

Information and Privacy Commissioner,  
Ontario, Canada



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

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## FINAL ORDER PO-4478-F

Appeals PA21-00153 and PA22-00048

Ministry of Natural Resources and Forestry

January 29, 2024

**Summary:** A group of hunters, including the appellant, were charged with improper hunting offences. They complained about the conduct of the investigation into the incident and sought access under the *Act* to the investigative records from the Ministry of Natural Resources and Forestry (the ministry).

In Interim Order PO-4370-I, I found that the responsive investigative report and supporting records were not excluded from the application of the *Act* under section 65(6)3 (employment or labour relations) and ordered the ministry to issue an access decision. The ministry denied access to portions of the records relying on the personal privacy exemption in section 49(b) and the solicitor-client privilege exemption in section 19(a). In this order, the adjudicator partially upholds the application of the claimed exemptions and also finds that section 49(a) applies in conjunction with section 19(a).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2(1) (definition of personal information), 19(a), 21(2)(h), 49(a), and 49(b).

**Orders Considered:** Orders M-352, PO-3256 and PO-4370-I.

### OVERVIEW:

[1] The appellant is a member of a group of four hunters (the group)<sup>1</sup> that were charged by ministry conservation officers for offences under two sections of the Fish

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<sup>1</sup> All members of the group have consented to disclosure of their personal information.

and Wildlife Conservation Act (the FWCA) related to their hunting of a moose. In response, the group wrote a letter of complaint to the Ministry of Natural Resources and Forestry (the ministry). The ministry then retained the Manager of Inspection Operations Support for the Food Safety Inspection Delivery Branch (the manager) of another ministry, the Ministry of Agriculture, Food and Rural Affairs (OMAFRA), as an external party to investigate the group's complaint.

[2] The appellant, a member of the group, submitted two requests to the ministry for investigative records under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The first request sought access to the investigative report, as follows:

A copy of the review completed by [the] Manager, Inspection Operations Support, Food Safety Inspection Delivery Branch, Ministry of Agriculture, Food and Rural Affairs, which was sent to [an identified individual at the] Enforcement Branch, Ministry of Natural Resources and Forestry, on 2021/01/04, in an email with the subject line "Re: Moose file review update". Time period of the records: 2020/08/11 to 2021/01/04.

[3] On March 12, 2021, the ministry issued a decision denying access to the requested record, the 16-page report of the identified investigation, pursuant to the exclusion at section 65(6)3 of the *Act* (employment or labour relations).

[4] The appellant appealed the access decision to the Information and Privacy Commissioner of Ontario (the IPC). Appeal PA21-00153 was opened and a mediator was assigned to explore the possibility of resolution.

[5] The appellant's second request sought the supporting documents to the investigative report seeking:

... all information and notes gathered by [the manager/investigator named in the first request] in regards to an investigation into potential wrongdoing of conservation officers that led to a charge against me that was finally withdrawn. Specific to conversations or emails with the following officers [names] (Sudbury District), [name] (Sault Ste Marie), [name] (Wawa), [name] [Northeast Regional Enforcement Officer] between the dates of August first 2020 to the end of January 2021...<sup>2</sup>

[6] On January 14, 2022, the ministry issued a decision in response to the appellant's second request, denying access to the records identified as responsive, also relying on section 65(6)3 of the *Act* as with its first decision.

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<sup>2</sup> The request also contained the name, title and contact information for the identified manager who conducted the investigation. Additionally, below the written part of the request, the form indicates a different start date for the time-period than the one written above, i.e., July 1, 2020, rather than "August first".

[7] The appellant also appealed the January 14, 2022 access decision to the IPC. Appeal PA22-00048 was opened and the same mediator assigned to it as in Appeal PA21-00153.

[8] When no further mediation of the two appeals was possible, both appeals moved to the adjudication stage where an adjudicator may conduct an inquiry.

[9] Appeals PA21-00153 and PA22-00048 were both assigned to me. I conducted a joint inquiry into both appeals, considering whether the exclusion at section 65(6)3 applies to the records. I then issued Interim Order PO-4370-I, where I found that the records in both appeals were not excluded from the application of the *Act* by reason of section 65(6)3. I ordered the ministry to issue another access decision with respect to the records, without relying on the section 65(6)3 exclusion.

[10] The ministry issued an access decision in response to Interim Order PO-4370-I on April 28, 2023 and disclosed redacted records, relying on the personal privacy exemption in section 49(b) and the solicitor-client privilege exemption in section 19(a) to deny access to portions of the records.

[11] I sought and received representations from the parties on the application of those exemptions to the records. Those representations were shared amongst the parties in accordance with the IPC's *Practice Direction 7*.

[12] In its representations, the ministry withdrew its application of section 49(b) to certain portions of the records in both appeals that it had earlier withheld. This information is no longer at issue in these appeals.

[13] I also sought representations from three affected persons<sup>3</sup> whose personal information is at issue in the records. As a result of a consent from one affected person, the ministry agreed to disclose the audio statement and transcription of this audio statement of one of these affected persons, at pages 68-88 in the 327-page package of records (Appeal PA22-00048).<sup>4</sup> Therefore, the remaining audio statement is no longer at issue in this appeal.<sup>5</sup>

[14] Of the three affected persons, who I had sought representations from, two of them did not provide representations nor consent to disclosure of their information in the records.

[15] Finally, I note that the records contain information that is not responsive to the

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<sup>3</sup> These affected persons are not members of the hunting group. All the other members of the group, as well as the appellant's wife, consented to disclosure of their personal information to the appellant.

<sup>4</sup> As well, the number of pages of records in Appeal PA22-00048 (327 pages) were incorrectly described in the interim order as being 297 pages, which was the figure in the ministry's original index of records.

<sup>5</sup> Originally there were five audio files. Four of the audio files relate to the appellant and other members of the group and were disclosed to the appellant on consent.

request. I will order this information withheld.<sup>6</sup>

[16] In this order, I partially uphold the ministry's decision under 49(b). I also find that section 49(a) (discretion to refuse requester's own information) applies to the information exempt under section 19(a).

## **RECORDS:**

[17] The record at issue in Appeal PA21-00153 is a 16-page report (the report) that was prepared for management in the ministry's Enforcement Branch by the manager at OMAFRA after the receipt of the complaint. Portions of this record have been withheld under section 49(b) and 19(a).

[18] The records at issue in Appeal PA22-00048, are the supporting documents provided for the creation of the report. These records consist of emails, attachments, interview notes, notebooks, photos, and other documents related to the charges against the appellant totaling 327 pages.<sup>7</sup> Portions of these records have been withheld by the ministry under section 49(b), and section 19(a).

[19] I have added section 49(a) (discretion to refuse requester's own information) to the issues on appeal. As the records for which section 19(a) has been claimed contained the requester's own information, the exemption which must be considered for that information is section 49(a), read with section 19(a), as set out below.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?

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<sup>6</sup> This information in Appeal PA21-00153 consists of the name of the individual at the second severance on page 10 and in Appeal PA22-00048 consists of the names of the individual listed at the bottom of page 92, the individual listed at the top of page 93, and the individuals at pages 268-270, all of whom were not involved in the investigation that are the subject matter of the records.

<sup>7</sup> Originally there were five audio files. but one audio file relates to the affected person who consented to disclosure of their information at adjudication. The other audio file relates to the appellant and other members of the group and were disclosed to the appellant on consent. As well, the number of pages of records in Appeal PA22-00048 were incorrectly described in the interim order as 297 pages.

- C. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 19 solicitor-client privilege exemption, apply to the information at issue? <sup>8</sup>

## **DISCUSSION:**

### **Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?**

[20] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

[21] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

[22] "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>9</sup>

[23] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official, or business capacity is not considered to be "about" the individual.<sup>10</sup> See also sections 2(3) and 2(4), which state:

2(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

2(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[24] In some situations, even if information relates to an individual in a professional, official, or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.<sup>11</sup>

[25] Information is about an "identifiable individual" if it is reasonable to expect that

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<sup>8</sup> I have added section 49(a) (discretion to refuse requester's own information) to the issues on appeal. As I find below that the records for which section 19(a) has been claimed contain the requester's own information, the appropriate exemption to be considered is section 49(a), read with section 19(a).

<sup>9</sup> See the definition of "record" in section 2(1).

<sup>10</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>11</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

an individual can be identified from the information either by itself or if combined with other information.<sup>12</sup>

[26] Section 2(1) of the *Act* gives a list of examples of personal information. The only examples that are relevant to these appeals is found in paragraphs (b) and (h) of the definition of personal information, as follows:

“personal information” means recorded information about an identifiable individual, including,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

(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.

[27] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be “personal information.”<sup>13</sup>

[28] Sections 2(2), (3) and (4) of the *Act* exclude some information from the definition of personal information. Sections 2(3) and (4) are described above.

[29] It is important to know whose personal information is in the record. If the record contains the requester’s own personal information, their access rights are greater than if it does not.<sup>14</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>15</sup>

### ***Representations***

[30] The ministry states that the report and supporting documents contain the personal information of the following individuals:

- Four conservation officers;

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<sup>12</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>13</sup> Order 11.

<sup>14</sup> Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

<sup>15</sup> See sections 21(1) and 49(b).

- The manager; and
- Other identifiable individuals including the three affected persons.<sup>16</sup>

[31] It submits that although information pertaining to these individuals in the report and supporting documents sometimes appears in a business capacity, the ministry has only withheld their information in situations where it appears in a personal capacity.

[32] The ministry also states that the report and supporting documents contain the personal information of the four members of the hunting group (which includes the appellant), as well as the appellant's wife, all of whom have consented to disclosure of their personal information.

[33] The appellant did not address this issue in his representations.

### ***Findings***

[34] I find that all of the records contain the appellant's personal information as they relate to charges against him concerning alleged offences under the *FWCA* resulting from his personal hunting of a moose.<sup>17</sup> This constitutes information about his criminal history under paragraph (b) of the definition of personal information in section 2(1) of the *Act*. As I have found all the records contain the appellant's personal information, I will consider the ministry's application of section 19(a) with section 49(a).

[35] For the same reason, I find that the records also contain the personal information of the other three members of the hunting group, all of whom were also charged under the *FWCA*. As previously indicated, the other members of the group have consented to the disclosure of their personal information to the appellant.

[36] I will now consider whether, as claimed by the ministry, the records contain the personal information of other individuals, specifically, the manager at OMAFRA and the four conservation officers.

### ***The report (Appeal PA21-00153)***

[37] The report is a review of the actions taken by conservation officers and their ministry managers that resulted in charges being laid against members of the hunting group in relation to a moose hunt that occurred in September 2018.

[38] Based on my review of the report, other than the name of one individual not involved in the investigation found at the second severance on page 10, I find that all the severances in the report are about the three affected persons whose

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<sup>16</sup> One of these affected persons has provided consent to disclosure.

<sup>17</sup> The *FWCA* provides by section 102(1) that a person convicted of an offence under this Act is liable to a fine of not more than \$25,000, to imprisonment for a term of not more than one year, or to both.

representations I sought,<sup>18</sup> and not about the manager and the four conservation officers. Although the manager and the four conservation officers are mentioned in the report, their information has been disclosed and is not withheld in conjunction with that of the three affected persons.

[39] I find that none of the information at issue about the three affected persons is information about them in their personal capacity, instead it is information about them in a professional, official, or business capacity that does not reveal something of a personal nature about them. In my view this information concerns the ministry's interviews of these individuals in their professional, official, or business capacity.

[40] Section 49(b) applies to give an institution the discretion not to disclose a requester's personal information if disclosure would result in the unjustified invasion of personal privacy of another individual.

[41] I have found that the report contains the personal information of the appellant and the other members of the hunting group (all of whom have consented to disclosure) but that it does not contain the personal information of other identifiable individuals, therefore, the personal privacy exemption in section 49(b) cannot apply to it.

[42] With the exception of one severance made to the report under section 19(a), which I will consider below, no other exemptions have been claimed for the information at issue in the report. Therefore, I will order this information disclosed.

*The supporting documents to the report (Appeal PA22-00048)*

[43] These records consist of emails, attachments, interview notes, notebooks, photos, and other documents related to the charges against the appellant. The ministry has withheld the dates of birth, home addresses, home phone numbers, drivers' license numbers, family status, and employment history of the appellant and other individuals from these records. It has also withheld the employment history and family status information of ministry employees, as well as the dates on which the manager and certain ministry employees took personal vacation.<sup>19</sup>

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<sup>18</sup> These affected persons are not members of the hunting group.

<sup>19</sup> Dates of birth, home addresses, home phone numbers, and driver license numbers are found at:

- pages 92, 93, 289, 292, 294, 307, 325, and 327 of the records.

Employment history of ministry employees is found at:

- pages 99 (second severance), 100 (all severances except last one), 222 (last two severances), 234 (last severance), 235 (first severance), 242, 291, and 294 (first severance).

Family status information of ministry employees at:



[44] The appellant confirmed that of this information that has been severed by the ministry, he only seeks access to the personal vacation date related information found in emails at pages 1, 97, 250, and 253 of the 327-page package of records in Appeal PA22-00048. Accordingly, I will only consider whether the personal vacation date related information is personal information within the meaning of section 2(1) of the *Act*.

[45] In Order PO-3256, the adjudicator found that details relating to vacations qualify as personal information under the definition of that term at section 2(1), stating:

I have reviewed the records and find that information about the individuals' vacation time is recorded information about them and qualifies as their personal information. I make this finding despite the fact that the named individuals were acting in their professional capacity. I find that information about an individual's vacation time would reveal something of a personal nature about them.

[46] I agree with and adopt this reasoning for the purpose of this appeal. I have reviewed the personal vacation date related information and find that it qualifies as personal information within paragraph (h) of the definition of that term at section 2(1) of the *Act*. Disclosure of the manager and the ministry employees' names appear with other personal information relating to them, specifically details about these individuals' personal vacations. Though this information may appear in work related emails, I find that its disclosure would reveal something of a personal nature about these individuals.

[47] As I have found that the supporting documents to the report (the records in Appeal PA22-00048) contain the personal information of both the appellant and other individuals, below I will consider whether the discretionary exemptions in sections 49(a), read with section 19(a), and 49(b) apply to the information that the appellant continues to seek access to in these records.

**Issue B: Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?**

[48] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides some exemptions from this right.

[49] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

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- pages 234 (first severance), 235 (first sentence of second severance), 238, and 240.

[50] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.

[51] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

[52] Also, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.<sup>20</sup>

[53] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[54] If sections 21(1)(a) to (e) or 21(4)(a) to (d) apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 49(b). None of these sections apply.

[55] Sections 21(2) and (3) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b).

[56] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker<sup>21</sup> must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.<sup>22</sup>

### ***Representations***

[57] The ministry states that it redacted references to vacation date information of the manager and certain ministry employees that were contained in the records for the purpose of coordinating aspects of the manager's investigation. It states that it withheld this information because it was provided in confidence to the ministry under the factor that favours privacy protection in section 21(2)(h) (supplied in confidence) and that no factors weigh in favour of disclosure of this information.

[58] The appellant did not address the application of section 49(b) to the vacation date information in the records in Appeal PA22-00048.

### ***Findings***

[59] Section 21(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal

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<sup>20</sup> Order PO-2560.

<sup>21</sup> The institution or, on appeal, the IPC.

<sup>22</sup> Order MO-2954.

privacy.<sup>23</sup> Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[60] The list of factors under section 21(2) is not a complete list. The ministry must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 21(2).<sup>24</sup>

[61] The factor relied upon by the ministry, section 21(2)(h), reads:

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,

the personal information has been supplied by the individual to whom the information relates in confidence.

[62] This section weighs against disclosure if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. This requires an objective assessment of whether the expectation of confidentiality is "reasonable."<sup>25</sup>

[63] Based on the ministry's representations and my review of the records, I find that the personal vacation date related information of the manager and other ministry employees was supplied by them to the ministry in confidence. Therefore, the factor in section 21(2)(h) that weighs against disclosure applies.

[64] The appellant has not raised any of the factors in section 21(2) that weigh in favour of disclosure and, from my review, I find that none of them apply.

[65] I have taken into account that no factors favouring disclosure apply and that the factor in section 21(2)(h) that weighs against disclosure applies, and I have balanced the interests of the parties. I find that disclosure of the personal vacation date information would be an unjustified invasion of personal privacy under section 49(b), and this information is therefore, exempt.

[66] In making this finding, I have considered the ministry's exercise of discretion. Based on my review of the ministry's representations and the vacation date information in the records, I find that the ministry exercised its discretion in a proper manner in withholding this information. I find that the ministry did not exercise its discretion to withhold this personal information for any improper purpose or in bad faith, and that there is no evidence that it failed to take into account relevant factors or that it considered irrelevant ones. The appellant has no sympathetic or compelling need to

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<sup>23</sup> Order P-239.

<sup>24</sup> Order P-99.

<sup>25</sup> Order PO-1670.

receive this information and this information is confidential information to the individuals to whom it pertains.

[67] Accordingly, I uphold the ministry's exercise of discretion in denying access to the vacation date information of the manager and the ministry employees in the records in Appeal PA22-00048.

**Issue C: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 19(a) solicitor-client privilege exemption, apply to the information at issue?**

[68] The ministry did not claim section 49(a) when applying the section 19(a) exemption to the records. However, as I have found that the records for which section 19(a) has been claimed contain the requester's own information, this information must be considered under section 49(a), read with section 19(a).

[69] The discretionary nature of section 49(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.<sup>26</sup>

[70] Section 49(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information.  
[Emphasis added].

[71] The ministry has severed one sentence from the report (on page 1), and one sentence each from pages 99, 222, 231, 234, 242, and 257 of the supporting documents, under section 19(a).

[72] I asked the ministry to comment on whether the more appropriate exemption to claim in this case, where the records contain the personal information of the appellant, is section 49(a) read with section 19(a). It responded that because the severed information does not contain the personal information of the appellant, its position is that section 49(a) cannot apply.

[73] I disagree. In determining whether section 49(a) applies, it is not only the information at issue that should be looked at. Order M-352 establishes that whether a record contains the requester's personal information must be determined using a

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<sup>26</sup> Order M-352.

“record-by-record” approach, where the “unit of analysis is the record, rather than the individual paragraphs, sentences or words contained in a record.”

[74] If the institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[75] As I have found that all the records contain the personal information of the appellant, section 49(a) applies. Accordingly, I will consider whether the information that the ministry withheld under section 19(a), is exempt from disclosure under section 49(a), read with section 19(a).

[76] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution.

[77] In this case, the ministry relies on the section 19(a) common law solicitor-client communication privilege exemption. Section 19(a) states:

A head may refuse to disclose a record,  
that is subject to solicitor-client privilege.

### ***Representations***

[78] The ministry states that the severances in the report and supporting documents are confined to references to legal advice and work done by counsel on behalf of the client. This information is intended to be confidential as between solicitor and client, and if revealed would reveal the nature and scope of legal advice and review provided by named counsel.

[79] The appellant did not directly reply to these representations.

### ***Findings***

[80] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.<sup>27</sup> This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.<sup>28</sup> The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that

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<sup>27</sup> Orders PO-2441, MO-2166 and MO-1925.

<sup>28</sup> *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

advice can be sought and given.<sup>29</sup>

[81] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.<sup>30</sup> The privilege does not cover communications between a lawyer and a party on the other side of a transaction.<sup>31</sup>

[82] As noted above, the ministry has severed one sentence from the report (on page 1), and one sentence each from pages 99, 222, 231, 234, 242, and 257 of the supporting documents to the report.

[83] The ministry did not provide specific representations on each of these seven severances and how disclosure would reveal legal advice as contemplated by section 19(a). I have reviewed them and note that the sole severance made to the report and four of the six severances in the supporting documents are identical. They name the counsel who will or has provided legal advice. The ministry does not explain how disclosing counsel's identity would reveal legal advice given or sought. In the circumstances of these appeals, I do not accept that disclosure of the name of counsel would reveal the nature and scope of legal advice and review provided by that named counsel, as claimed by the ministry.

[84] Instead, I find that these five severances merely refer to which government lawyer provided legal advice on the matter and nothing more. I find that these severances are not subject to solicitor-client privilege in section 19(a), and I will order them disclosed.

[85] The remaining two severances are found in internal ministry emails (pages 231 and 257). These severances reveal communications received from, or sent to, the government lawyer who was providing advice to the ministry on the review being conducted by the manager. In my view, disclosure of these two severances would reveal direct communications of a confidential nature between a lawyer and client (ministry staff) made for the purpose of obtaining or giving legal advice.

[86] Therefore, I find that the two severances on pages 231 and 257 are subject to common law solicitor-client privilege and are exempt by reason of section 49(a), read with section 19(a).

[87] In making this finding, I have considered the ministry's exercise of discretion. The ministry, in exercising its discretion under section 19(a), submits that it considered the circumstances of the request, the purposes of the *Act*, the nature of the exemption, the importance of the solicitor-client relationship, and the preservation of confidentiality

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<sup>29</sup> *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

<sup>30</sup> *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

<sup>31</sup> *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)

of communications in the course of seeking and giving legal advice.

[88] While the ministry did not consider whether the information it withheld under section 19(a) should be disclosed to the appellant given that the records at issue contain the appellant's personal information, I find that the other factors considered by the ministry were valid and proper in the circumstances.

[89] Based on my review of the ministry's representations and the information I have found exempt under section 49(a), read with section 19(a), I find that the ministry exercised its discretion in a proper manner in withholding the severances on pages 231 and 257 of the records in Appeal PA22-00048, the supporting documents to the report.

[90] I find that the ministry did not exercise its discretion to withhold this information for any improper purpose or in bad faith, and that there is no evidence that it considered irrelevant factors. The appellant has no sympathetic or compelling need to receive this information and this information is confidential solicitor-client privileged information.

## **ORDER:**

1. I uphold the ministry's decision not to disclose the following information in the report in Appeal PA21-00153:
  - the name of the individual at the second severance on page 10.
2. I uphold the ministry's decision not to disclose the following information in the supporting documents to the report in Appeal PA22-00048:
  - the names of the individual listed at the bottom of page 92, the individual listed at the top of page 93, and the individuals at pages 268-270,
  - the vacation date related information at pages 1, 97, 250, and 253,
  - the dates of birth, home addresses, home phone numbers, and driver license numbers at pages 92, 93, 289, 292, 294, 307, 325, and 327,
  - the employment history of ministry employees at pages 99 (second severance), 100 (all severances except last one), 222 (last two severances), 234 (last severance), 235 (first severance), 242, 291, and 294 (first severance),
  - family status information of ministry employees at pages 234 (first severance), 235 (first sentence of second severance), 238, and 240, and
  - the solicitor-client privileged information at pages 231 and 257.

3. I order the ministry to disclose the remaining information at issue in the records in Appeals PA21-00153 and PA22-00048 to the appellant by **March 4, 2024** but not before **February 28, 2024**.

Original signed by: \_\_\_\_\_

Diane Smith  
Adjudicator

\_\_\_\_\_  
January 29, 2024