about individuals other than the applicant who are identified by name within the information itself. It is also sufficiently specific that someone familiar with the affected individuals could identify them. I find that this information is about identifiable individuals other than the applicant.

[75] Finally, I find that individuals' thoughts, opinions, and most of the information relating to the steps individuals took in relation to the applicant's report is about identifiable individuals. First, most of this information is sufficiently specific that the applicant could identify the author and others involved from this information. In addition, it is often about individuals who are named in the information. For both reasons, I find that most of this information is also about identifiable individuals other than the applicant.

[76] However, I find that the balance of the information is not about an identifiable individual other than the applicant. First, the applicant is not an "other individual." Accordingly, information that is exclusively about the applicant does not qualify. For this reason, I find that the information about the applicant's words and conduct is not personal information about other individuals.

[77] The remaining information is the name, address, and mission statement of organizations found in professional email signature blocks, generic email subject lines, salutations, and dates on which email messages were sent, general communications about internal SPCA matters including the applicant's Report and communications with Crown Counsel, and a small amount of more general information related to the steps taken by individuals in relation to the applicant's report. In my view, this information is too general to identify any specific individual. Accordingly, I find that it is not personal information about other individuals.

[49] Order F21-47, 2021 BCIPC 55 (CanLII) at para. 13.

[78] The next question is whether the information about identifiable individuals other than the applicant is contact information or work product information. If so, then it is not personal information, and the SPCA is not required to withhold it under s. 23(4)(c).

[79] While the complete definitions are set out above, "contact information" is information to enable an individual to be contacted as a place of business, and "work product information" includes information prepared by an individual as part of the individual's employment responsibilities where the information is not about an individual who did not prepare it.

[80] Some of the names, titles, badge numbers, email addresses, and telephone numbers are found in professional email signature blocks[50] and the to and from lines of email addresses. Past orders have consistently held that the purpose of this kind of information is to enable an individual to be contacted at their place of business.[51] I agree with this reasoning, and I find that this information is contact information. It is therefore, excluded from the definition of "personal information".

[81] I find that the remaining information is not contact information, or work product information. Its purpose is not to enable an individual to be contacted at their place of business. Some of the remaining information is a discussion of the steps taken by an SPCA employee that appears to have been prepared by the employee as part of their ordinary employment responsibilities. However, that information is about several individuals other than the individual who prepared it. Accordingly, I find it is not work product information.

[82] Given the findings above, what remains is individuals' names, health information, personal life information, the discussion of the steps taken by the SPCA employee, and the names of individuals' pets. I find that this information is the personal information of individuals other than the applicant. Therefore, I find that the SPCA is required to withhold it under s. 23(4)(c).

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

[83] Section 23(4)(d) provides 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.

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[50] I also note that some of the email signature blocks also contain the name of individuals' pets. I find that this information is unrelated to the ability to contact the affected individuals and is therefore not contact information.

[51] See for example Order F21-40, 2021 BCIPC 48 (CanLII) at para 50, Order F20-37, 2020 BCIPC 43 (CanLII) at para 81, and Order F24-48, 2024 BCIPC 56 (CanLII) at paras 72 and 73.

Parties' submissions

[84] The SPCA relies on s. 23(4)(d) to withhold individuals' names, titles, badge numbers, email addresses, telephone numbers, and organizations' names, addresses, and mission statements.

[85] According to the SPCA, the information falls within the scope of s. 23(4)(d) because all the individuals whose information is at issue supplied information about the applicant; the disclosure of the information would reveal their identities; and "due to the circumstances and nature of the records, it is reasonable to expect that the individual[s] do… not want their identity to be disclosed."[52]

[86] The applicant argues that the SPCA has not met the statutory requirements of s. 23(4)(d) because the identities of the individuals who provided information about the applicant have already been revealed, and because the SPCA failed to provide sufficient evidence that any of the affected individuals did not consent to the disclosure of their identity.

[87] With respect to the requirement that the information would reveal the identity of an individual, the applicant argues that to the extent that the Special Constable is one of the individuals whose identity would be revealed if the emails were disclosed, this position has no merit because the fact that the Special Constable has provided information about the applicant to the APD has already been revealed in open court. In support of this position, the applicant relies on an affidavit sworn by the Special Constable (the Court Affidavit) which the applicant says was filed with the BC Supreme Court in the Proceeding. The applicant also states that the Court Affidavit reveals the actions and identities of other individuals.

[88] Regarding consent, the applicant submits that the SPCA's assertion that it is reasonable to expect that the individuals in question do not want their identities disclosed is insufficient to meet the required standard, and that to satisfy the standard, the individuals in question would need to be asked whether they consent.

[89] In reply, the SPCA states that not all the information is about the Special Constable. In addition, citing past OIPC orders, it argues that s. 23(4)(d) does not require evidence that the affected individual does not consent, but rather that it applies in circumstances where there is no evidence that the individuals in question consented to the disclosure of their identities.

Findings and analysis

[52] Initial submission of the SPCA at para. 22.

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

- The information at issue would reveal the identity of an individual
- That individual provided personal information about another person, and
- That individual does not consent to the disclosure of their identity.[53]

Would the information at issue reveal the identity of an individual?

[91] I find that the names, addresses, and mission statements of organizations would not reveal the identity of an individual because the information is about the organizations rather than individuals and is too general to reveal the identity of any particular individual. Therefore, s. 23(4)(d) does not apply to this information.

[92] The remaining information – the names, titles, badge numbers, email addresses, and telephone numbers – is sufficiently specific as to identify the individuals sending or receiving email messages.

[93] The OIPC has recently considered the meaning of the term "reveal" in s. 23(4)(c) of PIPA in Order P24-08.[54] In that case, the adjudicator rejected an argument that information that was already known to the applicant could not be "revealed" within the meaning of that provision:

> 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.[55] 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.[56] 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.[57]

[94] It is clear from this excerpt that in interpreting the meaning of the word "reveal" in s. 23(4)(c), the adjudicator focused on whether disclosing the information would allow a reader to identify an individual, as opposed to whether doing so would disclose information that was not otherwise available. I agree with this approach.

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[53] See for example Order P22-06, 2022 BCIPC 54 (CanLII) at para 69.
[54] 2024 BCIPC 59 (CanLII).
[55] Order P22-06, 2022 BCIPC 54 (CanLII) at para 67.
[56] *Ibid.*
[57] Order P20-01, 2020 BCIPC 6 at para 21.

[95] The word "reveal" is used in substantially the same way in ss. 23(4)(c) and (d). While s. 23(4)(c) requires an organization to refuse to disclose information where "the disclosure would reveal personal information about another individual," s. 23(4)(d) requires an organization to refuse to disclose information where "the disclosure would reveal the identity of an individual …". Both are mandatory provisions intended to protect the personal privacy of individuals. Both appear in the same subsection of s. 23 of PIPA. For these reasons, I find that the word reveal should be interpreted consistently across ss. 23(4)(c) and (d), and that the reasoning in Order P24-08 applies equally to s. 23(4)(d).

[96] Adopting the approach set out in Order P24-08, I find that disclosing the names, titles, badge numbers, email addresses, and telephone numbers of the affected individuals would reveal their identities.

Did the individual provide personal information about another person?

[97] I find that most of the information at issue is not captured by s. 23(4)(d) because there is no indication in the relevant email chains that the individual whose information is at issue provided any personal information about another person. In some cases, the identifying information is associated with an individual who received or was kept in the loop rather than provided information in the email chain at issue.[58] In other cases, the emails are not about providing personal information about another individual.[59]

[98] What remains is information about two identifiable individuals who, I can see from the records, provided personal information about another individual.[60]

Does the individual not consent to disclosure of their identity?

[99] In past orders the OIPC has held that this requirement is satisfied so long as there is no evidence that the affected individuals consent to the disclosure of their identities.[61] In this case, there is no evidence that the two individuals who provided information about another person consent to the disclosure of their identity. Further, having considered the records, I can see that the events between the applicant and the SPCA led to negative attention from the public. In the circumstances, I accept the SPCA's submission that it is reasonable to expect that the affected individuals do not consent to their identity being disclosed.

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[58] See for example pages 1, 4, 5, 24, 30, and 35-37, 41-42, 47-48, 50, 52-57, 89-92 of the documents.
[59] See for example pages 58, 64, 65, 70, 71, 98-102 of the documents.
[60] The information about individuals who provided personal information about another person is found at pages 1, 2, 4, 53, 54, 55, 56, 61-64, 87-91of the documents.
[61] See Order P22-06, 2022 BCIPC 54 (CanLII) at para 75 and Order P23-09, 2023 BCIPC 82 (CanLII) at para 29.

[100] I find that all three requirements in s. 23(4)(d) are satisfied with respect to the names, titles, email addresses, and telephone numbers of two individuals from the emails in which those individuals provided information about another individual.[62] Accordingly, the SPCA is required to withhold this information.

Severance – 23(5)

[101] Section 23(5) requires the SPCA to provide the applicant with access to his personal information if it can remove the information to which ss. 23(3)(a), 23(4)(c) and (d) apply. It reads:

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

[102] In terms of the information that is subject to solicitor-client privilege under s. 23(3)(a), I have considered whether it is possible to sever the applicant's personal information from the communications at issue and their attachments. The courts have emphasized that once solicitor-client privilege is established, it applies to all communications within the framework of the solicitor-client relationship and that severance of some of these communications can only occur when there is no risk of revealing legal advice provided by the lawyer to the client.[63] In the present case, the other information the SPCA withheld from the email chains containing privileged information relate to the legal advice. In the circumstances, I am unable to conclude there is no risk that revealing this related information would reveal privileged communications. As a result, I conclude severance of the records containing privileged information is not possible.

[103] Turning to the information the SPCA is required to withhold under ss. 23(4)(c) and 23(4)(d), I find the SPCA has, for the most part, already complied with s. 23(5) by providing the applicant with his personal information in these documents and severing only the identifying information about other individuals. I find that no further severance of the remaining records is required.

CONCLUSION

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

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[62] The information about individuals who provided personal information about another person is found at pages 1, 2, 4, 53, 54, 55, 56, 61-64, 87-91 of the documents.
[63] *British Columbia (Attorney General) v Lee,* 2017 BCCA 219 at para 51.

1. I require the SPCA to refuse the applicant access to the information that I found does not qualify as the applicant's personal information under PIPA.
2. I confirm the SPCA's decision, in part, to refuse the applicant access to information withheld under 23(3)(a).
3. I require the SPCA to refuse the applicant access to the personal information to which I found ss. 23(4)(c) and (d) apply.
4. I require the SPCA to give the applicant access to the information that I have found it is not required to withhold under ss. 23(3)(a), (b), (c), 23(4)(c) or (d). I have highlighted this information in yellow in a copy of the records which are provided to the SPCA with this order.[64]
5. I require the SPCA to 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.

[105] Pursuant to s. 53(1) of PIPA, the SPCA is required to comply with this order by October 11, 2024.

August 28, 2024

ORIGINAL SIGNED BY

Allison J. Shamas

OIPC File No.: File P22-89773

[64] I note that the highlighting is subject to my notes found on pages 10, 13, 17 and 21 of the copy of the records provided to the SPCA.