OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
Prince Edward Island
Re: Department of Transportation and Infrastructure

Order FI-22-006

Maria C. MacDonald
Adjudicator

July 8, 2022

Summary: The Applicant requested a review of the Public Body's decisions to withhold information and of the adequacy of the Public Body's search. The Adjudicator found that the Public Body properly applied section 15 of the *FOIPP Act* [disclosure of personal information would be an unreasonable invasion of personal privacy], clause 22(1)(g) [advice from officials], and clause 25(1)(a) [solicitor-client privilege]. Although there were some shortcomings of the Public Body's search, the Adjudicator found that the Public Body conducted an adequate search.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, subsection 8(1), section 15, section 22, clause 25(1)(a), and section 65.

Decisions Considered:

Order FI-20-004, *Re: Public Schools Branch*, 2020 CanLII 33890 (PE IPC)

Order 07-002, *Re: Workers' Compensation Board*, 2007 CanLII 55714 (PE IPC)

Order FI-19-005, *Re: Department of Workforce and Advanced Learning*, 2019 CanLII 32855 (PE IPC)

Order FI-18-006, *Re: Department of Economic Development and Tourism*, 2018 CanLII 54182 (PE IPC)

Solosky v. *The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821

Alberta (Information and Privacy Commissioner) v. *University of Calgary*, 2016 SCC 53 (CanLII), [2016] 2 SCR 555

Canadian Natural Resources Limited v*. ShawCor Ltd.*, 2014 ABCA 289 (CanLII)

Order F2021-24, *Re: Justice and Solicitor General*, 2021 CanLII 62588 (AB OIPC)

Pritchard v. Ontario (Human Rights Commission), [2004] 1 SCR 809

Descôteaux et al. v. *Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860

Order FI-17-011, *Re: Department of Communities, Land and Environment*, 2017 CanLII 49927 (PE IPC)

I. BACKGROUND

[1] The Department of Transportation and Infrastructure, formerly known as the Department of Transportation, Infrastructure and Energy, or TIE (the "Public Body") made a decision about the location and status of a road. A landowner on the road (the "Applicant") made the following access request pursuant to section 7 of the *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, Cap. F-15.01 (the "*FOIPP Act*"):

> Any and all records as defined in FOIPPA relating to [name of Applicant] and [name of co-owner of the property] and or our property at [address], including records relating to or used in the review of the status of [a road], and those records from other government entities relating to the above.
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> (Date range for Record Search from Oct 1, 2018 to June 10, 2019).

[2] The Public Body found over 500 responsive pages and disclosed most of them to the Applicant. The Applicant requested a review of the Public Body's decisions to withhold information under sections 15 [unreasonable invasion of personal privacy], 22 [advice from officials], and 25 [solicitor-client privilege] of the *FOIPP Act*, and of the adequacy of their search. Former Commissioner Karen Rose delegated this matter to me to investigate, and if necessary, conduct an inquiry and issue an order.

II. ISSUES

[3] The issues in this review are:

a. Did the head of the Public Body properly apply section 15 of the *FOIPP Act* when they decided to sever information on the basis that the information is personal information that, if disclosed, would constitute an unreasonable invasion of a third party's personal privacy?
b. Did the head of the Public Body properly apply section 22 of the *FOIPP Act* when they decided to sever information on the basis that the information is advice from officials [clause 22(1)(g)]?
c. Did the head of the Public Body properly apply clause 25(1)(a) of the *FOIPP Act* when they decided to sever information on the basis that the information is subject to solicitor-client privilege?
d. Did the head of the Public Body fulfill their duty to conduct an adequate search pursuant to subsection 8(1) of the *FOIPP Act*?

III. INFORMATION AT ISSUE

[4] The Applicant asked us to review the Public Body's decisions to withhold information on the following pages, under the following provisions of the *FOIPP Act*:

a. section 15 [unreasonable invasion of personal privacy], the information at issue is on pages 354-357;

b. clause 22(1)(g) [advice from officials], the information at issue is pages 16 (63 and 64), 91, 96 (108), and 159 (162). The page numbers in parenthesis are duplicate copies of the same withheld information, and will refer to them as "the duplicates");
c. clause 25(1)(a) [solicitor-client privilege], the Public Body withheld six documents (14 pages, unnumbered).

IV. BURDEN OF PROOF

[5] Section 65 of the *FOIPP Act* sets out which parties have the burden of proof depending on the circumstances. Section 65 states, in part:

> 65. (1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.
>
> (2) Notwithstanding subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.
> . . .

[6] In this review, the Applicant and the Public Body each have a burden of proof. The Applicant must prove that disclosure of the third parties' personal information would not be an unreasonable invasion of their personal privacy under section 15 of the *FOIPP Act*. The Public Body has the burden to prove that they properly applied section 22 [advice from officials], and clause 25(1)(a) [solicitor-client privilege] of the *FOIPP Act*, and that they conducted an adequate search under subsection 8(1) of the *FOIPP Act*.

V. ANALYSIS

Issue a. Did the head of the Public Body properly apply section 15 of the *FOIPP Act* when they decided to sever information on the basis that the information is personal information that, if disclosed, would constitute an unreasonable invasion of a third party's personal privacy?

[7] The information at issue appears in an addendum to a letter between two employees of the Public Body. The addendum is a bullet list of information under the headings "Summary of Findings" and "Analysis". The addendum refers to historic public records and includes summaries of verbal accounts about the history of the road by provincial employees, and members of the public about the history of the road. The Public Body disclosed the letter and addendum but withheld the names and other identifying information about some, but not all, of the people in the summaries. The Public Body disclosed the identifying information of provincial employees, and people who work for other organizations, and an individual who consented to the Public Body disclosing their name. Under the *FOIPP Act,* these people are "third parties"; they are not the Applicant or the Public Body.

[8] I reviewed the withheld information and I confirmed to the Applicant that the information that the Public Body withheld is personal information. I advised the Applicant that they have the burden of proof and asked for their submissions about why disclosure of the information would not be an unreasonable invasion of the third parties' personal privacy.

[9] When considering whether section 15 applies we first consider whether any of the circumstances listed in subsection 15(2) are applicable. Subsection 15(2) lists circumstances that are deemed not to be an unreasonable invasion of a third party's personal privacy if disclosed. If any of the circumstances of subsection 15(2) apply, the

analysis ends there, and the Public Body cannot withhold the personal information from the Applicant under section 15 of the *FOIPP Act*.

[10] If no provisions of subsection 15(2) apply, then we turn next to subsection 15(4). Subsection 15(4) lists circumstances that are presumed to be an unreasonable invasion of a third party's personal privacy if the personal information is disclosed.

[11] Subsection 15(5) requires us to consider whether any other relevant circumstances may impact whether disclosure would be an unreasonable invasion of a third party's personal privacy. Subsection 15(5) includes a non-exhaustive list of potentially relevant circumstances.

[12] The Applicant believes that we should give the personal information to them so the Applicant can assess the Public Body's claims that section 15 of the *FOIPP Act* applies. This is not reasonable. If we gave applicants the personal information to participate in a review, all the measures intended to protect personal privacy would be undermined by simply requesting a review, which would be an absurd result.

[13] The Applicant says their primary focus is on those people who gave information to the Public Body, and on which the Public Body relied to make the decision about the status and location of the road.

[14] The Applicant claims that several provisions of subsection 15(2) of the *FOIPP Act* apply. If any of these provisions apply, disclosure is not an unreasonable invasion of personal privacy and the analysis ends. In the alternative, the Applicant argues there are several relevant considerations under subsection 15(5) that the Applicant believes weigh in favour of a finding that disclosure would not be an unreasonable invasion of these individuals' personal privacy.

[15] The Applicant claims the following provisions of subsection 15(2) of the *FOIPP Act* apply:

> 15(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
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> . . .
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> (b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party;
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> . . .
>
> (g) the information is about a license, permit or other similar discretionary benefit relating to
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> . . .
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> (ii) real property, including a development permit or building permit, that has been granted to the third party by a public body, or
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> . . .
>
> and the disclosure is limited to the name of the third party and the nature of the license, permit or other similar discretionary benefit;
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> . . .
>
> (h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body;
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> . . .

Clause 15(2)(b) – health or safety

[16] The Applicant claims clause 15(2)(b) of the *FOIPP Act* applies, because their safety and the co-owner's safety are affected, and that there is a threat to the environment. This provision does not relate to threats to the environment, and I will not address threats to the environment.

[17] In the Public Body's response submissions, they directed me to Order FI-20-004, *Re: Public Schools Branch*, 2020 CanLII 33890 (PE IPC). At paragraph 33, former Commissioner Karen Rose states that for clause 15(2)(b) of the *FOIPP Act* to apply, an applicant must prove that:

a. there are compelling circumstances affecting anyone's health or safety; and
b. there is a causal connection between disclosing the personal information and the compelling circumstances affecting anyone's health or safety.

[18] The Applicant's safety concerns are that the Public Body's decision about the location and status of the road "encourage unlawful and extensive access by vehicles to this shoreline creating unsafe conditions". The Applicant also refers to submissions in a related matter in which they describe several incidents which the Applicant calls threats. I do not consider these incidents to be persuasive evidence that disclosing the personal information could reasonably be expected to affect anyone's health or safety. I am not persuaded that the circumstances, including these incidents, would affect anyone's health or safety.

[19] The Public Body withheld information that identifies people in the context of the history of the road. The withheld information does not relate to any alleged health or safety issue.

[20] There are no compelling circumstances affecting anyone's health or safety, and no causal connection between the withheld personal information and the alleged health or safety issues. I find that clause 15(2)(b) of the *FOIPP Act* does not apply.

Subclause 15(2)(g)(ii) – discretionary benefit related to real property

[21] The Applicant claims that subclause 15(2)(g)(ii) of the *FOIPP Act* applies. On a plain reading of subclause 15(2)(g)(ii) of the *FOIPP Act,* all of the following elements must apply:

a. There must be a license, permit or other similar discretionary benefit,
b. The information must relate to the above-noted discretionary benefit,
c. A public body must have granted the discretionary benefit,
d. A public body must have granted the discretionary benefit to a third party, and
e. The discretionary benefit must relate to real property, including a development permit or building permit.

[22] The Applicant's position is that the Public Body's decision about the location and status of the road gave members of the public some rights. The Applicant's position is that the individuals in the records are members of the public, therefore these individuals obtained a discretionary benefit from the Public Body.

[23] The withheld information identifies individuals in the context of the history of the road. It is not about a discretionary benefit, or a benefit similar to a license or permit. I also do not accept that, the Public Body's ultimate decision about the location and status of the road was a "grant" to the people mentioned in the context of the history of the road.

[24] I find that subclause 15(2)(g)(ii) of the *FOIPP Act* does not apply in these circumstances because the personal information the Public Body withheld is not about a discretionary benefit, similar to a license or permit, granted by a public body to the third parties.

Clause 15(2)(h) – discretionary benefit of a financial nature

[25] The Applicant claims clause 15(2)(h) of the *FOIPP Act* applies. Similar to their position on subclause 15(2)(g)(ii) of the *FOIPP Act*, the Applicant's position is that the Public Body's decision about the location and status of the road gave members of the public some rights, which the Applicant contends have a financial value. The Applicant's position is that the individuals in the records are members of the public, therefore the

Applicant argues, these individuals obtained a discretionary benefit of a financial nature from the Public Body.

[26] The withheld information identifies individuals in the context of the history of the road. It is not about a discretionary benefit, or a benefit of a financial nature. I also do not accept that, the Public Body's ultimate decision about the location and status of the road was a "grant" to the people mentioned in the context of the history of the road.

[27] I find that clause 15(2)(h) of the *FOIPP Act* does not apply because the personal information the Public Body withheld would not reveal details of a discretionary benefit of a financial nature granted to the third parties by a public body.

[28] None of the provisions of subsection 15(2) of the *FOIPP Act* apply.

Subclause 15(4)(g)(i) – name appears with other personal information

[29] The Public Body states:

> As noted earlier in this response, the names protected in the responsive records, including pages 352 to 358, are found with other information about those individuals that has been disclosed to the Applicant. Disclosing the names of individuals will result in disclosure of other personal information about the individuals the Chief Surveyor spoke to and in some cases personal information about other third parties.

[30] Neither the Applicant nor the Public Body claim any of the provisions of subsection 15(4) apply, but the above statement alludes to clause 15(4)(g)(i), which states:

> 15(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> . . .

(g) the personal information consists of the third party's name where
(i) it appears with other personal information about the third party, or
. . .

[31] The Public Body disclosed the third parties' recollections of how they personally used the road and how others used the road, and their recollections about disputes of the location and status of the road. As noted, the Public Body did not withhold all the identifying information. They disclosed the names of individuals' whose recollections related to their work duties, and previous owners of properties in the area which are available in public records. The identifying information the Public Body withheld is from or about individuals involved in past disagreements about property boundaries, ownership, and the location and status of the road. The Public Body disclosed the particulars of these recollections and withheld the identifying information. It is presumed that disclosure would be an unreasonable invasion of the third parties' personal privacy.

Subsection 15(5) – relevant circumstances

[32] Next, we consider subsection 15(5), and whether any relevant circumstances may weigh either for or against a finding that disclosure would be an unreasonable invasion of the third parties' personal privacy.

[33] The Applicant and the Public Body raise the following provisions of subsection 15(5) of the *FOIPP Act*:

15(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Prince Edward Island or a public body to public scrutiny;
> . . .
> (c) the personal information is relevant to a fair determination of the applicant's rights;
> . . .
> (g) the personal information is likely to be inaccurate or unreliable;
> . . .

Clause 15(5)(a) – public scrutiny

[34] Previous orders have confirmed that for clause 15(5)(a) to apply, an activity of the public body must have been called into question, raising the need for public scrutiny [see Order 07-002, *Re: Workers' Compensation Board*, 2007 CanLII 55714 (PE IPC), at page 25].

[35] The Applicant states:

> . . . Disclosure of the personal information (names) of these informants is important to understanding the context, veracity and reliability of the information TIE used in making their decisions and taking their actions. Providing this information is desirable for subjecting this public body's activities to public scrutiny; advances the very purpose of FOIPPA and is not be an unreasonable invasion of the personal privacy of those persons.

[36] The Public Body withheld information that would identify some of the individuals that the Public Body talked to, or about (but not the Applicant). The Public Body disclosed a detailed summary of the Public Body's findings and analysis, including their research into the history of the road. Although the Applicant believes that the people are not real people, or they were not honest, and appears to disagree with the Public Body's

decision about the location or status of the road, the Applicant has not provided any evidence that the research was not fulsome or was inaccurate.

[37] I am not satisfied that the disclosure of identifying information is desirable for public scrutiny of how the Public Body made their decision. I have no evidence that anyone other than the Applicant believes that public scrutiny into the Public Body's decision about the location and status of the road is desirable.

[38] In these circumstances, clause 15(5)(a) of the *FOIPP Act,* about public scrutiny, is not applicable and does not weigh either in favour or against, a finding that disclosure of the personal information would be an unreasonable invasion of the third parties' personal privacy.

Clause 15(5)(c) – fair determination of the applicant's rights

[39] The Applicant believes disclosure of the names of the informants is relevant to a fair determination of the Applicant's rights. Specifically, whether the information the Public Body relied on to make the decision about the location and status of the road, was truthful. The Applicant states:

> . . . The names of the informants are the foundation for TIE's actions. Names are the first step in determining whether the information TIE relied upon was valid or whether these informants are in fact even <u>real</u> people. Are they related to persons at TIE, including [the Minister] who made these decisions, took or ordered these actions? Do they have a personal or political relation to [the Minister]? Reliable information is that [the Minister] campaigned on the promise to [information that may identify the Applicant]. Were the informants sought out – cherry-picked – because they supported [the Minister] and his assertions? Are they reliable or biased? Without disclosure

> it is impossible to answer these questions or test the veracity of their information and TIE's decisions. [underline emphasis in original]

[40] In Order FI-20-004, *Re: Public Schools Branch*, 2020 CanLII 33890 (PE IPC), at paragraph 45, former Commissioner Karen Rose held that for section 15(5)(c) to apply, the following circumstances must be met:

> 1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds.
> 2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed.
> 3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question.
> 4. The personal information must be necessary to prepare for the proceeding or to ensure a fair hearing.

[41] I make no findings about the first three items as I find that the fourth condition has not been satisfied. The personal information is not necessary for the Applicant to prepare for a proceeding or to ensure a fair hearing. The Public Body has given the Applicant their title search notes, sketches, photographs, old surveys, a new survey, and detailed notes of their findings and analysis. The Public Body gave the particulars of the third parties' recollections about the history of the road. If the Applicant has any evidence that contradicts any of the statements about the history of the road, they could present their evidence in a proceeding.

[42] In these circumstances, clause 15(5)(c) of the *FOIPP Act,* about fair determination of an applicant's rights is not applicable, and does not weigh either in favour or against a finding that disclosure of the personal information would be an unreasonable invasion of the third parties' personal privacy.

Clause 15(5)(g) – inaccurate or unreliable

[43] The Applicant says they need the personal information to determine if the information is accurate and reliable. The Applicant may misunderstand this provision. It applies if the information is likely to be inaccurate or unreliable, not for an applicant to assess the accuracy or reliability of the information. If the personal information is inaccurate or unreliable, that would weigh in favour of a finding that disclosure would be an unreasonable invasion of personal privacy and cannot be disclosed. This is the opposite of the Applicant's intention to gain access to the identifying information.

[44] In these circumstances, clause 15(5)(g) of the *FOIPP Act,* about inaccurate or unreliable personal information, is not applicable, and does not weigh either in favour or against a finding that disclosure of the personal information would be an unreasonable invasion of the third parties' personal privacy.

Other relevant considerations

[45] The Public Body advises that when they were considering whether disclosure of personal information would be an unreasonable invasion of personal privacy, they also considered the following.

> In addition to those circumstances addressed earlier in this response, the Public Body considered clauses 15(5)(b), (d), (e) and (i) and determined that they did not apply.
>
> However, the Public Body considered the following and determined that all facts and circumstances taken together favoured protection of the protected personal information:
> • The individuals whose names and other personal information was protected did not consent to disclosure of their personal information;

• The Applicant is not required to maintain the confidentiality of third parties whose identities are protected via protection of the personal information at issue;
• If disclosed the Public Body would be unable to protect the identity of third parties, their opinions and views shared with the Chief Surveyor or the personal information shared about others;
• It was not possible or practically possible to notify or consult with all individuals named in the records;
• The protected personal information derives from consultation with individuals in their personal capacities and/or information received relates to information about third parties in their personal capacities;
• Some of the protected information would reveal the identity of individuals discussing other individuals, opinions and historical disputes involving individuals. The Public Body believes that the nature of the records favours protection as was done when the records were processed;
• We believe that amount of information disclosed to the Applicant demonstrated openness, transparency and accountability.

[46] These factors are all relevant factors that weigh in favour of a finding that disclosure would be an unreasonable invasion of the Third Parties' personal privacy.

[47] The Applicant raised a few provisions of subsection 15(5) of the *FOIPP Act* but has not met the criteria for those provisions. There are no relevant considerations that weigh in favour of a finding that disclosure would not be an unreasonable invasion of personal privacy.

[48] I find that disclosure of the personal information would be an unreasonable invasion of the third parties' personal privacy under section 15 of the *FOIPP Act*. Therefore, the head of the Public Body is required to refuse to disclose the third parties' personal information to the Applicant.

Issue b. Did the head of the Public Body properly apply section 22 of the *FOIPP Act* when they decided to sever information on the basis that the information is advice from officials [clause 22(1)(g)]?

[49] The Public Body withheld information under two clauses of section 22 of the *FOIPP Act*. On my request, the Public Body provided submissions on clause 22(1)(a), which relates to consultations and deliberations. However, the Applicant did not request a review of the Public Body's application of clause 22(1)(a), respond to the Public Body's submissions on clause 22(1)(a), and does not oppose these severances, so I will not address them further.

[50] Clause 22(1)(g) of the *FOIPP Act* states:

> 22(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal
>
> . . .
>
> (g) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council;
>
> . . .

[51] Previous orders have accepted the following definitions of the terms used in clause 22(1)(g) of the *FOIPP Act*:

> The term r*ecommendations* refers to formal recommendations about courses of action to be followed which are usually specific in nature and are proposed mainly in connection with a particular decision being taken.
>
> *Advice*, on the other hand, refers to less formal suggestions about particular approaches to take or courses of action to follow.
>
> *Proposals and analyses or policy options* are closely related to advice and recommendations and refer to the concise setting out of the advantages and disadvantages of particular courses of actions.

[see for example, Order FI-19-005, *Re: Department of Workforce and Advanced Learning*, 2019 CanLII 32855 (PE IPC), at paragraph 63]

[52] Clause 22(1)(g) of the *FOIPP Act* applies to advice, proposals, recommendations, analyses or policy options, which I will collectively call 'advice'. The person giving the advice must have the responsibility to give the advice, and the views must be for the purpose of doing something, such as taking an action, or making a decision or a choice [see for example, Order FI-18-006, *Re: Department of Economic Development and Tourism*, 2018 CanLII 54182 (PE IPC), at paragraph 53].

[53] The Public Body claims that clause 22(1)(g) of the *FOIPP Act* applies to some information they withheld from pages 16, 91, 96, and 159 (and duplicates). In their request for review, the Applicant states:

> Documents withheld under Section 22.1 (g) relating to advice from/to officials is overly broad and should be disclosed given the context discussed above. Records relating to discussions and decisions about expropriating our private property are especially vital and should have been included.

[54] The Public Body gave submissions on section 22, together with their submissions on sections 15, 25, and the adequacy of the Public Body's search. We gave these submissions to the Applicant with an invitation to provide a response. The Applicant provided response submissions on the other issues but did not provide any representations about the application of section 22 of the *FOIPP Act*.

[55] As set out in other decisions of our office, the analysis of section 22, involves assessing:

a) whether a clause of subsection 22(1) applies; and, if so,
b) whether a clause subsection 22(2) applies – which is a list of exceptions to subsection 22(1); and, if not,
c) whether the head of the Public Body properly exercised their discretion to withhold the information.

[56] I will consider first whether clause 22(1)(g) of the *FOIPP Act* [advice from officials] applies to the withheld information. If so, I will then consider whether any provision of subsection 22(2) of the *FOIPP Act* applies, and if not, whether the Public Body properly exercised their discretion to withhold the information.

[57] The Public Body describes the information that they withheld from these pages as follows (I added the headings):

> *Page 16*
> The same information protected pursuant to clause 22(1)(g) is found on pages 16, 63 and 64. The protected information is contained in an ongoing email discussion that could also fit within clause 22(1)(a). The situation involves a discussion about a Communication Officer's response to media and her request for input from a Director and the Deputy Minister in relation to the suggested draft text, part of which was not considered acceptable and resulted in an updated draft which has been disclosed.
>
> *Page 91*
> The information protected pursuant to clause 22(1)(g) on page 91 consists of advice provided by the Director to the Communications Officer responsible for preparing a media response. It was provided because the Communications Officer was preparing a response and sought input from the Director. This Officer was in a position to accept or reject the suggested test.
>
> *Page 96*
> The same information protected pursuant to clause 22(1)(a) and 22(1)(g) is found on pages 96 and 108. The protected information on these pages forms part of an email exchange between the Chief Surveyor and the Director. It commences with an email from the Director consulting with the Chief Surveyor and inquiring about whether assistance is required because these two individuals both share responsibilities in the context of a road review and related matters/communications. The protected information at issue is part of ongoing deliberations relating to addressing an issue and forms part of a response from the Chief Surveyor who was asked for his views on addressing same for the purpose of taking action. The protected information also

contains the Chief Surveyor's advice consisting of suggestions and/or an approach to address the issue.

Page 159
The same information protected pursuant to clause 22(1)(a) and 22(1)(g) is found on pages 159 and 162. The protected information was provided by the Supervisor of Roads and Right-of-ways. Her position requires her to regularly use her expertise in these subject areas. In this email exchange she was asked for her views and advice. The protected information contains her views and advice and the Chief Surveyor was in a position to take an action and accept or reject those views and suggestions.

[58] I reviewed the withheld information and confirm that the Public Body's descriptions are accurate. Pages 16 and 91 relate to proposed responses to media requests, page 96 relates to an option for the recipient to consider, and page 159 relates to two proposed amendments to a draft letter.

[59] I reviewed the content of the withheld information and confirm that in each instance it contains a suggested course of action pursuant to the definitions of recommendations or advice as set out above. I confirm that the people providing the advice are responsible to provide it, and it is for the purpose of taking an action. I accept that clause 22(1)(g) of the *FOIPP Act* applies to the information the Public Body withheld on pages 16, 91, 96, and 159 (and duplicates).

Subsection 22(2) – exceptions to subsection 22(1)

[60] Neither party has raised any exceptions under subsection 22(2) of the *FOIPP Act*. I reviewed the exceptions in subsection 22(2) and confirm that none of these circumstances apply.

Exercise of Discretion

[61] Under section 22, the head of the Public Body has discretion to provide access to an applicant or withhold the information. I must now assess whether the head of the Public Body exercised their discretion reasonably. A decision is not reasonable if, for example, the head of a public body made a decision in bad faith or for an improper purpose, or considered irrelevant considerations, or failed to consider relevant considerations. The head of a public body must show that all relevant factors for and against access were considered in a balanced and judicious manner when making their determination [see for example, Order FI-19-005, *supra*, at paragraphs 70 to 74].

[62] The Public Body advises that they considered a range of factors, including the following:

> Second, the Public Body considered the relevant legal principles and severed the information at issue in good faith and judiciously after having balanced all circumstances and interests at stake. Specifically the Public Body notes the following:
>
> - The Public Body was mindful of the general purposes of the *Act* with a view of being open, transparent and accountable. The Public Body exercised its discretion in such a way to promote the general purposes of the Act.
> - The Public Body considered the fact that the information at issue was exchanged in confidence in order to provide views, suggestions, recommendations and/or advice to deal with a sensitive matter involving parties with different opinions and interests. The Public Body was mindful of the context and the need to balance the interests of those concerned.
> - The Public Body considered the age of the information at issue.
> - The Public Body considered its historical practices and previous orders of the Information and Privacy Commissioner.
> - The Public Body acknowledged that the other information relating to these matters is in the public realm and determined that there was no definite or compelling need to disclose the information at issue as doing so would not contribute the public body's understanding or increase public confidence in the operation of the Public Body.
> - In exercising its discretion under subsection 22(1) of the *Act*, the Public

> Body recognized that the Applicant had a personal interest in the responsive records and made every effort to only severe [sic] views, suggestions, recommendations and/or advice it deemed to be significant or sensitive. As such, the Public Body acknowledged that it was required to balance the interests at issue in a way that did not detract from purpose of this limited exception, being the promotion of frank exchanges among employees and public bodies as well as provision of candid advice from officials.

[63] I am satisfied that the Public Body considered relevant factors when exercising its discretion under section 22 of the *FOIPP Act*, and it did not consider any irrelevant considerations. I therefore find that the head of the Public Body exercised their discretion reasonably, in deciding to withhold the information on pages 16, 91, 96, and 159 (and duplicates).

Issue c: Did the head of the Public Body properly apply clause 25(1)(a) of the *FOIPP Act* when they decided to sever information on the basis that the information is subject to solicitor-client privilege?

[64] The Public Body withheld 14 pages relying on clause 25(1)(a) [solicitor-client privilege], which states:

> 25. (1) The head of a public body may refuse to disclose to an applicant
> (a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege;
> . . .

[65] The leading Canadian decision to establish whether communications are subject to solicitor-client privilege is the Supreme Court of Canada case of *Solosky* v. *The Queen,* 1979 CanLII 9 (SCC), [1980] 1 SCR 821. The Court set out the following three

requirements for solicitor-client privilege, which are sometimes referred to as the *Solosky* test:

> … privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege—
>
> (i) a communication between solicitor and client;
> (ii) which entails the seeking or giving of legal advice; and
> (iii) which is intended to be confidential by the parties.

[66] The Public Body did not provide a copy of the 14 pages at issue to our office. In *Alberta (Information and Privacy Commissioner)* v. *University of Calgary*, 2016 SCC 53 (CanLII), the Supreme Court of Canada considered wording very similar to PEI's *FOIPP Act*, and held that the Commissioner's office cannot compel a public body to provide a copy of records that a public body claims are protected by solicitor-client privilege.

[67] When a public body elects not to provide a copy of the records that they claim are protected by solicitor-client privilege to the Commissioner's office, they must nevertheless provide enough information to support their claim. They must describe each record with enough detail to assist other parties to assess the validity of the claimed privilege, short of revealing any privileged information [see for example, *Canadian Natural Resources Limited* v. *ShawCor Ltd.*, 2014 ABCA 289 (CanLII) (*ShawCor*)].

[68] Our role on a review of a public body's claim of solicitor-client privilege is as follows, as summarized by Alberta's Office of the Information and Privacy Commissioner in Order F2021-24, *Re: Justice and Solicitor General*, 2021 CanLII 62588 (AB OIPC), at paragraph 71:

> My understanding, then, in light of *EPS, ShawCor*, and rule 5.8, is that I am to consider whether the description of a record enables me to recognize that the elements of solicitor-client privilege set out in *Solosky* are present. At that point, the Public Body will have satisfied the *ShawCor* standard and established a rebuttable presumption that the records are subject to solicitor-client privilege. Absent evidence to rebut the presumption, I must find that the records were properly withheld under section 27(1)(a). Where the standard is not met, in the absence of other evidence that would establish that the records are subject to solicitor-client privilege, I must find that the records were not properly withheld under section 27(1)(a).

Preliminary issue: Should we accept the Public Body's evidence *in camera?*

[69] In our initial correspondence to the Public Body requesting submissions and evidence, we invited the Public Body to provide descriptions of the records *in camera*, that is, our office would not provide them to the Applicant or refer to them in our final report. Our office's practice has since evolved to instruct public bodies that our office will consider requests to receive submissions or evidence *in camera* if it contains the withheld information that is the subject of the review, or contains information that is subject to an exception under the *FOIPP Act* (including solicitor-client privilege).

[70] On our invitation, the Public Body requested that we receive the description column *in camera.* The Applicant opposed this approach, and I advised the Public Body that, as a preliminary issue, I would address whether our office ought to receive the description column *in camera* and invited the Public Body to provide submissions. The Public Body did not provide submissions but amended the descriptions and advised us that they did not oppose us giving the revised descriptions to the Applicant or disclosing them in this order. The issue of whether to accept this information *in camera* is now moot.

The Public Body's position regarding solicitor-client privilege

[71] The Public Body states:

> The affidavit we are providing clearly and sufficiently shows that the criteria in the *Solosky* test have been met. The case law confirms that a public body may satisfy the test with sufficient detail in its submissions and affidavit evidence: See *Order No. FI-20-005, Re: Department of Justice and Public Safety*, dated April 2, 2020.
>
> The affidavit evidence shows that the records at issue were intended to be confidential and that they were exchanged in the context of seeking or giving of legal advice, including seeking legal advice and information exchanged for the purpose of giving or seeking legal advice.
>
> In the case of both this matter and related file [file numbers of the Public Body and our office], we submit that clear and sufficient evidence has been provided. However to assist you in your deliberations, the Public Body believes it would be helpful to elaborate a bit more on context. We have attached a schedule to these Submissions for your further consideration. It is being provided on an "*in camera"* basis and the Public Body does not consent to it being shared with the Applicant.

[72] In addition to the Public Body's affidavit evidence, the Public Body provided a supplementary page to describe the context, but it does not describe the records and is information that the Applicant knows.

Analysis

[73] In addition to the Public Body's evidence, I have copies of the responsive records the Public Body disclosed to the Applicant. The Public Body also responded to my question about a letter from the Public Body's lawyer to the Applicant (pages 115-116). I will consider the three parts of the *Solosky* test with this evidence.

i) Are the records a communication between solicitor and client?

[74] The Public Body's affidavit evidence about the second part of the *Solosky* test is that four of the six records are:

> Email correspondence between Departmental client and legal counsel seeking or giving legal advice.

And, the other two records are:

> Email correspondence between Departmental client and legal counsel made within the framework of a solicitor-client relationship that contains solicitor-client privileged information.

[75] For the purposes of this review I presume that "departmental client" is the Public Body.

[76] Although the affidavit evidence does not include the names of the authors or the recipients of the correspondence, we can tell from the context of the other records that the Public Body was in a solicitor-client relationship with an internal government lawyer. I have enough information to recognize that the records are a communication between a solicitor and their client and that the first part of the *Solosky* test is met.

ii) Does the information entail the seeking or giving of legal advice?

[77] As noted above, the Public Body's affidavit evidence about the second part of the *Solosky* test is that four of the six records entail seeking or giving legal advice, and the other two records are made within the framework of a solicitor-client relationship.

[78] When the lawyer involved is a government lawyer, we must consider the remarks of the Supreme Court of Canada in *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1

SCR 809, at paragraph 20. Because in-house lawyers may be called upon to give policy or business advice, which is not legal advice, further evidence may be needed about the circumstances in which the legal advice arose:

> Owing to the nature of the work of in-house counsel, often having both legal and non-legal responsibilities, each situation must be assessed on a case-by-case basis to determine if the circumstances were such that the privilege arose. Whether or not the privilege will attach depends on the nature of the relationship, the subject matter of the advice, and the circumstances in which it is sought and rendered.

[79] The Public Body did not provide information described in the *Pritchard* decision in their submissions or affidavit evidence, such as information about the nature of the relationship, the subject matter of the advice, or the circumstances in which it was sought or rendered. But I have other evidence. One of the responsive records the Public Body disclosed to the Applicant is a letter that the internal government lawyer wrote to the Applicant, which included the Public Body's legal position on an issue. The Applicant had questioned the Public Body's process and authority, and the factual and legal decisions of the Public Body. The Applicant further advised the Public Body that they had retained counsel. I am satisfied that the government lawyer was more likely than not acting in a legal capacity as opposed to a business, policy, or other non-legal capacity.

[80] The Public Body claims that solicitor-client privilege applies to two records that are emails described as "made within the framework of a solicitor-client relationship that contains solicitor-client privileged information".

[81] It is circular to assert that something is subject to solicitor-client privilege because it contains solicitor-client privileged information. Although it is awkwardly phrased, the affidavit of the head of the Public Body also includes the following statement:

> 5. More specifically, all of the records were made in the context of a solicitor-client relationship and consist of either:
>
> . . .
> b. communications made within the framework of the solicitor-client relationship and forming part of the continuum of communication in the giving or seeking of legal advice that were intended to be confidential; or,
> . . .

[82] There is a presumption that communications made in the framework of a solicitor-client relationship, in the course of seeking legal advice, is protected by solicitor-client privilege [see *Descôteaux et al*. v. *Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860, among other decisions].

[83] I have enough information to recognize that the six records exchanged between the Public Body and their internal government lawyer either entail the seeking or giving of legal advice, or are made within the framework of a solicitor-client relationship and relate to seeking or giving of advice, and that the second part of the *Solosky* test has been met.

iii) Are the records intended to be confidential by the parties?

[84] Confidentiality is often implied when there are communications between a solicitor and their client involving legal advice. The head of the Public Body states in their affidavit

that the records were intended to be confidential. I had a question for the Public Body arising from one record the Public Body disclosed to the Applicant.

[85] The Public Body's internal government lawyer wrote to the Applicant (page 115-116). In this letter, the lawyer says they are responding to the Applicant's email dated June 7, 2019. The Applicant's email to the Public Body would have been responsive to the Applicant's request, but it was not among the responsive records. There are potentially two reasons the Public Body did not disclose the Applicant's email to the Applicant: either it was not located and retrieved; or the Public Body withheld it from our office because they claim it is protected by solicitor-client privilege.

[86] I asked the Public Body about this email. They re-searched one of the employee's records and located and retrieved the email dated June 7, 2019, and a few other records, and disclosed them to the Applicant.

[87] The Public Body did not disclose any records about their letter to the Applicant, such as how the internal government lawyer's letter was directed or arranged. There may not be any such records. But if the Public Body is claiming solicitor-client privilege over information they already disclosed in their letter to the Applicant, it is possible that it was not intended to be confidential, or that the Public Body waived their privilege. The Public Body advises that the withheld information does not relate to the internal government lawyer's letter to the Applicant.

[88] The Public Body asked me to receive, on an *in camera* basis, the fact that the information they claim is protected by solicitor-client privilege does not relate to the internal lawyer's letter to the Applicant. When I asked why the Public Body wanted me to receive this information *in camera*, the Public Body's position is that the Applicant is not entitled to know anything about the information over which they claim solicitor-

client privilege (paraphrased). The *ShawCor* standard is to describe the records short of revealing information that is privileged. I did not accept this information *in camera*. In my view, information on what the withheld documents are NOT about, does not reveal any solicitor-client privileged information.

[89] I have enough information to recognize that the records were intended to be confidential, and that the third part of the *Solosky* test has been met.

[90] In summary, the evidence before me is consistent with the tests for solicitor-client privilege. I find that the records are subject to solicitor-client privilege pursuant to clause 25(1)(a) of the *FOIPP Act*.

Exercise of discretion

[91] In their request for review, the Applicant states:

> Documents assertedly withheld under section 25(1)(a) should be disclosed because the redactions are overly broad, not supported by exceptions to FOIPPA. Because such records may contain information of potential or past illegal activity and would identify persons who were or are threats to our personal security or private property. TIE has the responsibility to provide these.

[92] The Applicant has not provided any information to substantiate their beliefs that the Public Body applied this exception overly broadly, or that the withheld records contain information about potential or past illegal activity or would identify any threats to the Applicant, or to the Applicant's property.

[93] Clause 25(1)(a) of the *FOIPP Act* is a discretionary exception to disclosure. Other orders of this Office have found that, once solicitor-client privilege has been established, withholding the information is usually justified for that reason alone. It is not necessary to review whether a public body properly exercised their discretion.

[94] Based on the foregoing, I am satisfied that the Public Body has met their burden to show, on a balance of probabilities, that the records at issue are subject to solicitor-client privilege, and the Public Body properly applied their discretion. I confirm the decision of the Public Body to withhold the records at issue from the Applicant pursuant to clause 25(1)(a) of the *FOIPP Act*.

Issue d: Did the head of the Public Body fulfill their duty to conduct an adequate search pursuant to subsection 8(1) of the *FOIPP Act*?

[95] Subsection 8(1) of the *FOIPP Act* states:

> 8(1) The head of a public body shall make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[96] Although it is not expressly set out in subsection 8(1) of the *FOIPP Act*, the duty to conduct an adequate search has been incorporated into a public body's duty to assist. The test to determine whether a public body has conducted an adequate search is based on reasonableness. A public body is not held to a standard of perfection. Although the burden of proof is on a public body to show that they conducted an adequate search, it is helpful for an applicant to give reasons to show why they believe that a public body did not conduct an adequate search [see for example, Order FI-17-011, *Re: Department of Communities, Land and Environment*, 2017 CanLII 49927 (PE IPC)].

The Applicant's concerns

[97] The Applicant had a number of concerns about the adequacy of the Public Body's search. The Public Body described who searched, where, and for electronic searches, the search terms they used, and addressed each of the Applicant's concerns in detail. I summarize the Applicant's concerns below and briefly address each of their concerns.

[98] The Applicant believes that the Public Body only disclosed records that supported their decision about the status and location of the road. If this claim is accurate, this is not enough to support a reasonable belief that such records exist or that the Public Body has not conducted an adequate search.

[99] The Applicant remarks that the Public Body did not provide any records relating to the current Minister's "political activities, discussions, interventions, research, or actions". The Public Body confirms that they searched the current and previous Ministers' records, and the package of responsive records include records from each of them. The Applicant has not provided enough information to support a reasonable belief that other records exist or that the Public Body has not conducted an adequate search.

[100] The Applicant notes that the Public Body did not disclose any sworn statements or affidavits relating to the historical use of the road. The Public Body advises that there were no sworn statements. The Applicant has not provided enough information to support a reasonable belief that such records exist or that the Public Body has not conducted an adequate search.

[101] The Applicant notes that there are no records related to expropriation. The Applicant provided an article in which a citizen told a journalist that they wanted the province to expropriate the road if it has to. The citizen who spoke to the journalist does not represent the Public Body, or any branch of government. The Public Body disclosed a

page in which an employee mentions expropriation (page 96) saying "I suppose you could consider expropriation but I doubt that's a road anyone wants to travel". It is possible that the Public Body sought legal advice about expropriation, if so, these records are protected by solicitor-client privilege. The Applicant has not provided enough information to support a reasonable belief that any records about expropriation exist or that the Public Body has not conducted an adequate search.

[102] The Applicant provides eight examples of records that mention drafts or items attached in PDF format, yet the Applicant says were not disclosed. On review of the mentioned examples, with two exceptions, most of the pages the Applicant refers to do not have attachments. I will address the two exceptions, page 183 and 185, below.

[103] The Applicant believes that there were ongoing communications and meetings between the Public Body and/or the Minister about their property along with communications with news outlets, private persons and citizens groups attempting to persuade the Public Body and the Minister about the status and location of the road. The Public Body disclosed a petition, a citizen's email to Public Body, media requests, and the Public Body's responses. The Applicant has not provided enough information to support a reasonable belief that any other records exist or that the Public Body has not conducted an adequate search.

[104] The Applicant believes that the Public Body ought to have provided records relating to the layout, opening or repairing or maintaining the road including budget, evidence of work orders or schedules. The Public Body disclosed records relating to employee's recollections regarding work on the road, and excerpts from road atlases and classification maps. These records were compiled for the Public Body's research, there is no reason to believe that any other responsive records were created or compiled that are responsive to the Applicant's request.

[105] A citizen advised the Public Body that an MLA conducted research into the location and status of the road seven years earlier. The Applicant was concerned that no such records were disclosed. The Public Body disclosed records in which the Deputy Minister and the Chief Surveyor asked the Minister about this, and the records confirm there was no reply (page 59/74). If any records exist from seven years earlier, they were not compiled as part of the Public Body's research and are not in the custody or control of the Public Body. This is not an indication that the Public Body did not conduct an adequate search for responsive records.

[106] The Applicant notes that an opinion of the Premier about the historic use of the property was not among the responsive records. The Applicant has not provided any information to support a reasonable belief that this opinion exists, or if it does, that the opinion is in the custody or control of the Public Body. The Applicant has not provided enough information to support a belief that the Public Body did not conduct an adequate search for responsive records.

[107] The Applicant noted that the Public Body did not provide copies of deeds of predecessors. The Public Body provided their title search notes, which has the particulars about the chain of title, and advised us and the Applicant that they did not copy the deeds. This is a reasonable explanation. The Applicant has not provided any information to support a reasonable belief that the Public Body has any other records in their custody or control, or that the Public Body did not conduct an adequate search for responsive records.

[108] The Applicant noted that the Public Body did not provide surveys and drafts of surveys. The Public Body confirms that they gave a copy of a survey to the Applicant. I note that the Public Body also provided several historic drawings to the Applicant. The Applicant has not provided any information to support a reasonable belief that the Public Body

has any other records in their custody or control, or that the Public Body did not conduct an adequate search for responsive records.

[109] The Applicant noted that the Public Body did not provide RCMP records. The Applicant has not provided any information to support a reasonable belief that the Public Body has any records of the RCMP in their custody or control, or that the Public Body did not conduct an adequate search for responsive records.

[110] The Applicant noted that the Public Body did not provide records relating to trespass/vandalism. The Applicant has not provided any information to support a reasonable belief that the Public Body has any records about trespass or vandalism in their custody or control, or that the Public Body did not conduct an adequate search for responsive records.

[111] With respect to the Applicant's concerns about missing attachments to emails, there are two emails, at pages 183 and 185, that indicate that there are attachments.

[112] The text of the email at page 183 refers to two deeds. In their submissions, the Public Body advises that they are not required to disclose such records because they are registered with the Land Registry and available for purchase by the public. They may be referring to clause 27(1)(a) of the *FOIPP Act* which permits a public body to refuse to disclose to an applicant information that is available for purchase by the public. Or, they may be referring to subclause 4(1)(h)(iii) of the *FOIPP Act* which excludes from the *FOIPP Act* information from records of Office of the Registrar of Deeds. Either provision would apply, and I will not order the Public Body to disclose copies of deeds to the Applicant. However, pursuant to clause 10(1)(c)(i) of the *FOIPP Act*, if a public body is refusing access to a record or part of it, they must advise the applicant "the reasons for the refusal and the provision of this Act on which the refusal is based". It does not appear

that the Public Body did this in this instance.

[113] The text of the email at page 185 refers to a drawing that the recipient of the email did in 1970. In their submissions, the Public Body advises us that all of the Chief Surveyor's notes were disclosed, and refers us to pages 340 to 361, pages 352 to 357 in particular. There are no drawings at page 352 to 357, no reference to a drawing from 1970 or the recipient of the email. There are other drawings between pages 340 to 361, but no drawings from the 1970s. I do not understand the Public Body's response to this concern and agree with the Applicant that the Public Body did not disclose the attachment to this email. The attachment to the email is responsive to the access request and the Public Body does not suggest that they are withholding this record under any authority under the *FOIPP Act.* I will order the Public Body to locate and retrieve this attachment and process this portion of the access request.

[114] In response to the Public Body's explanations, the Applicant expresses a concern about the search terms the employee's used:

> Also TIE used inconsistent search terms to identify required records. There is no explanation about why searches were limited to certain terms and applied randomly to different persons whose records were searched. Why not settle or a valid set of terms and apply them across the sites and persons searched. This is not difficult. Failing to use the same terms allows for variances that almost assures records will be omitted and not disclosed as required by FOIPPA. TIE has "cut the coat to fit the cloth". . . . .

[115] While it would not be difficult to set search terms, I see no need for a public body to set the search terms for each of their employees. There is no correlation between the search terms the Public Body used, and the concerns expressed by the Applicant.

Public Body's second search

[116] When I asked the Public Body about the Applicant's email dated June 7, 2019, the Public Body conducted a follow up search and located 12 additional pages of responsive records which they then disclosed to the Applicant. The records were email chains and the Public Body had already disclosed several of the earlier emails to the Applicant. In one instance, although the emails from an organization had not been disclosed initially, a summary of the content had been disclosed (at page 356).

[117] These 12 pages were email records of one of the employees who had already searched their records. The Public Body describes where and how this employee searched but did not explain why these 12 pages were not located and retrieved earlier. The employee is no longer employed with the Public Body and the Public Body did not talk to them to get insight on any factors that may have contributed to missing these records in their original search. I considered whether to review the Public Body's search instructions to employees, but since this access request, the province moved to another email system, and the Access and Privacy Services Office has excellent guidance for employees on how to search emails in the *FOIPP Guidelines and Practices Manual* (October 2021). As a result of these circumstances, it is not necessary to review the Public Body's search instructions to employees.

Conclusion regarding adequacy of the Public Body's search

[118] The Public Body provided the particulars of who searched, where, and the search terms they used for electronic searches. They responded to each of the Applicant's concerns and re-searched an employee's records. There were records located in a subsequent

search, and the Public Body did not provide an attachment to an email (page 185). This shows that their original searches were not perfect. A public body does not have to have perfect searches, but they need to be reasonable. I am satisfied that although there were shortcomings of the Public Body's original searches, it does not show that the Public Body's search efforts were not reasonable.

[119] I find that the Public Body conducted adequate searches and made reasonable efforts to determine if there were any other responsive records.

VI. SUMMARY OF FINDINGS

[120] I find that the information the Public Body withheld from pages 16, 91, 96, and 159 (and duplicates) is advice from officials under clause 22(1)(g) of the *FOIPP Act*, and the head of the Public Body exercised their discretion reasonably.

[121] I find that the 14 pages the Public Body withheld are subject to solicitor-client privilege pursuant to clause 25(1)(a) of the *FOIPP Act,* and the Public Body exercised their discretion reasonably.

[122] Although there are some shortcomings of their search, I find that the head of the Public Body conducted an adequate search for responsive records as required under subsection 8(1) of the *FOIPP Act.*

VII. RECOMMENDATION

[123] The Public Body remarked that they are not required to disclose to an applicant a deed that is available for purchase by the public. This is accurate, but the Public Body did not advise the Applicant of these provisions as required under subclause 10(1)(c)(i). In the future, I recommend that the Public Body advise an applicant when they are withholding a record under either section 27 or 4 of the *FOIPP Act*.

VIII. ORDER

[124] As I have determined that the head of the Public Body is required or authorized to refuse access to the information at issue under section 15, section 22, and clause 25(1)(a) of the *FOIPP Act,* I will not order the Public Body to provide the Applicant with access to the records at issue. I confirm the decisions of the head of the Public Body.

[125] I order the Public Body to locate and retrieve the attachment to the email at page 185 and to process it within 30 days of the date of this decision.

[126] I thank both parties for their submissions in this matter. In accordance with subsection 68(1.1) of the *FOIPP Act*, the Public Body shall not take any steps to comply with this order until the end of the time period for bringing an application for judicial review of the order under section 3 of the *Judicial Review Act*, R.S.P.E.I. 1988, c J-3.

SGD MARIA MACDONALD

Maria MacDonald, Adjudicator