



Order P26-20

MNP LLP

Amy O'Connor
Adjudicator

October 20, 2026

CanLII Cite: 2026 BCIPC 112
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 112

Summary: An applicant requested her personal information from MNP LLP (organization) under the *Personal Information Protection Act* (PIPA). The organization asked the Office of the Information and Privacy Commissioner to exercise the Commissioner's discretion under s. 50(1) of PIPA to not conduct the inquiry given the findings in a related inquiry. An adjudicator determined it was appropriate to cancel the inquiry because the organization was permitted to withhold the information at issue on the basis that litigation privilege applied and there were no factors that warranted proceeding with the inquiry.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003], c 63, ss. 23(3)(a) and 50(1).

INTRODUCTION

[1] An applicant requested that MNP LLP (organization) provide her with access to her personal information under s. 23(1)(a) of the *Personal Information Protection Act* (PIPA), which gives individuals a right to access their personal information under the control of an organization subject to any exceptions under ss. 23(3) and 23(4) of PIPA.¹

[2] The organization refused to disclose any information to the applicant. The organization says the information at issue is not in its control under s. 23(1)(a) and, regardless, is subject to solicitor-client privilege and may be withheld pursuant to s. 23(3)(a), among other sections which both authorize and require it to refuse disclosure.² The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the organization's response. Mediation by the OIPC did not resolve the issues in dispute, the matter proceeded to inquiry

¹ From this point forward, all section references are to PIPA unless otherwise specified.

² The organization says that ss. 23(3)(b), 23(3)(c), 23(4)(c) and 23(4)(d) also apply.

(Access Inquiry) and a Notice of Inquiry was issued. At the organization's request, the OIPC adjourned the Access Inquiry pending the outcome of a related inquiry involving the applicant and some of the same information (Related Inquiry).³

[3] In the Related Inquiry, I found that the applicant's former employer (Former Employer) was permitted to withhold an investigation report prepared by the organization (Investigation Report) under s. 23(3)(a) because it is subject to litigation privilege. The organization now requests that the OIPC exercise the Commissioner's discretion under s. 50(1) to not conduct the Access Inquiry given the findings in the Related Inquiry. Both the applicant and the organization provided submissions, and both are represented by legal counsel.

ISSUE AND BURDEN OF PROOF

[4] In this proceeding, I will determine whether the Access Inquiry should proceed or be cancelled.

[5] Previous OIPC Orders have found that the party requesting an inquiry not proceed has the burden to establish and support its request.⁴ If the requesting party proves it is appropriate to cancel the inquiry, then the applicant has the burden to prove the inquiry should still proceed.⁵ I agree and adopt the same approach here.

DISCUSSION

Background

[6] All the relevant background facts for this proceeding are set out in the Related Inquiry.⁶ In short, the Former Employer retained the organization through its legal counsel to prepare the Investigation Report.

[7] The Investigation Report concerns allegations about the applicant. It was the sole document at issue in the Related Inquiry, where I found the Former Employer was authorized to withhold it under s. 23(3)(a) because it is subject to litigation privilege.

Information at issue

[8] The organization did not provide the information at issue for my review. Instead, it says the relevant information is found in the Investigation Report and other documents gathered or prepared for the purposes of preparing the

³ [Order P26-14](#) [*Related Inquiry*].

⁴ [Order P24-11](#), paras 10-13.

⁵ *Ibid.*

⁶ *Related Inquiry*, *supra* note 3, paras 5-6.

Investigation Report. The organization describes an Ontario court decision as having nearly identical key facts, in which the notes, working papers, memos and other communications prepared in the course of a forensic audit were at issue.⁷ I understand the organization is arguing that the information at issue here is similar to the information at issue in the Ontario decision.

[9] The organization provides affidavit evidence from a partner of the organization (Partner) in support of its position. The Partner was directly involved in the preparation of the Investigation Report, and her evidence is that the information requested by the applicant is contained solely in the Investigation Report and other documents that were gathered in the course of preparing the Investigation Report. She says that she has considered but is not aware of any other personal information held by the organization about the applicant.

[10] The applicant argues there is further information responsive to her access request, that is unrelated to the investigation, because she had regular dealings with the organization throughout her employment with the Former Employer. The applicant provides an affidavit in support of her position, describing the relationship between herself and the organization that was established before litigation was contemplated (Prior Relationship).

[11] I find both the Partner and the applicant's evidence to be credible. I am satisfied by the Partner's evidence that all personal information held by the organization consists of the Investigation Report itself or is contained in documents that were gathered or prepared in the course of preparing the Investigation Report. I am also satisfied that the Prior Relationship existed. I am not persuaded, however, that the Prior Relationship resulted in further documents containing the applicant's personal information.

[12] The applicant's evidence is that she did the following throughout her employment with the Former Employer:

- signed engagement letters respecting the organization on behalf of the Former Employer;
- engaged with the organization in preparing the Former Employer's year-end audited financial statements;
- communicated with the organization while the audited financial statements were prepared; and
- arranged financial training support that the organization provided to the Former Employer.

[13] I do not see, and the applicant does not explain, how the Prior

⁷ The organization cites *Drabinsky v KPMG*, 1999 CarswellOnt 3752, 92 ACWS (3d) 1001 (ON SCJ).

Relationship would have resulted in additional documents containing her personal information as opposed to her contact information or work product information.⁸ These are defined in s. 1 as follows:

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

"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] In my view, based on the applicant's evidence and the examples she provides, the Prior Relationship existed solely in her capacity as an employee of the Former Employer. This means that any associated documents would contain only her contact information or work product information rather than her personal information.

[15] In conclusion, while I do not have the benefit of being able to see the information at issue, based on my review of the parties' submissions and evidence I find it consists of: (1) the Investigation Report; and (2) documents such as working notes, memos and communications that were gathered or prepared in the course of and for the purposes of preparing the Investigation Report (Additional Information).

Discretion to conduct inquiries

[16] Section 50(1) enables, but does not require, the Commissioner to conduct inquiries. It provides as follows:

If a matter is not referred to a mediator or is not settled under section 49, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry. [*emphasis added*]

[17] I have the authority under s. 50(1) to consider whether to cancel an inquiry that has commenced, as is the case here.⁹ The issues in the Access Inquiry are as follows:

1. Does the organization have control of the information at issue?

⁸ The definition of personal information excludes contact information and work product information.

⁹ Order P24-11, *supra* note 4, para 8.

2. If so, is the organization:

- a. authorized to withhold the personal information pursuant to ss. 23(3)(a) [solicitor-client privilege] or 23(3)(c) [information collected for investigation]; or
- b. required to withhold the personal information pursuant to ss. 23(4)(c) [personal information about another individual] or 23(4)(d) [identity of an individual who provided information about another]?

[18] As such, if I find that the information at issue is subject to litigation privilege, then it may be appropriate to cancel the Access Inquiry. This is because it will not matter who has control of the information at issue, or whether any other exceptions to disclosure apply, if litigation privilege applies and authorizes the organization to withhold that information under s. 23(3)(a).

[19] A more detailed analysis on the litigation privilege is set out in the Related Inquiry at paragraphs 36 to 52.¹⁰ I have not reproduced the applicable legal principles here, but I have adopted them for the purpose of determining whether litigation privilege applies. In short, I must be satisfied that litigation was in reasonable prospect at the time the documents in dispute were created and that the dominant purpose of their creation was for use in litigation.

Parties' arguments

[20] The organization submits it is prohibited from disclosing the information at issue given the disposition of the Related Inquiry. It says the OIPC has already determined that the Investigation Report is subject to the Former Employer's litigation privilege, and all remaining information is subject to the same litigation privilege because it was created entirely within the scope of its engagement by the Former Employer's legal counsel. It says the findings in the Related Inquiry still apply as litigation was in reasonable prospect at the time the organization was engaged, the dominant purpose of the organization's engagement was the creation of the Investigation Report for use in litigation, and the litigation privilege has not been waived and has not expired.¹¹

[21] The organization says that to allow the Access Inquiry to proceed would be an abuse of process. It says the OIPC should not exercise its discretion to hear the Access Inquiry as it does not engage any real or new rights or disputes between the organization and the applicant, and there are no unique legal issues of a recurring nature, nor any matters of public importance which justify the use of OIPC resources.

¹⁰ *Related Inquiry*, *supra* note 3, paras 36-52.

¹¹ The organization cites the *Related Inquiry*, *supra* note 3, paras 47, 49-50 and 58.

[22] The applicant says there is still a live issue regarding whether the organization is permitted to refuse to provide the personal information she requested. The applicant says she does not agree with my findings in the Related Inquiry, and she maintains the position that litigation privilege does not apply to the Investigation Report. (In that regard, I note the proper recourse for such a position is judicial review of the Related Inquiry, rather than proceeding with the Access Inquiry). Finally, the applicant says that the OIPC should exercise its discretion to proceed with the Access Inquiry as there is clearly no abuse of process.

Analysis and findings

[23] I must first determine whether the information at issue is subject to litigation privilege.

[24] Firstly, with respect to the Investigation Report, I have already determined in the Related Inquiry that litigation privilege applies. As such, the organization is authorized to withhold the Investigation Report under s. 23(3)(a).

[25] Next, since I found above that the Additional Information consists solely of documents that were gathered or prepared in the course of preparing the Investigation Report, and I found in the Related Inquiry that the Investigation Report satisfies the two-part test for litigation privilege, I find that litigation privilege similarly applies to the Additional Information. I do not see how the dominant purpose of creation, specifically regarding documents that were created or compiled in preparing a report, would differ from the dominant purpose of creation for the report itself. Similarly, I do not see how litigation could be in reasonable prospect at the time a report was prepared but not at the time other documents were gathered or prepared for the purposes of preparing that report. Finally, there is no evidence before me that the privilege has been waived or has expired. As such, I am satisfied that the Additional Information is protected by litigation privilege and may be withheld under s. 23(3)(a).

[26] In conclusion, I am satisfied that all the information at issue in the Access Inquiry is either the same information that I determined was protected under s. 23(3)(a) in the Related Inquiry (i.e., the Investigation Report) or consists of the Additional Information that is subject to the same litigation privilege that I found applies to the Investigation Report in the Related Inquiry. As such, I find the issue of disclosure in the Access Inquiry has now been determined.

[27] Despite this finding, there may be special circumstances that warrant continuation of the Access Inquiry, and the applicant has the burden to establish why the Access Inquiry should still proceed. The applicant does not explain why the lack of an abuse of process should result in the OIPC exercising its discretion to conduct the Access Inquiry. In the absence of any further argument or

explanation, I find there are no special circumstances that make it worthwhile to allow the Access Inquiry to proceed.

CONCLUSION

[28] For the reasons given above, I find the issues in the Access Inquiry have been determined and there are no special circumstances that warrant continuation of the Access Inquiry. As such, the Access Inquiry is cancelled, and the OIPC's file is now closed.

October 20, 2026

ORIGINAL SIGNED BY

Amy O'Connor, Adjudicator

OIPC File No.: P24-97332