

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3077

Appeal MA12-484-2

Haliburton, Kawartha, Pine Ridge District Health Unit

July 25, 2014

Summary: The Haliburton, Kawartha, Pine Ridge District Health Unit received a request for records relating to a "soil plug" on an identified property. The health unit granted partial access to the responsive records, denying access to portions of them pursuant to the exemptions at sections 14(1) (personal privacy), 12 (solicitor-client privilege), and 38(b) (personal privacy) of the *Act*. The requester appealed the health unit's decision. During mediation, the reasonableness of the health unit's search for responsive records was included as an issue on appeal. This order finds that the health unit conducted a reasonable search for responsive records. This order also finds that the records contain the personal information of the appellant, as well as that of other identifiable individuals; that the discretionary exemption at section 38(b) applies to all of the information for which it was claimed; that the discretionary exemption at section 12 applies to all of the information for which it was claimed; and that the health unit's exercise of discretion to deny access to the records or portions of the records pursuant to the exemptions claimed was reasonable. As a result, the health unit's decision is upheld and the appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 12, 14(1)(f), 14(2), (f), and (h), 14(3)(b), 17 and 38(b).

OVERVIEW:

[1] The Haliburton, Kawartha, Pine Ridge District Health Unit (the health unit) received a multi-part request pursuant to the *Municipal Freedom of Information and*

Protection of Privacy Act (MFIPPA or the Act) for access to records related to the septic system, including a "soil plug," on an identified property.

[2] The health unit responded to the request and advised that it was prepared to release the responsive records, with the exception of any third party personal information.

[3] The requester, now the appellant, appealed the decision.

[4] During mediation, the health unit issued a revised decision and granted partial access to the responsive records. Access to some of the records was denied pursuant to sections 38(b) (personal privacy), 14(1) (personal privacy) and 12 (solicitor-client privilege) of the *Act*. The health unit broke down the request into eight parts.

[5] Following further mediation, the health unit issued a second revised decision with an index of records. Further access was granted to some of the records while access to some of the information remained denied, pursuant to sections 38(b), 12, 8(1)(g) (law enforcement) and 9(1)(b) (relations with other governments) of the *Act*. In response to a query communicated by the appellant, the health unit conducted a further search to determine whether photographs of the holding tank for the septic system exist. It advised that no photographs were located.

[6] The appellant was not satisfied with the additional disclosure and continues to believe that further records should exist, adding reasonable search as an issue in this appeal. In an effort to resolve this appeal, the appellant notified the mediator that he continues to seek access only to parts 1, 4 and 7 of the request as defined in the health unit's decision, along with any pictures that may exist of the holding tank. The appellant also confirmed that he is not seeking access to any of the other records identified on the index of records as being withheld.

[7] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. In my inquiry into this appeal, I sought and received representations from both the health unit and the appellant. The health unit's representations were shared with the appellant in accordance with section 7 of this office's *Code of Procedure and Practice Direction Number 7*. After reviewing the appellant's representations provided in response, I deemed that it was not necessary for them to be shared with the health unit.

[8] In this order, I uphold the health unit's decision to deny access to portions of the responsive records. In the discussion that follows, I reach the following conclusions:

- the health unit conducted a reasonable search for responsive records;

- one of the records contains the personal information of the appellant, as well as that of other identifiable individuals;
- the disclosure of the portions of the record containing the personal information of identifiable individuals other than the appellant would result in an unjustified invasion of personal privacy of those individuals, in accordance with section 38(b);
- the remainder of the records qualify for exemption pursuant to the exemption for solicitor-client privileged information at section 12; and
- the health unit's exercise of discretion to deny access to portions of the records pursuant to section 38(b) and records in their entirety pursuant to section 12, was reasonable.

RECORDS:

[9] The records remaining at issue are identified in the index of records under the headings E and F:

- E-1: chronological summary of events, calls, and correspondence dated December 14, 2011 (section 38(b) or 14(1)).
- E-2: reporting letter dated October 2, 2012 (section 12).
- E-3: email dated August 3, 2012 (section 12).
- F-1: fax from health unit dated October 28, 2011 (section 12).
- F-2: email chain dated October 30, 2011 to November 15, 2011(section 12).

ISSUES:

- A. Did the health unit conduct a reasonable search for records?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the records?
- D. Does the discretionary exemption at section 12 apply to the records?

- E. Did the health unit properly exercise its discretion under section 38(b) and 12 If so, should this office uphold its exercise of discretion?

DISCUSSION:

A: Did the health unit conduct a reasonable search for records?

[10] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.¹ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[11] Although a requester will rarely be in a position to indicate precisely which records that the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.²

[12] The *Act* does not require the institution to prove with absolute certainty that further records *do not* exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³

[13] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁴

[14] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

Representations

[15] The appellant takes the position that additional records responsive to the request should exist. As noted above, during mediation, the appellant confirmed that he continues to believe that additional records related to the soil plug should exist, including pictures of the soil plug and the inside of the holding tank. As a result, the health unit conducted an additional search and confirmed that no additional records were located. Despite the second search conducted by the health unit, the appellant continues to believe that additional records should exist.

¹ Orders P-85, P-221 and PO-1954-I.

² Order MO-2246.

³ Orders P-624 and PO-2559.

⁴ Orders M-909, PO-2469, and PO-2592.

⁵ Order MO-2185.

[16] In its representations, the health unit submits that it conducted an extensive search for all responsive records. It submits that all relevant documents were retained in a folder relating to the subject property and when the appellant insisted that additional photographs of the holding tank should exist but were not in the file, it asked all of the inspectors who had visited and inspected the property to confirm whether or not they had taken any photographs that were not disclosed. The health unit submits that all of the inspectors confirmed that any photographs that were taken of the subject property were in the file that was disclosed to the appellant.

[17] In support of its representations, the health unit provided an affidavit sworn by the Director of Environmental Health who attested to the search conducted by the health unit for the responsive records, including all photographs taken of the subject property. He stated that, to the best of his knowledge, the health unit's former Director of Environmental Health, who retired in late 2012, conducted a thorough search of the file and spoke with each of the inspectors who attended at the property. He confirmed that the former Director of Environmental Health was told that no photos of the inside of the holding tank existed, and that all existing photos had been disclosed to the appellant. The Director of Environmental Health confirmed that he also conducted a full review of the file and confirmed that no further photographs responsive to the request exist.

[18] The appellant continues to believe that additional photographs related to the request, including photos of the inside of the holding tank, exist. He submits that, in his view, if a soil plug was installed and is of a legal nature, the health unit would have information in the file as to the type of soil that was used to make the soil plug and the specifications on its proper installation. He also submits that there is evidence in the records that were disclosed to him that the soil plug was deemed to be an acceptable fix and therefore, there must be documentation in the file to prove that. The appellant does not specifically comment on the existence of photographs, either of a general nature or specifically of the holding tank, in his representations.

Analysis and finding

[19] On my review of the information before me in this appeal, I accept that the health unit has provided me with sufficient evidence to demonstrate that it made a reasonable effort to identify and locate records responsive to the appellant's request. I accept that the searches were conducted by experienced employees who are knowledgeable about records held by the health unit and that those individuals expended a reasonable effort to locate any responsive records, including all photographs, sought by the appellant through his request.

[20] As noted above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide

a reasonable basis for concluding that such records exist.⁶ In the circumstances of this appeal, I find that I have not been provided with a reasonable basis for concluding that additional records responsive to the request exist. The appellant has not provided sufficient evidence to support his view that additional records responsive to the request, including photographs of the holding tank or other elements related to the soil plug, should exist.

[21] Additionally, as previously stated, the *Act* does not require the health unit to prove with absolute certainty that further records *do not* exist. However, the health unit must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. In the circumstances of the current appeal, I accept that I have been provided with sufficient evidence to show that the health unit has made a reasonable effort to identify and locate records responsive to the appellant's request, including all photographs related to the soil plug (and the holding tank) on the subject property.

B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[22] Under the *Act*, different exemptions may apply depending on whether or not a record contains the personal information of the requester.⁷ Where records contain the requester's own information, access to the records is addressed under Part II of the *Act* and the discretionary exemptions at section 38 may apply. Where the records at issue contain the personal information of individuals other than the appellant but not that of the appellant, access to the records is addressed under Part I of the *Act* and the mandatory exemption at section 14(1) may apply.

[23] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to

⁶ Order MO-2246.

⁷ Order M-352.

financial transactions in which the individual has been involved,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[24] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.⁸

[25] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.⁹

[26] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.¹⁰

⁸ Order 11.

⁹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

¹⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

[27] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.¹¹

Representations

[28] The health unit submits that portions of record E-1, the chronological summary of events, calls and correspondence dated December 14, 2011, contains the personal information of identifiable individuals other than the appellant. The health unit's representations suggest that this information includes the names of these individuals, together with other personal information about them (paragraph (h) of section 2(1) of the *Act*).

[29] The appellant does not specifically address whether the severed portions of this record might contain personal information within the meaning of that term in section 2(1) of the *Act*.

Analysis and finding

[30] Having reviewed record E-1, I find that it contains the personal information of the appellant, including his personal opinions or views (paragraph (e)), and his name, along with other personal information about him (paragraph (h)).

[31] The record also contains the personal information of other identifiable individuals. This information qualifies as their personal information because it consists of their personal opinions or views (paragraph (e)), and their names, along with other personal information about them (paragraph (h)).

[32] As described above, given that record E-1 contains both the appellant's personal information, as well as that of other identifiable individuals, Part II of the *Act* applies to the record in its entirety. Therefore, I must consider whether the severed information is exempt from disclosure under the discretionary exemption at section 38(b).

C. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the records?

[33] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

¹¹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[34] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

[35] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. The information at issue in this appeal does not fit within any of paragraphs (a) to (e) of section 14(1).

[36] The factors and presumptions in section 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). That section reads:

A head shall refuse to disclose personal information to any person other than the individual to whom it relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[37] If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this case, paragraphs (a) to (c) of section 14(4) do not apply.

Sections 14(2) and (3)

[38] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy.

[39] For records claimed to be exempt under section 14(1) (i.e., records that do not contain the requester's personal information), a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if a section 14(4) exception or the "public interest override" at section 16 applies.¹²

[40] If the records are not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy, and the information will be exempt unless the circumstances favour disclosure.¹³

[41] For records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in

¹² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

¹³ Order P-239.

determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.¹⁴

Section 14(3) - presumptions

14(3)(b) – investigation into a violation of law

[42] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.¹⁵ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹⁶

[43] The health unit references the presumption in section 14(3)(b) in its representations with respect to record E-1 but does not explain how the chronological summary of events, calls, and correspondence dated December 14, 2011, falls under that presumption. From my review of both the record and the evidence that has been provided to me, it is not clear whether record E-1 was compiled in the course of an investigation into a possible violation of law and that section 14(3)(b) applies in the circumstances of this appeal.

[44] It is possible that the health unit has some law enforcement powers with respect to health-related matters and that such health-related matters might arise from the soil plug that is the subject matter of the records at issue, including record E-1. However, in light of my findings with respect to the factors outlined in section 14(2), it is not necessary for me to determine whether the presumption at section 14(3)(b) applies to the information at issue in record E-1.

Section 14(2) – factors

[45] Section 14(2) provides some factors for the health unit to consider in making a determination on whether the disclosure of personal information would result in an unjustified invasion of the other individuals' personal privacy. The list of factors under section 14(2) is not exhaustive. The health unit must also consider any circumstances that are relevant, even if they are not listed under section 14(2).¹⁷ Some of these criteria weigh in favour of disclosure, while others weigh in favour of privacy protection.

[46] In the circumstances of this appeal, none of the factors at section 14(2) have been raised by the parties. However, on my review of the information at issue, the criteria listed at sections 14(2)(f) and (h) might be relevant. Those sections read:

¹⁴ Order MO-2954.

¹⁵ Orders P-242 and MO-2235.

¹⁶ Orders MO-2213, PO-1849 and PO-2608.

¹⁷ Order P-99.

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances including whether,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom it relates in confidence;

Section 14(2)(f)

[47] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.¹⁸ Given the nature of the information that is at issue, I accept that the personal information that has been withheld may be highly sensitive and that its disclosure could reasonably be expected to result in significant personal distress to the individuals to whom it relates. Accordingly, I find that this factor, weighing against disclosure, is relevant.

Section 14(2)(h)

[48] The factor at section 14(2)(h) weighs in favour of privacy protection. For it to apply, both the individual supplying the information and the recipient must have had an expectation that the information would be treated confidentially, and it must be satisfied that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹⁹

[49] In my view, the context and surrounding circumstances of this matter are such that a reasonable person would expect that the information supplied by these individuals to the health unit would be subject to a degree of confidentiality. Accordingly, in this appeal, I find that the factor in section 14(2)(h) is a relevant consideration that weighs in favour of protecting the privacy of the other identified parties and withholding their personal information.

Summary

[50] In conclusion, in the absence of evidence to support its application, I have declined to determine whether the personal information in record E-1 was compiled as part of an investigation into a possible violation of law and therefore, whether the presumption at section 14(3)(b) applies.

¹⁸ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

¹⁹ Order PO-1670.

[51] However, although the information at issue in record E-1 is not covered by that presumption, I have found that the factors weighing in favour of privacy protection and against disclosure at sections 14(2)(f) and (h) are relevant considerations as the information is highly sensitive and was supplied to the health unit by the individuals to whom it relates in confidence.

[52] As a result, I find that the disclosure of the personal information of identifiable individuals other than the appellant present in record E-1 would constitute an unjustified invasion of their personal privacy. Accordingly, subject to my discussion below on the exercise of discretion, I find that section 38(b) applies to the information for which it was claimed.

D. Does the discretionary exemption at section 12 apply to the records?

[53] Section 12 states as follows:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[54] Section 12 contains two branches as described below. Branch 1 arises from the common law and branch 2 is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

[55] Branch 1 of the section 12 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 12 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue.²⁰

Solicitor-client communication privilege

[56] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.²¹

²⁰ Order PO-2538-R and *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).

²¹ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

[57] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.²²

[58] The privilege applies to “a continuum of communications” between a solicitor and client:

. . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach.²³

[59] The privilege may also apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice.²⁴

[60] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.²⁵

Representations

[61] The health unit submits that records E-2, E-3, F-1, and F-2 are subject to solicitor-client privilege and are therefore exempt from disclosure pursuant to section 12.

[62] Specifically, the health unit submits that all of the records for which section 12 has been claimed clearly fall under both branches of solicitor-client privilege outlined above. It submits that these records reveal the substance of legal advice given by its solicitors.

[63] The appellant does not make any specific submissions on whether the solicitor-client privilege exemption at section 12 applies to any of the records.

Analysis and finding

[64] I have reviewed records E-2, E-3, F-1 and F-2 and have considered the health unit’s representations. I am satisfied that these records fall within the solicitor-client communication privilege exemption aspect of branch 1 of section 12.

[65] All of these records for which section 12 has been claimed consist of emails, including attachments, between health unit staff and legal counsel that either reveal

²² Orders PO-2441, MO-2166 and MO-1925.

²³ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

²⁴ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

²⁵ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

legal advice directly or are part of a "continuum of communications" between the health unit and its counsel. My review of these records reveals the following:

- legal counsel is either the recipient or the sender of the email communication;
- legal advice is being sought or provided;
- only legal counsel and the health unit are copied on the communications and there is no suggestion that privilege has been waived or that anyone outside of the health unit is aware of the content of the communications.

[66] Accordingly, I find that these records are exempt under the solicitor-client privilege component of branch 1 of section 12.

[67] Subject to my findings on the health unit's exercise of discretion which are outlined below, I find that all of the records that have been withheld as solicitor-client privileged information are exempt from disclosure under section 12.

E. Did the health unit properly exercise its discretion under section 38(b) and 12? If so, should this office uphold its exercise of discretion?

[68] The exemptions at sections 38(b) and 12 are discretionary and permit an institution to disclose information despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, this office may determine whether the institution failed to do so.

[69] In this order, I have found that the information in record E-1 qualifies for exemption under the discretionary personal privacy exemption at section 38(b). I have also found that the remaining records at issue, records E-2, E-3, F-1 and F-2, qualify for exemption under the discretionary exemption for solicitor-client privileged information at section 12. Consequently, I will assess whether the health unit exercised its discretion properly in applying those exemption to the records or portions of the record that have been withheld.

[70] This office may find that the institution erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose,
- it takes into account irrelevant considerations, or
- it fails to take into account relevant considerations.

[71] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁶ This office may not, however, substitute its own discretion for that of the institution.²⁷

[72] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

²⁶ Order MO-1573.

²⁷ Section 43(2) of the *Act*.

Representations

[73] The health unit takes the position that it exercised its discretion appropriately. It does not elaborate on its exercise of discretion.

[74] The appellant does not make any representations on whether he believes that the health unit properly exercised its discretion in denying access to the specific information at issue.

Finding

[75] As stated above, this office cannot substitute its exercise of discretion for that of the institution. Based on my review of the records and portions of records at issue in this appeal I am satisfied that the health unit properly exercised its discretion to withhold the information at issue in the records under sections 38(b) and 12. It appears that the health unit has considered the sensitive nature of the information that it has withheld, the appellant's interest in this information, and the purposes of the *Act*.

[76] The health unit exercised its discretion to apply the exemption at section 38(b) to withhold the personal information relating to the individuals other than the appellant in record E-1. In my view, its exercise of discretion was made in good faith. The health unit disclosed all of the information contained in that record to the appellant, with the exception of the names of individuals and other small portions of information that would render them identifiable. In my view, the health unit considered the fact that the disclosure of the personal information relating to other identifiable individuals would give rise to an unjustified invasion of their privacy as set out in sections 38(b). The health unit also considered the fact that, in the context of this appeal, the personal information is highly sensitive and was supplied in confidence, which are both factors weighing against disclosure listed in sections 14(2)(f) and (h).

[77] I also find that the health unit exercised its discretion appropriately to apply the solicitor-client exemption at section 12 to records E-2, E-3, F-1 and F-2. In withholding this information, I am satisfied that the health unit appropriately considered and weighed the importance of protecting the integrity of solicitor-client privilege by not disclosing privileged information against the appellant's right to access the specific information at issue in this appeal.

[78] Having reviewed the records closely, I note that the health unit has disclosed the majority of the information that is responsive to the request but does not contain the personal information of other identifiable individuals or is subject to solicitor-client privilege. In my view, considering the nature of the information that has been severed, the purpose of the solicitor-client privilege exemption, as well as the privacy rights of the identifiable individuals to whom the personal information relates, I accept that the health unit took proper considerations into account and exercised its discretion under

both section 38(b) and section 12 appropriately. Accordingly, I uphold its exercise of discretion as reasonable and find that the information at issue is properly exempt.

ORDER:

I uphold the health unit's decision and dismiss the appeal.

Original Signed By: _____ July 25, 2014 _____
Catherine Corban
Adjudicator