Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4775

Appeal PA22-00498

Metrolinx

December 30, 2025

Summary: Metrolinx received a request for records related to insurance policies, an investigation, and a Request for Proposal process. It issued a fee decision and granted partial access to the responsive records. It withheld some information under various mandatory and discretionary exemptions in the *Act*. It also said that some of the information it initially identified was not responsive to the request. The appellant challenged Metrolinx's fee decision and its decision to withhold information under the advice or recommendations exemption in section 13(1), the third party information exemption in section 17(1), the solicitor-client privilege exemption in section 19, and the personal privacy exemption in section 21(1). The appellant also claimed that the public interest override at section 23 of the *Act* applied to the records at issue, that additional responsive records should still exist, and that the records identified as not responsive by Metrolinx were responsive.

In this order, the adjudicator upholds Metrolinx's search and fee, and its decision to apply section 19 of the *Act*. She finds that the discretionary exemptions at section 49(a), read with section 13(1), and section 49(b) of the *Act* apply to some of the information Metrolinx withheld in records that contain the appellant's personal information, while section 13(1) applies to information in other records that do not contain the appellant's personal information. She finds that the public interest override at section 23 of the *Act* does not apply. She determines it is not necessary to consider whether section 17(1) applies to any of the information at issue. Finally, she finds that information in two records Metrolinx identified as not responsive is responsive, and she orders Metrolinx to issue an access decision in relation to that information. She also orders Metrolinx to disclose the information to the appellant that is not subject to any of the exemptions in the *Act.*

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 as amended, sections 2(1) (definition of "personal information"), 13(1), 19, 21, 24, 49(a), 49(b), and 57(1); Regulation 460, section 6.

OVERVIEW:

[1] Metrolinx received a multi-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from an individual that was clarified as follows:

1. For each of the three insurance policies under the Corporate General/ Railway Liability Insurance Program, with [a named vendor], provide the Transparency and Disclosure Forms for the following policy time periods:

    - June 1, 2019 – June 1, 2020
    - June 1, 2020 - June 1, 2021
    - June 1, 2021 - June 1, 2022
    - June 1, 2022 – June 1, 2023

2. All e-mails, communications, briefing notes, reports, findings, and conclusions related to the investigation into the financial breach of contract [number] between Metrolinx and [named vendor], as conducted by Legal Services, Procurement and/or [named] CEO.

3. Copy of [number] including any addendums and Q&A's issued as part of the tender.

[2] Metrolinx issued a fee estimate of $1072.50, requesting a deposit of $536.75, which the requester then paid. After completing its search for responsive records, Metrolinx issued a final access decision, with a revised fee of $765 and balance due of $228.75.

[3] Metrolinx granted the requester partial access to the records. It withheld some information under the discretionary exemptions in sections 13(1) (advice or recommendations), 18(1) (economic and other interests), and 19 (solicitor-client privilege), as well as the mandatory exemptions in sections 17(1) (third party information), and 21(1) (personal privacy). Metrolinx also indicated that some information was not responsive to the request and it removed duplicates of records.

[4] The requester (now the appellant) appealed Metrolinx's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, Metrolinx provided additional details regarding the responsive records for Part 2 of the request, as well as some more detail regarding the breakdown of the final fees. Metrolinx maintained its access decision and provided an index that could be shared with the appellant.

[5] The appellant paid the outstanding fees and received the remainder of the information in accordance with the access decision. The appellant then advised that she wanted to challenge the fee, and all exemptions applied to the records responsive to part two of her request (the Part 2 records), including those marked as non-responsive, at adjudication. The appellant also raised the issue of reasonable search, advising that she believes more records should exist beyond those identified as responsive by Metrolinx. Finally, the appellant advised that she believes the public interest override provision at section 23 of the *Act* should apply.

[6] Further mediation was not possible, and the appeal was moved to the adjudication stage of the appeals process where an adjudicator may conduct a written inquiry pursuant to the *Act*. I conducted an inquiry and received the parties' representations on the issues set out below.

[7] In this order I uphold Metrolinx's search for responsive records as reasonable, its fee, and its decision to apply section 19 of the *Act.* I find that, because some of the records contain the personal information of the appellant and other individuals, the appellant's right of access must be determined under the discretionary exemptions in section 49(a) (discretion to refuse requester's own information) and 49(b) (personal privacy) of the *Act*. I find that section 49(a), read with section 13(1), applies to some of the records in part, that section 13(1) on its own applies to certain information in other records, and that section 49(b) applies to the personal information of an individual other than the appellant that Metrolinx withheld. I find that the public interest override at section 23 of the *Act* does not apply and I conclude that it is not necessary to consider whether section 17(1) applies to any of the information at issue. Finally, I find that certain information in two records that Metrolinx identified as not responsive is responsive, and I order it to issue an access decision for that information. I also order Metrolinx to disclose certain information that I determine is not subject to any of the exemptions claimed.

RECORDS:

[8] At issue is the withheld information in the Part 2 records, comprising emails and attachments in 140 records, as described in the index at Schedule A to Metrolinx's supplemental representations.[1]

ISSUES:

A. Does the discretionary solicitor-client privilege exemption at section 19 of the *Act* apply to the records?

[1] The Part 2 records are also described in an index in Exhibit A to the affidavit Metrolinx provided from its Legal Services Director with its initial representations.

B. What is the scope of the appellant's request for records and which records are responsive to that request?

C. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

D. Does the discretionary exemption at section 49(a), read with the exemption at section 13(1) for advice or recommendations given to an institution, or section 13(1) on its own, apply to the information at issue?

E. Does the discretionary personal privacy exemption at section 49(b) apply to the records?

F. Is there a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the exemptions at section 49(a), read with 13(1), section 13(1) on its own, and/or section 49(b)?

G. Did Metrolinx conduct a reasonable search for records?

H. Should the IPC uphold Metrolinx's fee?

DISCUSSION:

Background

[9] Metrolinx explains that the appellant, while employed by Metrolinx, made an informal complaint that led to the creation of most of the records at issue in this appeal. Metrolinx states that it informed the appellant of some, but not all, of the steps it took in response to her complaint.

[10] The appellant disputes Metrolinx's characterization of her role and actions. She denies making an "informal complaint" and asserts that she was a whistleblower who reported an illegal payment by Metrolinx to a vendor (the Vendor). She submits that although she was an employee at Metrolinx, she made her access to information request in her capacity as a member of the public seeking information about "Open Bid Contracting Records." She asserts that Ontario citizens have the right to scrutinize public sector contracting costs and to hold government agencies accountable under the *Act*.

[11] Having reviewed the parties' representations and the records provided by Metrolinx, I am satisfied that the type of complaint the appellant made to Metrolinx and/or her employment status when she made her request are not relevant to the outcome of this appeal. These matters are separate from the issues before me. My task is to determine whether the exemptions that Metrolinx claimed apply, whether it conducted a reasonable search for records, and whether it charged an appropriate fee. I can address these issues without regard to the appellant's employment status when she made the

request or the nature of her earlier complaint to Metrolinx.

Issue A: Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?

Preliminary matter

[12] Metrolinx did not provide copies of the records that it withheld under section 19 of the *Act* to the IPC.[2] Instead, it provided an affidavit from its Director of Legal Services (the LS Director) with three exhibits explaining the contents of the records in various detail. The appellant takes issue with this approach and asserts that Metrolinx is avoiding "peer review of investigation results" by providing affidavit evidence in lieu of copies of the records at issue to the IPC. The appellant asks that I not allow an affidavit to be used to "conceal public records." She says that Metrolinx must provide actual records for my review.

[13] I disagree with the appellant. The approach taken by Metrolinx is permissible and the evidence it provides meets the guidelines set out in the IPC's *Protocol for appeals involving solicitor-client privilege claims.*[3] In this case, Metrolinx provides ample evidence about the records at issue, including a 70-page exhibit to an affidavit setting out all of the relevant details of each of the 123 records subject to its section 19 claim.[4] The contents of the records, as described in the exhibits to the affidavit, are attested to by the LS Director. This approach, while time-consuming for both Metrolinx and the IPC, is acceptable. Given the level of detail in this affidavit evidence, I can adjudicate Metrolinx's claim that section 19 of the *Act* applies without viewing the records at issue.[5]

Section 19 of the Act

[14] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared in contemplation of litigation. The relevant portions state:

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

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[2] Metrolinx provided the IPC copies of the remainder of the records that it withheld under sections other than section 19, as well as those records it claims are not responsive to the appellant's request.
[3] Available at: IPC protocol for appeals involving solicitor-client privilege claims where the institution does not provide the records at issue to the IPC | Information and Privacy Commissioner of Ontario
[4] I describe the contents of Metrolinx's affidavit evidence and the exhibits in detail below.
[5] For clarity, I am not conducting any sort of "peer review" of the investigation results. My role is to determine whether the records are subject to the discretionary exemption for solicitor-client privilege at section 19 of the *Act.*

> (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation[.]

[15] Section 19 contains three different exemptions, which the IPC has referred to in previous decisions as making up two "branches." The first branch, found in section 19(a), ("subject to solicitor-client privilege") is based on common law. The second branch, found in section 19(b) ("prepared by or for Crown counsel") contains statutory privileges created by the *Act*. The institution must establish that at least one branch applies.

Branch 1: common law privilege

[16] At common law, solicitor-client privilege encompasses two types of privilege: solicitor-client communication privilege and litigation privilege. Metrolinx claims solicitor-client communication privilege for most of the records it withheld under section 19 of the *Act.* 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.[6] 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.[7]

[17] 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 advice can be sought and given.[8] The privilege may also apply to the lawyer's working papers directly related to seeking, formulating or giving legal advice.[9]

[18] 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.[10] The privilege does not cover communications between a lawyer and a party on the other side of a transaction.[11]

Branch 2: statutory privilege

[19] The Branch 2 exemption is a statutory privilege that applies where the records were "prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation." Metrolinx claims Branch 2 statutory litigation privilege over pages eight and nine of record 47.

[20] The statutory litigation privilege applies to records prepared by or for Crown counsel "in contemplation of or for use in litigation." It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such

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[6] Orders PO-2441, MO-2166 and MO-1925.
[7] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[8] *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.
[9] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[10] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[11] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.).

as communications between opposing counsel. The statutory litigation privilege in section 19 protects records prepared for use in the mediation or settlement of litigation. In contrast to the common law privilege, termination of litigation does not end the statutory litigation privilege in section 19 of the *Act*.

Metrolinx's representations

[21] Metrolinx submits that the appellant is seeking access to records that are subject to the solicitor-client privilege exemption at section 19 of the *Act.* It says that many of the records at issue are duplicates. It explains that there are eight key records (the Key Records) that it has identified in Appendices A to E of its representations, along with the records that relate to them (the related records), which it says are mostly duplicates or near duplicates. Metrolinx explains that it addresses the remaining records that are not part of the Key Records directly in its representations.

[22] In addition to its representations and appendices, Metrolinx also provides an affidavit from the LS Director, who attests that he is the lawyer who gave the legal advice in the records at issue. The LS Director's affidavit includes three indexes that provide additional context and detailed information about the records at issue. They are described as follows:

> Exhibit A: a full index of records for the appellant's entire request (the Part 1, 2 and 3 records), listing the number of pages, a brief description of the record and any exemptions applied. Exhibit A was provided to the appellant in full.
>
> Exhibit B: a 70-page chart containing a detailed index of the records that includes the date of each record, the number of pages, and the title of the record (in most cases, the subject line of the email). The chart also specifies the creator of the record (i.e., the sender of the email), the recipient(s), a description of the subject matter, and a detailed explanation of how section 19 of the *Act* applies to the record. Exhibit B was not shared with the appellant because the contents met the confidentiality criteria in the IPC's *Practice Direction Number 7.*
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> Exhibit C: a narrowed index of records with a fuller description of the Key Records, provided in full to the appellant.[12]

[23] Metrolinx submits that its representations, appendices and affidavit evidence establish that the information at issue is subject to solicitor-client privilege and/or the statutory litigation privilege. It denies that this privilege has been waived through disclosure to third parties. It says only a limited group of Metrolinx employees received

[12] Metrolinx proposed that since the remaining records at issue are predominantly duplicates of the Key Records, the scope of the appeal could be narrowed to the records listed in Exhibit C. The appellant declined to narrow the appeal in this manner.

the legal advice over which it claims privilege. Metrolinx refers to Order PO-3689 where it says an adjudicator determined that although emails containing confidential legal advice were shared between non-lawyers there was "no evidence of the sharing of the confidential legal advice or continuum of communications with individuals that would be considered "outsiders" to the particular events in process here." Metrolinx further specifies that some of the records at issue were provided to the appellant in her capacity as its employee. It denies that this is a waiver of privilege.

[24] Metrolinx provides detailed and voluminous representations about each of the individual records at issue. For convenience, I will outline the remainder of the parties' representations and replies first and will set out Metrolinx's evidence about each of the records at issue when I address whether section 19 applies to the records in the analysis section below.

The appellant's representations

[25] The appellant submits that section 19 does not apply to any of the responsive records because they relate to an "open-bid government procurement process." She argues that these types of records are not confidential in nature and have historically not been treated as such by public-sector institutions. The appellant relies on guidance in the IPC's *Guide to Open Contracting*, which she says encourages proactive disclosure of procurement information and identifies government contract costs as matters of public interest.[13]

[26] The appellant states that records that she already received pursuant to her request show three overpayments made by Metrolinx to the Vendor in 2020, 2021, and 2022. She argues that these payments were the subject of an internal fact-finding exercise into a possible financial breach of the contract, and that this process did not involve seeking legal advice, nor was litigation contemplated. The appellant says that the process is administrative in nature, focused on determining whether contract terms were followed. She submits that the results of the fact-finding investigation were freely circulated with business and procurement before being reclassified as a "legal review" to avoid disclosure.

[27] The appellant further submits that Metrolinx did not follow its own procurement and dispute-resolution procedures when it conducted the contract management review. She argues that records associated with factual investigations (such as instructions to staff, background information, analytical summaries, and conclusions) are not legal advice and therefore do not qualify for solicitor-client privilege.

[28] The appellant also disputes that case law cited by Metrolinx is applicable, stating that the decisions it relies on concern confidential records and do not address investigations into possible financial breaches of open-bid government contracts. The

[13] Available at: https://www.ipc.on.ca/en/resources-and-decisions/open-contracting-proactive-disclosure-procurement-records

appellant says that, in this case, Metrolinx's legal counsel was acting in a business or managerial capacity during the contract review process rather than providing legal advice. On this basis, she argues that the communications in question are not privileged.

Metrolinx's reply representations

[29] Metrolinx argues that the appellant's representations are incorrect and cite material out of context. It submits that the appellant invites the IPC to find that Metrolinx, because it is subject to access to information legislation, cannot receive legal advice about public contracting or at least not legal advice over which it can assert privilege. Metrolinx submits that this is not the law.

[30] Metrolinx argues that the appellant glosses over the distinction between a contract and legal advice related to a contract. Furthermore, it says that the guidance documents cited by the appellant do not support the proposition that section 19 cannot extend to legal advice about a contract. To the contrary, Metrolinx says that the IPC has expressly held that section 19 can apply to records relating to a public contract.[14]

[31] Next, Metrolinx submits that the language used by the appellant in her access request mischaracterizes the process that led to the creation of the records she seeks. Specifically, it says the term "investigation," as used by the appellant, is not accurate. It submits that the LS Director was asked to provide a legal opinion and argues that distinction is crucial. Metrolinx argues that documents generated by a client who asks for a legal opinion and a lawyer who provides the legal opinion are covered by solicitor-client privilege. It says that courts have held that even where a lawyer is asked to conduct an investigation to ascertain certain facts in order to deliver a legal opinion, solicitor-client privilege applies.[15]

[32] Furthermore, Metrolinx submits that the Supreme Court of Canada has held that "it is not appropriate to establish a strict demarcation between communications that are protected by professional secrecy and facts that are not so protected."[16] It says the Court explained that "[c]ertain facts, if disclosed, can sometimes speak volumes about a communication," which is why there is a rebuttable presumption to the effect that "all communications between lawyer and client and the information they shared would be considered prima facie confidential in nature."[17]

[33] Finally, in response to the appellant's allegation that the results of the "investigation" by the legal department were "freely circulated with business and procurement," Metrolinx reiterates that the only parties to whom the legal opinion was

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[14] Metrolinx refers me to Orders PO-3647-I and PO-4374 where it says adjudicators concluded that section 19 of the *Act* applied to draft versions of agreements.
[15] *Gower v. Tolko Manitoba Inc.*, 2001 MBCA 11, at para 42.
[16] *Canada (Attorney General) v. Chambre des notaires du Québec*, 2016 SCC 20, at para 40.
[17] *Ibid.* Emphasis added by Metrolinx.

provided were Metrolinx employees who needed to be informed of the legal advice.

The appellant's sur-reply representations

[34] The appellant was invited to make sur-reply representations in response to Metrolinx's reply.[18] She denies that Metrolinx sought a legal opinion and asserts that the investigation was organized by procurement to review and confirm her whistleblower report relating to a financial breach of contract by the Vendor.

[35] The appellant says that Metrolinx has made false statements and misrepresentations, for example, she notes that it changed its descriptions from "Request for a Legal Review" to "seeking legal opinion" in one of its indexes. The appellant submits that a two-page "Work Request" was sent to a non-lawyer confirming that the Director of Insurance was primarily responsible for the investigation and not legal.[19] She says the Director of Insurance led an investigation and denies that the legal department was involved.

[36] Next, the appellant submits that the LS Director acted as a manager and/or business advisor, or in some other non-legal capacity. She denies that any legal advice was provided and says that no legal opinion was sought or requested. She reiterates her assertions that the LS Director was investigating a potential breach of contract and was not providing legal advice.

[37] The appellant provides a copy of a "Vendor Performance Improvement Plan" which she says describes how to conduct a breach of contract investigation. The appellant submits that Metrolinx has a duty of transparency and accountability to the public for use and/or misuse of taxpayer funds. She says that the procedure is written for vendors and the public. She argues that section 19 of the *Act* cannot be used to conceal an investigation into a financial breach of a government contract. She says that this is not a case where "legal advice about a public contract" was given.

[38] The appellant's position is that this type of investigation "requires business knowledge" and not "a lawyer's expert advice." She says there are "no complex rules and procedures like in common law" and "no assurances of confidentiality." The appellant

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[18] Despite being advised that the IPC's *Practice Direction Number 2* limits reply and sur-reply representations to a maximum of 10 pages and that new issues could not be raised, the appellant submitted 21 pages of representations dealing with a variety of issues, some only loosely connected to the issues before me. *Practice Direction Number 2* states that Representations that are unduly lengthy or repetitive may be rejected or disregarded by the IPC staff member. As such, I have highlighted only the points that are most relevant to the issues before me and my decision.

[19] The appellant provided a copy of this record at Appendix A to her sur-reply representations. She indicated that Appendix A should be kept confidential because it contains information that is at issue in this inquiry. I agree that the Appendix A meets the confidentiality criteria in the IPC's *Practice Direction Number 7*. Without divulging the specific content of the record, I note that it is a "Legal Services Work Request" form that asks for a "brief description of the legal services required." I also note that this record specifically states that "legal is being asked to investigate" a specific topic and provide an answer to a legal question.

submits that the fact that a lawyer reviewed and confirmed a breach of contract does not mean that the section 19 exemption applies.

Analysis and findings

[39] For the reasons set out below, I uphold Metrolinx's application of section 19 of the *Act* to all the information it identified in the records, and I also uphold its exercise of discretion to apply that section.

[40] As noted above, Metrolinx made detailed submissions about each of the Key Records (and the remaining records that do not fit into those categories). Below I outline the non-confidential portions of these submissions and explain my findings. However, before I address the individual records, I will respond to the various general arguments made by the appellant.

[41] The appellant submits that section 19 does not apply because the records relate to an open-bid government procurement process. I do not accept this submission. Institutions are entitled to seek legal advice on virtually any matter, including procurement-related issues, and to keep that advice confidential. The question before me is not the nature of the procurement process or whether there was a breach of contract, but whether the records at issue qualify for solicitor-client privilege under section 19 of the *Act*.

[42] I also note the appellant's characterization of the records she seeks as an "internal fact-finding exercise" that "did not involve seeking legal advice." I disagree and find that Metrolinx sought legal advice. The evidence it provides confirms that the LS Director was asked to provide legal advice on the subject matter of the request, and that his inquiries were undertaken for the purpose of providing that legal advice.[20] I understand the appellant to be asserting that a different process should have been followed. It is not my role to determine whether Metrolinx followed its procurement or dispute-resolution processes. The determinative question for me is whether the records sought by the appellant are subject to solicitor-client privilege under section 19 of the *Act*. These are distinct matters and only the latter is before me in this appeal.

[43] Finally, I find that the evidence does not support the appellant's assertion that the LS Director acted in a managerial, rather than legal, capacity. The evidence before me indicates that the LS Director was conducting a "legal review." In my view, little turns on the specific terminology Metrolinx used to describe this work. Whether Metrolinx and/or the LS Director referred to work undertaken as a legal review, a legal opinion, or a legal investigation, the evidence clearly demonstrates that the LS Director was providing legal advice.

[44] I will now consider each of the records that Metrolinx addresses individually in its

[20] Again, as noted in footnote 19, my view is that the copy of the record the appellant provided as Appendix A to her representations supports Metrolinx's assertion regarding the nature of the LS Director's work.

representations.

Record 19 and related records

[45] Metrolinx says that record 19 is an email with attachments from the LS Director that contains legal advice. It is described in the LS Director's affidavit, and in Exhibits A and C of that affidavit, as an email from the LS Director to a Procurement Advisor (the PA) and the Director of Insurance containing legal advice. The evidence before me is that the legal advice was communicated to a small group of employees and was marked confidential.

[46] Metrolinx submits that record 19 is a communication between a solicitor and a client, providing legal advice and was intended to be kept confidential. It submits that the same analysis also applies to the records that relate to record 19, identified and described in Appendix A to its representations. Specifically, it says that the records identified and described in Appendix A are duplicates or near duplicates of record 19 and are also solicitor-client privileged communications.

[47] Metrolinx provides more detailed descriptions of the content and general subject matter of each of these records in Exhibit B.[21] However, I cannot describe the information in Exhibit B further without revealing the content of the records at issue.

[48] I accept that solicitor-client communication privilege applies to record 19 and its related records. These are email communications that contain legal advice provided by the LS Director in response to a request for the same. I accept that record 19 and the related records contain confidential information passed between legal counsel and client, aimed at keeping both informed so that legal advice could be sought and given. These email chains are part of the continuum of communications between counsel and client. There is no evidence that they were shared with outside parties, and I find that they are subject to the common law solicitor-client communication privilege exemption in Branch 1 of section 19 of the *Act*.

Records 1, 3, 8, and 11, and related records

[49] Metrolinx says that records 1, 3, 8 and 11 are communications from a client seeking legal advice from its lawyer. It submits that the records contain background materials provided to legal counsel with a request for legal advice on those materials. Metrolinx says this request led to the legal opinion in record 19.

[50] Metrolinx says record 1 is an email from the PA to the Executive Assistant for Legal Services requesting a legal opinion from a lawyer. It says record 1 is 215 pages long and contains documents provided to legal services for the purpose of obtaining legal advice. According to Metrolinx, the Executive Assistant for Legal Services was responsible for

[21] Above, I determined that Exhibit B meets the confidentiality criteria set out in the IPC's *Practice Direction Number 7.*

reviewing new legal work requests and coordinating their assignment to lawyers within Metrolinx. It submits that this specific request for legal advice was given to the LS Director, who then gave the legal advice in record 19.[22]

[51] Regarding record 3, Metrolinx says it is an email chain related to the legal opinion sought in record 1 between the Director of Insurance, the LS Director and the PA providing additional context for the question being posed. Metrolinx says that the appellant, in her employment capacity at Metrolinx, and another employee, were also copied on the email.

[52] According to Metrolinx, record 8 is another email about the legal opinion sought in record 1 from the Director of Insurance to the LS Director and the PA. It is 536 pages and comprises a series of documents provided to the LS Director in relation to the legal opinion being sought. Metrolinx says that, as with record 3, the appellant and another Metrolinx employee were copied on the email as well.

[53] Metrolinx submits that record 11 is also an email chain between the Director of Insurance, the LS Director and the PA, related to the legal opinion being sought in record 1. Metrolinx says there is overlap between record 11 and record 3. It also says its Claims and Insurance Specialist was copied.

[54] Metrolinx argues that records 1, 3, 8 and 11 are direct confidential communications between a solicitor and client made while seeking or giving legal advice. To support its argument, Metrolinx relies on the following passage from Order PO-3615:

> In my view, all of the information amounts to either direct communications of a confidential nature exchanged in the course of giving and receiving legal advice, or falls within the type of information that can be characterized as part of a continuum of communications between lawyer and client, necessary in order to permit advice to be sought and received.

[55] Metrolinx submits that records 1 and 8 contain direct communications of a confidential nature exchanged while seeking and obtaining legal advice. It says that records 3 and 11 form part of the continuum of communications aimed at keeping both legal counsel and the client informed so that advice may be sought and given as required. It says the records contain the information that was gathered and shared with the LS Director for the purposes of obtaining the legal advice sought in record 1. Metrolinx submits that internal client communications "gathering information to be furnished to a solicitor to assist the solicitor in providing informed legal advice" fall within this continuum of legal advice.[23]

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[22] Metrolinx says that appellant was copied in her capacity as an employee in the email in record 1.
[23] Metrolinx relies on *Thompson Rivers University (Re)*, 2024 BCIPC 16, at para. 46; *Susan Hosiery Ltd. v. Minister of National Revenue,* 2 Ex CR 27*,* at pp. 33, 35; *Descôteaux et al. v. Mierzwinski,* [1982] 1 S.C.R. 860*,* at pp. 892-93.

[56] Metrolinx says that the same analysis and arguments also apply to the records it identified in its Appendix B as relating to records 1, 3, 8 and 11. It submits that all these related records are copies, or portions of records 1, 3, 8, and 11.[24]

[57] Based on my review of the evidence before me, including the confidential information in Exhibit B of the LS Director's affidavit, I accept Metrolinx's characterization of the information at issue. I find that it is all part of the continuum of communications aimed at keeping the solicitor and client informed so that legal advice can be sought and/or obtained, and it is therefore subject to the common law solicitor-client communication privilege in section 19 of the *Act*.

[58] Essentially, records 1, 3, 8, 11 and their related records, comprise a request for legal advice, in the form of a "Legal Services Work Request Form," background information the lawyer would need to understand and respond to the request for advice, and clarifications about the advice being sought. As I explained above, the form of the request does not matter, nor does it matter that it was not sent to the lawyer in the first instance. I accept Metrolinx's evidence that the Executive Assistant for Legal Services was responsible for reviewing new legal work requests and coordinating their assignment to lawyers within Metrolinx. This does not in any way negate Metrolinx's claim that the request is subject to solicitor-client privilege.

[59] Finally, I have reviewed the descriptions in Appendix B of the related records and the corresponding confidential descriptions in Exhibit B of the LS Director's affidavit. I am satisfied that all this information was exchanged confidentially for the purposes of seeking and/or obtaining legal advice and that Branch 1 of the common law solicitor-client privilege exemption in section 19 of the *Act* applies to each of the records listed.

Record 26 and related records

[60] Metrolinx's evidence is that record 26 is an email chain between its Chief of Staff and its Chief Executive Officer (the CEO). It says two additional employees were copied, including a lawyer. Metrolinx says that the Chief of Staff's email contains a summary of the legal opinion in record 19 and was shared with key personnel within Metrolinx. Metrolinx denies that this constitutes a waiver of the solicitor-client privilege. It says that in both its full and summarized form, the legal opinion is protected by solicitor-client privilege. Metrolinx says that the Chief of Staff's email in record 26 is part of the continuum of communications aimed at keeping both legal counsel and the client informed so that legal advice could be sought and received.

[61] Metrolinx submits that this analysis also applies to the records in its Appendix C. It says that all the records identified and described in Appendix C are copies of, portions of, or directly related to record 26 and are also subject to solicitor-client privilege.

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[24] I note again that descriptions of the related records are included in Exhibit B and the same level of detail is provided regarding their contents.

[62] Having reviewed the evidence provided by Metrolinx regarding record 26 and its related records, I am satisfied that it would reveal advice sought and/or obtained from legal counsel. The IPC has previously applied section 19 (or its municipal counterpart, section 12 of the *Municipal Freedom of Information and Protection of Privacy Act*) to internal communications not involving a lawyer where disclosure would reveal the content of communications between a solicitor and client.[25] Communications that refer to or reflect the legal advice that has been given are also protected under the solicitor-client communication privilege at section 19 of the *Act*. There is no evidence that any outside parties received the communications, and I am satisfied that they are confidential in nature. I find that solicitor-client communication privilege at section 19 of the *Act* applies to record 26 and its related records.

Record 47 and related records

[63] Metrolinx says that some of the information in record 47 reproduces the solicitor-client privileged information contained in records 1 and 19. Specifically, it says record 47 is an email from one of its employees to the Chief of Staff attaching the initial request for legal advice (record 1) and the legal opinion from the LS Director (record 19). Metrolinx submits that whether in full or in summarized form, sharing the request for legal advice and the legal advice with its employees is not a waiver of privilege. It says that the employees' roles required awareness of the information that was shared with them.

[64] Above, I have already determined that solicitor-client communication privilege applies to records 1 and 19 (and their related records). I confirm that this information is similarly subject to section 19 of the *Act* in record 47.

[65] Metrolinx says that record 47 also contains notes and material prepared in contemplation of litigation. It says that the notes are marked as such. Metrolinx says this information is exempt under Branch 2 of section 19 of the *Act*, which it says covers materials beyond solicitor-client confidences and embraces items gathered in the preparations for litigation, including lawyers and non-lawyers.[26] The appellant denies that any litigation was contemplated. In its reply, Metrolinx clarifies that the litigation in contemplation was not with the Vendor.

[66] Based on my understanding of the circumstances and the evidence before me, it is reasonable to conclude that Metrolinx prepared the notes at issue in record 47 in contemplation of potential litigation that the appellant did not know about. I accept the confidential evidence provided in Exhibit B to the LS Director's affidavit which indicates that the information on pages 8 and 9 of record 47 comprises notes that were developed in contemplation of possible legal action and I find that Branch 2 solicitor-client privilege applies.

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[25] See generally, Order MO-3326 at paragraphs 97 to 102.

[26] I note that previous IPC orders have concluded Branch 2 statutory litigation privilege may be applied by Metrolinx, including Orders PO-4374 and PO-4604.

[67] Finally, Metrolinx says that the two records identified in Appendix D are duplicates of record 47. I accept that they are, and I find that section 19 applies to them as well for the reasons set out above.

Record 85 and related records

[68] Metrolinx says that record 85 is an internal communication between its employees forwarding the legal advice provided by the LS Director in record 19, and summarizing and commenting on the legal advice. Metrolinx submits that solicitor-client privilege extends to documents between employees which transmit or comment on privileged communications with lawyers and says that the privilege also extends to communications between employees advising of communications from lawyer to client.[27]

[69] Specifically, it says that in record 85 the PA forwards the advice provided by the LS Director in record 19. It says that parts of the body of the email summarize the legal opinion. It says this summary is subject to solicitor-client privilege because it reflects the legal advice provided by the LS Director.[28] Metrolinx says that the advice was shared with certain employees in their professional capacity and does not constitute a waiver of privilege.

[70] Metrolinx says this analysis also applies to the records related to record 85, as identified in Appendix E. Metrolinx says that the records described in Appendix E are emails forwarding the privileged legal opinion by the LS Director in record 19 to other employees of Metrolinx on a "need-to-know" basis.

[71] I have reviewed the confidential evidence provided by Metrolinx in Exhibit B and I accept that solicitor-client communication privilege applies to the emails in record 85 and the related records. I am satisfied that these emails contain confidential information exchanged as part of the continuum of communications between legal counsel and client, that the communications were not shared with outside parties, and they are subject to the common law solicitor-client communication privilege exemption in section 19 of the *Act*.

The remaining records

[72] Metrolinx submits that the remaining records are invitations to meetings between its employees and its in-house legal counsel. It says the invitations reveal the nature of the legal advice being sought from and given by the LS Director. Specifically, it says that the subject line in records 2, 7, 9, 10, 37, 87, and 100 disclose the nature of the legal advice sought from the LS Director.

[73] I have reviewed the confidential evidence provided in Exhibit B and accept that

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[27] *Bank of Montreal v. Tortora*, 2010 BCSC 1430, at para. 12; *Mutual Life Assurance Co. of Canada v. Canada (Deputy Attorney General)*, [1988] O.J. No. 1090 (Ont. S.C.J.), at para. 12.
[28] *Ontario (Finance) (Re)*, 2019 CanLII 82865 (ON IPC), at para. 127.

the information withheld in records 2, 7, 9, 10, 37, 87 and 100 reveals the content of the matters that Metrolinx employees were seeking legal advice about. I find that section 19 of the *Act* applies to this information.

[74] With regards to records 60 and 99, Metrolinx says that these are email chains between its employees and the LS Director and another Metrolinx lawyer in which legal advice was sought and provided. Metrolinx says the legal advice in record 60 was provided by the LS Director and by the other lawyer in record 99. Metrolinx submits that these records are part of the continuum of solicitor-client communications in which legal advice was sought and provided. Based on my review of the confidential evidence provided in Exhibit B, I agree. I find that the communications in records 60 and 99 are confidential communications where legal advice is sought and obtained and section 19 of the *Act* applies to them.

[75] Next, Metrolinx submits that records 86, 90, 124, 127-128 and 136 are all part of the same email chain. It says it only withheld the following portions of these records under section 19:

a. duplicates of the request for legal advice found at pages 1 and 35-36 of record 1, and

b. an email from Metrolinx employees summarizing legal advice sought from and provided by the LS Director in records 1 and 19, and the contents of another request for legal advice submitted to Legal Services.

[76] The evidence before me indicates that each of the records identified above includes a request for legal advice and/or summaries of that advice. As I have discussed above in detail, all parts of the continuum of communications that allow for legal advice to be sought, obtained, and disseminated to employees who need to be aware of that advice are protected by the common law solicitor-client communication privilege at Branch 1 of section 19 of the *Act.* I find that the withheld portions of records 86, 90, 124, 127-128 and 136 are subject to section 19 on this basis.

[77] I am also satisfied that for all the records, or portions of records, to which Metrolinx has applied section 19 of the *Act*, it has not waived that privilege. The evidence before me indicates that the information was shared only with employees involved in the relevant matters. I note that in confidential Exhibit B, Metrolinx identifies the senders and recipients of each communication, and I confirm that only a few individuals were included in the communications. There is no evidence before me that the privilege has been waived.

[78] Finally, Metrolinx says that it properly exercised its discretion in claiming section 19 of the *Act*. It says it withheld information under section 19 to protect its interest in the privileged information. It states that while it disclosed records in response to the access request, it has properly claimed solicitor-client privilege over certain records or portions

of certain records. Metrolinx submits that records provided to a requester under the *Act* are available to the world at large. It submits that it has properly decided not to waive its solicitor-client privilege protected by section 19 of the *Act*.

[79] I am satisfied that Metrolinx has not erred in its exercise of discretion with respect to its application of section 19 of the *Act*, and that it has not exercised its discretion in bad faith or for an improper purpose. I find that it took relevant factors into account, including the importance of protecting solicitor-client privileged communications, and I uphold its exercise of discretion to apply section 19 of the *Act* to withhold its privileged information in the records at issue, as set out above.

Issue B: What is the scope of the appellant's request for records and which records are responsive to that request?

[80] Metrolinx submits that some of the information in records 24, 47, 63, 83, 85, 88, 96, 107, and 127 is not responsive to the appellant's request. The appellant disagrees and submits that all of the information is responsive.

[81] To be considered responsive to a request, records must "reasonably relate" to the request.[29] Institutions should interpret requests generously, to best serve the purpose and spirit of the *Act*. Previous IPC decisions have emphasized that if a request is unclear, the institution should interpret it broadly rather than restrictively.[30]

Metrolinx's representations

[82] Metrolinx says that it conducted searches to identify records responsive to the appellant's request. However, it explains that when the records identified were reviewed, some were found not to be responsive. Metrolinx submits that the appellant worded her request broadly, including "all e-mails, communications, briefing notes, reports, findings, and conclusions" related to an investigation. As a result, it argues that it is to be expected that some responsive and non-responsive information would be included in the responsive records.

[83] For example, Metrolinx submits that during the period relevant to the appellant's request (for records related to an investigation concerning the Vendor), it was also in a re-evaluation process relating to different aspects of its contract with the Vendor, including the owner-controlled insurance program (OCIP). Metrolinx says that at times, issues related to the investigation and the OCIP negotiations were discussed within the same communications. Metrolinx submits that only the information relating to the investigation is relevant to the appellant's request and that information relating to the OCIP re-evaluation process is not responsive. It says that this information is in records 24, 47, 83, 85, 96, 107, and 127. It also submits that record 127 (and related records)

[29] Orders P-880 and PO-2661.
[30] Orders P-134 and P-880.

contain an attachment subject line that is not responsive to the request.

[84] Next, Metrolinx says that records 63 and 88 (and related records) have no substantive content and are therefore, not responsive. Finally, it says that record 95 pre-dates the investigation that is the subject of the request.

[85] Metrolinx also explains that during the inquiry process the appellant clarified that the records she seeks are documents that include "proof (through fact-finding) that substantively investigate and confirm whether the terms of the contract were financially breached and what were the remedies." Metrolinx submits that none of the information within the non-responsive records meets that description.

The appellant's representations

[86] The appellant argues that Metrolinx incorrectly states that she limited her request. She submits that she made this clarification during the inquiry process due to "exasperation" from the inclusion of so many duplicate records. She submits that the clarification was not made so that Metrolinx could "usurp and limit" her request.[31]

[87] The appellant also reiterates that her request stated she was seeking records that related to the investigation. She submits that records that pre-date her complaint should be included.

Analysis and findings

[88] Having reviewed the records that Metrolinx says are not responsive to the appellant's request, and with the benefit of having reviewed various other records that are responsive to her request, I agree with Metrolinx that the records, or portions of records, that discuss the OCIP process are not related to the records sought by the appellant about the investigation. These records, or portions thereof, clearly discuss a different issue that I am not satisfied is reasonably, if at all, linked to the investigation that the appellant requested records about. As such, I uphold Metrolinx's decision that the information it has withheld as not responsive in 24,[32] 47, 83, 85, 96, and 127 is indeed, not responsive.[33] I also find that the attachment description in record 127 (and related records) is not responsive to the appellant's request.

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[31] Some of the appellant's representations under this issue do not engage with the issues as set out in the Notice of Inquiry, are made in point form, or are only partially explained. I have attempted to consider all aspects of the appellant's representations even though I do not include them in my overview of her submission.

[32] Metrolinx also claimed that a portion of a contract in an attachment to emails located in record 24 was exempt from disclosure under the mandatory third party information exemption in section 17(1) of the *Act*. Because I have found that this information is outside of the scope of the appellant's request and therefore not responsive, I need not consider whether the information is exempt under section 17(1) of the *Act*.

[33] This finding also applies to all the records related to records 24, 47, 83 and 127 as set out in Schedule B to Metrolinx's representations.

[89] I have reviewed records 63 and 88 (and its related records) and find that they contain technical information about joining a meeting or sharing a file.[34] Neither record refers to matters related to the appellant's request. I agree with Metrolinx that these records have no substantive content and are not responsive to the request.

[90] However, I disagree with Metrolinx's decision that record 95 and certain information in record 107 is not responsive to the request. With regard to record 95, I note that the withheld portion appears in part of an email chain that Metrolinx has withheld under the solicitor-client communication privilege exemption at section 19 of the *Act*.[35] In its representations regarding the application of section 19, Metrolinx describes record 95 as an email between Metrolinx employees gathering information for the purposes of making the request for legal advice in record 1. Metrolinx does not dispute that record 1 is responsive to the appellant's request. Based on this context and the specific content of record 95, my view is that it is also responsive to the appellant's request even though the content predates the investigation. As such, I will order Metrolinx to issue the appellant an access decision regarding the portion of record 95 it says is not responsive to the request.

[91] I note the appellant's assertion that other records that pre-date the investigation should also be responsive to her request. I agree with the appellant, in part. The appellant's request was for records that relate to the investigation. To the extent that there is a clear and objective connection between the investigation and a record, that record would be responsive. I appreciate that, as an employee of Metrolinx with a sophisticated understanding of the subject matter underlying the investigation, the appellant has opinions about what records may relate to the investigation. For the purpose of this appeal, my view is that only those records with an obvious and identifiable link to the investigation are responsive to the request. I find that records that pre-date the request and do not reference or otherwise refer to the investigation are not, by definition, "related to the investigation."[36]

[92] Finally, I find that a portion of record 107 is also responsive to the appellant's request. Record 107 is an email chain. Without revealing the content of the record, I note that the first email indicates that a highlighted portion of the email below is relevant to a discussion that I understand to be related to the information that is responsive to the appellant's request.[37] My view is that only the first email and the highlighted portion of the second email are responsive to the appellant's request. I have highlighted this

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[34] As per Schedule B to Metrolinx's representations, records 89 and 98 relate to record 88.
[35] I note that record 95 was included as one of the records "related to" records 1, 3, 8 and 11, and is described in Appendix B.
[36] I refer to the "investigation" here because this is how the appellant characterized her request. However, as I explain below, I accept that to the extent that there was an investigation, it was conducted by the LS Director as described in Metrolinx's evidence regarding section 19 of the *Act.* In order for a record to relate to this investigation, there must be some evidence connecting the record to the investigation.
[37] I base this understanding on my review of all the records at issue in this inquiry and the circumstances described in the parties' representations.

information in green in the copy of records that will be provided to Metrolinx with this order. I will order Metrolinx to issue an access decision to the appellant in relation to this information. I am satisfied that the remaining information relates to matters unconnected to the appellant's request and is not responsive.

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

[93] Both Metrolinx and the appellant assert that some of the records at issue contain the personal information of the appellant and/or other individuals.

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

[95] 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.[38] However, 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.[39]

[96] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.[40] Section 2(1) of the *Act* gives a list of examples of personal information, including the following:

> "personal information" means recorded information about an identifiable individual, including, …
>
> (e) the personal opinions or views of the individual except if they relate to another individual, …
>
> (g) the views or opinions of another individual about the individual, and
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> (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.

[97] The list of examples of personal information under section 2(1) is not a complete

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[38] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[39] Orders P-1409, R-980015, PO-2225 and MO-2344.
[40] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

list. This means that other kinds of information could also be "personal information."[41]

Metrolinx's representations

[98] Metrolinx says that records 27, 28, 35, 116, and 127 (and related records) are emails in which the appellant makes allegations of wrongdoing against named individuals and includes the appellant's views and opinions about those individuals. It says that record 66 (and its related records) contain information about the appellant's employment history and a reference to her claims about another employee's wrongdoing. Metrolinx submits that the personal information belongs to the appellant where it references her own employment matters and opinions, and to the individuals against whom she made allegations of wrongdoing.[42]

The appellant's representations

[99] The appellant submits that her personal information is in the records. She denies that there is any other personal information in the records at issue and says that the records are "responding in an official, professional, or business capacity, which is not personal information." She provides three examples of types of information in the records and outlines the information she believes is, or is not, personal information. In summary, the appellant asserts that she raised concerns in a personal capacity and that, because those concerns reflect her personal morals, they constitute her personal information. She submits that the ethics violations she raised about others stem from their activities in a professional and/or business capacity and, as a result, do not constitute their personal information.

Analysis and findings

[100] I find that the individuals' names and/or initials in records 27, 28, 35, 116, and 127 (and related records), where connected to the appellant's allegations regarding unprofessional conduct, qualifies as those individual's personal information.[43] This is in spite of the *Act*'s exclusion of professional information from the definition of personal information.[44] In the context in which it appears, the individuals' names go beyond simply identifying them in a business, professional or official capacity, and instead reveals something personal about them, specifically, that a colleague reported that they acted unethically. This finding is in line with many previous IPC orders that have found that information concerning an allegation about or an examination into the professional

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[41] Order 11.

[42] I note that Metrolinx also claimed that record 24 contains personal information of individuals other than the appellant. I have already concluded that record 24 is not responsive to the appellant's request and so I do not need to consider whether it contains personal information.

[43] With regard to the initials, my view is that the individuals would be identified based on their initials and the other employment related information and/or contextual information in the records. This finding also applies to the information at issue as it appears in the related records as well.

[44] Section 2(3) states: "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."

conduct of an individual is that individual's personal information within the meaning of the *Act*.[45] This information is highlighted in red in the copies of the records provided to Metrolinx with this order.[46]

[101] Records 27, 35 and 127 also identify a second individual other than the appellant by their name and/or initials and suggest that that person also acted unethically in the workplace. For the same reasons as above, I find that this is the personal information of the second individual.[47]

[102] I also find that records 27, 28, 35, 66, 116, and 127 (and their related records) contain the appellant's own personal information. These portions refer to her personal experience dealing with the allegations she raised. As with the information above, this information goes beyond professional information, revealing something of a personal nature about the appellant.

[103] Accordingly, because the records contain personal information belonging to the appellant and other individuals, the appellant's right of access must be determined under Part III of the *Act*. As such, I will consider the application of the discretionary exemptions in sections 49(a) and (b) of the *Act*.

Issue D: Does the discretionary exemption at section 49(a), read with the exemption at section 13(1) for advice or recommendations given to an institution, or section 13(1) on its own, apply to the information at issue?

[104] Metrolinx submits that section 13(1) applies to certain information in records 25, 27, 28, 35, 66, 83, 91, 112, 116, and 127 (and the records that relate to these records as set out in Schedule B to its representations). It also identifies the appellant's own personal information in records 27, 28, 35, 66, 116, and 127 (and their related records).[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 general right of access to one's own personal information.

[105] Section 49(a) of the *Act* 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.

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[45] See, for example, Orders P-721, PO-1912, PO-2524, PO-2778, PO-2976, and PO-3802.
[46] I confirm that only the name and/or initials of the individual constitute personal information. My view is that none of the other remaining information in these records would identify any individual.
[47] The personal information of the second individual appears a single time in a duplicate email in each record.
[48] I upheld its decision that these records contain the appellant's personal information above, in Issue C.

[106] 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.

[107] If an 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. As such, I will consider whether Metrolinx exercised its discretion to withhold certain information containing the appellant's own personal information in records 27, 28, 35, 66, 116, and 127 (and their related records) under section 49(a), read with the exemption for advice or recommendations at section 13(1) of the *Act.*

[108] Metrolinx also claims that section 13(1) applies to certain information in records 25 and 83 (and their related records), and records 91 and 112. Metrolinx does not claim that the information it withheld in these records contains any of the appellant's personal information. I have reviewed the records and agree that the withheld portions do not contain the appellant's personal information. Accordingly, I will consider whether Metrolinx exercised its discretion to apply section 13(1), on its own, for the information it withheld in these records.

[109] Section 13(1) of the *Act* exempts certain records containing advice or recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[49] Section 13(1) states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

What is "advice" and what are "recommendations"?

[110] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be express or inferred. "Advice" has a broader meaning than "recommendations." It includes "policy options," which are the public servant or consultant's identification of alternative possible courses of action. "Advice" includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.[50] "Advice" involves an evaluative analysis of information. Neither "advice" nor "recommendations" include "objective

[49] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[50] *Ibid*, at paras. 26 and 47.

information" or factual material.

[111] Section 13(1) applies if disclosure would "reveal" advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[51]

[112] Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13(1). Section 13(2)(a), the only exception relevant in this appeal, states:

> (2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,
>
> (a) factual material[,]

[113] Factual material refers to a coherent body of facts separate and distinct from the advice and recommendations contained in the record.[52] Where the factual information is inextricably intertwined with the advice or recommendations, section 13(2)(a) may not apply.[53]

Metrolinx's representations

[114] Metrolinx submits that section 13(1) applies to information in records 25, 27, 28, 35, 66, 83, 91, 112, 116, and 127 and the records that relate to these records as set out in Schedule B to its representations. It says that although some of the records it withheld under section 13(1) contain occasional statements of fact, these statements are inextricably intertwined with the advice and recommendations. It denies that the factual statements meet the exception for "factual material" in section 13(2)(a) because they do not constitute "a coherent body of facts separate and distinct from the advice and recommendations contained in the record."[54] Below is a summary of Metrolinx's representations for each set of records.[55]

Record 25 and related records

[115] Metrolinx submits that the only information withheld under section 13(1) in these

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[51] Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.
[52] Order P-24.
[53] Order PO-2097.
[54] Order PO-2097 at paragraph 23.
[55] For each set of records, I confirm that I have reviewed the related records and am satisfied that they contain that is duplicative or substantially similar to the associated records that are described in the representations.

records is an email from the appellant (in her capacity as an employee) to Metrolinx's CEO (Email A). In Email A, the appellant expresses concerns and recommends a course of action. Metrolinx says that Email A is appropriately withheld either as part of the deliberative process protected by section 13(1), or because it recommends a course of action to the CEO in his capacity as the most senior decision-maker at Metrolinx.

Record 27 and related records

[116] Metrolinx says the information withheld in these records is another email sent by the appellant in her capacity as a manager to the CEO (Email B). In Email B, the appellant expresses a view about the investigation of the complaint she made and recommends an action to the CEO in his capacity as the most senior decision-maker at Metrolinx. Metrolinx also withheld Email B in records 127 and its related records.

Record 28 and related records

[117] Metrolinx says these records contain an email from the CEO (Email C) responding to Email A. Metrolinx says section 13(1) applies to Email C because it contains advice about a proposed course of action and falls within the deliberative process followed by the CEO's office to address the concerns raised by the appellant.

Record 35 and related records

[118] The information withheld under section 13(1) in Record 35 is a copy of Email B with draft responses prepared by Metrolinx employees in collaboration with the CEO's office. Metrolinx says the final email sent by the CEO is disclosed in Record 116. Metrolinx submits that section 13(1) applies to the information withheld in the draft responses because they constitute advice or recommendations provided by public servants as part of the CEO office's deliberative process.[56] It says that as in PO-3058, because the final correspondence sent by the decision-maker was disclosed to the appellant, "disclosure of these emails and drafts would reveal staff's recommended course of action" such that these records qualify for exemption under section 13(1) of the *Act*.[57]

Record 66 and related records

[119] Metrolinx says these records consist of Email A and correspondence between the CEO and staff containing advice and recommendations about how to respond to the appellant. The CEO's request for advice is set out in an email contained in record 66 that was disclosed to the appellant. Metrolinx says that the CEO's eventual response to the appellant is disclosed in record 28. Metrolinx says the in-between deliberations which include the giving and receiving of advice are properly withheld under section 13(1) of the *Act.*

[56] J*ohn Doe v. Ontario (Finance)*, 2014 SCC 36, at para 50.
[57] Order PO-3058 at paragraph 58.

Record 83 and related records

[120] Metrolinx says these records contain recommendations and the underlying advice from the PA to the Vice-President, Procurement and Senior Manager, Client and Vendor Relations. It submits that the contents of the email expressly refer to a recommendation.

Record 91

[121] Metrolinx says this record contains advice from the Director of Insurance and recommended next steps to the Procurement team, including the appellant and the PA. It submits that advice and recommendations relating to contractual negotiations in the context of public procurement are properly withheld under section 13(1) of the *Act*.[58]

Record 112

[122] Metrolinx explains that this is an email from the Director of Insurance to the Chief of Staff that contains background, context and advice in relation to Email C.

Record 116 and related records

[123] According to Metrolinx these records contain Email B and a follow-up email from the appellant expressing concerns and providing advice on what steps ought to be taken. Metrolinx says that section 13(1) applies to Email B for the same reasons set out above. It says that the exemption also applies to the appellant's follow-up email because it too contains a recommendation she made in her capacity as an employee of Metrolinx to its CEO. Metrolinx submits that section 13(1) also applies to the information redacted from the additional email from the Vice-President, Audit, Regulatory Compliance and Controls to the CEO because it provides advice which had been requested by the CEO. Metrolinx says it therefore formed part of the deliberative process that informed the CEO's decision with respect to the management of the appellant's complaints.

The appellant's representations

[124] The appellant submits that none of the information withheld by Metrolinx reveals advice or recommendations as contemplated by section 13(1) of the *Act.* She argues that this is not a case of "the deliberative process of government decision making and policy making." She argues that the information Metrolinx has withheld contains facts, rather than opinions. She says that there are public procurement and conflict of interest policies that contain procedures for a vendor and Metrolinx to follow for the gathering of evidentiary information when investigating facts, including financial breach of contract and ethics breaches and that this the content of the records.

[125] The appellant says, advice and recommendations are part of a subjective analysis, also known as an "interpretive analysis" or "evaluative analysis" and require the

[58] Interim Order PO-3647-I at paragraphs 92 to 93.

assessment or judgment of something based on established criteria. The appellant argues that investigations for financial breach and conflict of interest are fact-finding missions. She says they are objective and do not contain advice or recommendations. The appellant argues that any business advice or recommendations are actually instructions on what to do based on the facts and procedures. She says that there is only one outcome to a financial breach of contract or related ethics/conflict of interest investigation, either yes or no. Both, she says, are solely factual investigations.

[126] The appellant argues that investigation records are "factual material" as per the section 13(2)(a) exception to the exemption. She submits that there is no need to provide guidance, offer solutions, or suggest courses of action. Furthermore, she says the "factual information" is not "inextricably intertwined" with advice or recommendations. She argues that to the extent that anyone involved in the investigation worked outside of the facts, any advice and recommendations provided would be "incorrect, of inadequate quality and/or negligent."

Analysis and findings

[127] Having reviewed the records at issue, and for the reasons set out below, I accept Metrolinx's characterization of the information it withheld under section 13(1) and find that it qualifies as advice or recommendations, except for records 91 and 112, and certain portions of record 116 and its related records.[59]

[128] Emails A and B in records 25 and 27 are emails from the appellant, in her role as a manager at Metrolinx to its CEO. In these emails, the appellant provides background information about certain concerns she holds about events she says took place and she sets out her views on what the CEO should do and why. The emails recommend specific courses of action that she believes that Metrolinx, its CEO, and the CEO in the capacity of Metrolinx's Ethics Executive should take. As noted by Metrolinx in its representations, the appellant expresses her view about the investigation of her original complaint and recommends certain actions based on her position as a Metrolinx employee. I agree that these emails fit the description of advice or recommendations as contemplated by section 13(1) of the *Act*.

[129] I disagree with the appellant's assertion that these emails contain factual information and not opinions related to decisions to be made. The emails consist of her opinion as a Metrolinx employee regarding certain events and her recommendations for what should be done based on those opinions. In my view, any facts that may be included in the appellant's emails are intertwined with her opinions such that they cannot be disentangled because they serve as a basis for her recommendations.[60] As such, I find that the exception for factual material at section 13(2)(a) does not apply.

[130] Continuing, I find that the withheld portions of records 28, 35, 66, and 127 are

[59] The related records are records 133, 135, 139 and 140.
[60] See *John Doe v. Ontario (Finance)*, 2014 SCC 36, para. 47.

parts of email chains between Metrolinx employees discussing next steps and responses to the issues raised by the appellant in Emails A and B.[61] I find the redacted portions contain advice or recommendations as contemplated by section 13(1) of the *Act.* To begin, Email C in record 28 is an email from the CEO to Metrolinx staff detailing what he believes the next steps should be and what actions should be taken. Having reviewed the redacted portion, I find it is clearly advice.

[131] Next, as is evident from the unredacted portion of the email in record 35, the redacted portion contains a suggested response. A suggested response constitutes advice or recommendations for the purpose of section 13(1) of the *Act.*[62]

[132] Similarly, an unredacted portion of an email from the CEO on page 66 specifically requests advice and a draft response. The redacted emails that follow contain the advice, as requested, and further emails discuss why employees believe the response should include certain additional information. Each redacted email contains either advice or a recommendation or would reveal the content of the advice or recommendation ultimately provided.

[133] Moving on, I find that record 83 contains two formal recommendations under the heading "Recommendation."[63] These recommendations qualify for exemption under section 13(1) of the *Act*. There are also three paragraphs on page two of record 83 that suggest a recommended course of action and provide advice about why that course of action should be taken. These three paragraphs also qualify as "advice or recommendations" under section 13(1) of the *Act*.

[134] Next, I find that records 116 and 127 each contain a copy of Email B from record 27, already addressed above. Email B is reproduced in records 116 and 127 and I apply the same conclusion to it in these instances as I did above.[64]

[135] I confirm that in making the decisions above, I considered the appellant's argument that the exception 13(2)(a) for factual material applies to the withheld information in records 25, 27, 28, 35, 66, 83, and 127. I confirm that these records do not contain factual material as contemplated by section 13(2)(a), which I find does not apply.

[136] Having found that the information Metrolinx withheld above under section 13(1) qualifies as "advice" within the meaning of section 13(1), I must now consider whether Metrolinx exercised its discretion under section 49(a) of the *Act* because some of the records also contain the appellant's personal information, specifically, records 27, 28, 35,

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[61] The emails from records 25 and 27 that I have determined contain advice or recommendations are also included throughout records 28, 35, 66, 116 and 127. Section 13(1) applies anywhere in the records these emails appear.
[62] Order PO-2888.
[63] Metrolinx disclosed the heading but withheld the information under it.
[64] This decision also applies to Email B when it appears in the records related to records 116 and 127.

66 (and their related records), and Email B in records 116 and 127 (and their related records).

[137] I have reviewed the reasons and rationale provided by Metrolinx for exercising its discretion and I find nothing improper. Although Metrolinx does not specifically indicate that it exercised its discretion to withhold the information under section 49(a), read with section 13(1), I note that it identified the appellant's personal information in the records and considered the fact that the records contain the appellant's personal information in deciding whether to disclose the information at issue to her. It says that the appellant's personal information appears in emails containing advice and recommendations that she wrote as an employee of Metrolinx. It submits that the appellant's views are already known to her and should not be available to the public at large.

[138] Overall, I am satisfied that Metrolinx considered the purpose of the exemption in section 13(1) of the *Act*, and the principle that exemptions from an individuals' right of access to their own information should be limited and specific when exercising its discretion. Consequently, I uphold its exercise of discretion to withhold the information at issue in records 27, 28, 35, 66, and 127 (and their related records), and to certain portions of record 116 (and related records) and find that this withheld information qualifies for exemption under section 49(a) read with section 13(1) of the *Act.*

[139] Regarding its exercise of discretion to apply section 13(1) generally, Metrolinx says that it considered whether to disclose the advice and recommendations it withheld and ultimately decided to disclose only the final communications. It explains that it did this, in part, because in many cases the advice was being provided to its most senior employees. Based on this evidence, I also uphold Metrolinx's exercise of discretion to apply section 13(1), on its own, to records 25 and 83 (and their related records).

[140] There are three remaining records in which Metrolinx withheld information that I find does not qualify as advice or recommendations under section 13(1) and, therefore, are not exempt under section 49(a), read with section 13(1), or section 13(1) on its own: records 91, 112, and portions of record 116 (and its related records).

[141] To begin, I have reviewed record 91 and do not agree with Metrolinx that it contains advice relating to recommended next steps or contractual negotiations. In my view, the two sentences that Metrolinx has withheld are more properly characterized as an opinion about something that happened in the past and a current update. There is no course of action recommended. Rather the author of the email states, as a matter of fact, what is happening. I will order Metrolinx to disclose this withheld information in record 91.

[142] Next, regarding record 112, I agree with Metrolinx that the email contains background and context. However, I find that it does not contain any information that could reasonably be considered "advice or recommendations." As in record 91, the author of the email is not recommending a course of action or steps to take. Rather the author

is explaining something that happened and why certain steps were taken. I have considered Metrolinx's submission that this background and context was provided in connection to advice or recommendations requested and/or provided in other records (for example, records 28 or 66). Based on the evidence before me, I am not satisfied that there is a clear connection between any advice sought and the content of the email at issue in record 112. I will order Metrolinx to disclose this information.

[143] Finally, on page 1 of record 116 (and its related records) I find that the sentence Metrolinx withheld is a statement of fact that does not contain a recommended course of action, nor does it suggest what Metrolinx should or should not do. In my view, this statement is more properly characterized as a report, or an update. Metrolinx has not applied any other exemptions to this portion of the sentence and so I will order it to disclose that withheld information to the appellant.

[144] I also find that the email from the appellant in her capacity as a manager to the CEO on pages two and three of record 116 (and its related records, 133, 135, 139, and 140) does not constitute advice or recommendations within the meaning of section 13(1) of the *Act.* This email poses several questions and provides various details, but does not offer any guidance or advice, and does not recommend any specific course of action. The email uses language such as "would it be advisable," in question format, and expresses preferences for certain outcomes. However, in my view, the content cannot be considered either advice or recommendations. I will order Metrolinx to disclose this information to the appellant.[65]

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

[145] The only personal information of an individual other than the appellant at issue in the records is the name and/or initials of the Metrolinx employees that the appellant raised concerns about in records 28 and 116 (and their related records). Under the section 49(b) exemption, if a record contains the personal information of both the appellant and another individual, an institution may refuse to disclose the other individual's personal information to the appellant if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.[66]

[146] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy. If any of the exceptions in section 21(1)(a) to (e) apply, disclosure would not be an unjustified invasion of personal privacy, and the information is not exempt from disclosure under section 49(b). Section

[65] Metrolinx also applied the mandatory exemption for personal privacy at section 21(1) to record 116 (and its related records). Below, I consider whether section 49(b) applies to the personal information.
[66] As I noted above, Metrolinx claimed that the mandatory exemption for personal information at section 21(1) of the *Act* applied to the information at issue. However, because the information at issue also contains the appellant's personal information it must be considered under the discretionary exemption at section 49(b) of the *Act.*

21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy. There is no evidence before me to suggest that the exceptions in section 21(a) to (e) or situations in section 21(4) apply to the withheld information. If sections 21(1)(a) to (e) and 21(4) do not apply, the decision-maker,[67] in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[68]

Metrolinx's representations

[147] Metrolinx submits that the disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy of other individuals identified in the records. Specifically, it says that allegations of wrongdoing about an identifiable individual in the context of their employment would be an unjustified invasion of personal privacy if they were disclosed.

[148] Metrolinx says that information related to the employment history of individuals is presumed to be an invasion of privacy under section 21(3)(d) of the *Act*. The presumption at section 21(3)(d) covers several types of information connected to employment history, including the start and end date of an individual's employment, as well as information contained in resumes[69] and work histories.[70]

[149] Metrolinx also says that the following factors enumerated in section 21(2) of the *Act* weigh against the disclosure of the personal information, particularly in respect of the appellant's views and opinions about the other employee:

- Section 21(2)(f): The personal information is highly sensitive in that it contains serious allegations against the named individual, and
- Section 21(2)(i): Disclosure of the information could unfairly damage the identifiable individual's reputation.

[150] Finally, Metrolinx submits that the appellant's personal views about certain individuals at Metrolinx are already known to her and should not be available to the public at large.

The appellant's representations

[151] The appellant submits that she is seeking access to her own personal information. She also submits that Metrolinx "shared" her personal information without her authority in breach of section 21(1) of the *Act*. She submits that she has an expectation of

[67] The institution or, on appeal, the IPC.
[68] Order MO-2954.
[69] Orders M-7, M-319 and M-1084.
[70] Orders M-1084 and MO-1257.

confidentiality pursuant to Metrolinx's Health & Safety Harassment complaint policy and procedures.

[152] The appellant argues that the factor at section 21(2)(a) applies to the personal information of the other employees withheld by Metrolinx. She says that disclosure is desirable for public scrutiny and to ensure public confidence in a public institution. She says that the IPC "promotes transparency of government actions" and "the public has the right to expect that spending by employees of government institutions when performing their employment-related responsibilities is in line with established policies and procedures."

[153] She also submits that section 21(3)(d), the presumption against disclosing an individual's employment or educational history" does not apply because a person's name and professional title alone do not constitute "employment history" and are not covered by the presumption.

Analysis and findings

[154] Having reviewed the records, I find the presumption against disclosure at section 21(3)(d) applies to the personal information of the individuals other than the appellant that I have highlighted in red in records 28 and 116 (and their related records). I agree with Metrolinx that allegations of wrongdoing in the context of an individual's employment constitutes part of their employment history. While the appellant is correct that an employee's name alone is not considered personal information, the name and/or initials, if disclosed alongside the other information that I have concluded is not personal information, would reveal personal information. As such, I agree that the presumption against disclosure at section 21(3)(d) applies to the personal information in records 28 and 116 (and their related records).

[155] I also find that the factors weighing against disclosure at sections 21(2)(f) and (i) also apply to the information highlighted in red. The allegations against the individuals are serious in nature and could unfairly damage their reputations. I note that the appellant is the person who made the allegations about the other individuals, and as such, she already knows the identities of those individuals. However, I must treat disclosure to the appellant as having the potential for "disclosure to the world." The identity of the employees would enter the public domain, and I must consider the consequences of disclosure on the assumption that the public may have access to that information.[71]

[156] I also considered the appellant's assertion that the factor in favour of disclosure at section 21(2)(a) applies because the withheld information would be desirable for public

[71] See, for example, Orders PO-3429 and PO-4416.

scrutiny.[72] I am not satisfied that disclosing the identities of the employees that the appellant raised concerns about would, in any way, be desirable for public scrutiny. The only information withheld in the records at issue is the individuals' identities. In my view, revealing the identities of the individuals would not achieve the purpose of section 21(2)(a).

[157] Finally, I note the appellant's submissions regarding her assertion that Metrolinx disclosed her personal information without her consent. This issue is not before me in this inquiry and as such, I will not consider it further.

[158] In summary, I find that the presumption against disclosure in section 21(3)(d) and the factors weighing against disclosure in section 21(2)(f) and (i) apply to the names and/or initials of the other individuals that appear in the records at issue.

[159] The section 49(b) exemption is discretionary. This means that Metrolinx can decide to disclose the affected parties' personal information to the appellant even if doing so would result in an unjustified invasion of the affected parties' personal privacy. Metrolinx must exercise its discretion. On appeal, the IPC may determine whether it failed to do so or whether, in exercising its discretion, it did so in bad faith or for an improper purpose; it took into account irrelevant considerations; or it failed to take into account relevant considerations.

[160] Metrolinx says that it redacted the information at issue as narrowly as possible to promote access to information while protecting the personal privacy of the identifiable individuals. It submits that the personal information it withheld does not go to the root of the appellant's request and says that the withheld information is already known to the appellant and should not be available to the public at large.

[161] I uphold Metrolinx's exercise of discretion. I find that it considered the interests that the personal privacy exemption seeks to protect, the nature of the information, and the extent to which it is sensitive to the affected parties. There is no evidence before me that Metrolinx took into account irrelevant considerations or exercised its discretion in bad faith or for improper purpose. I find the information highlighted in red in records 28 (and 49, 76, 77, 78, 104, 129 and 137) and 116 (and 133, 135, 139 and 140) is exempt under the discretionary personal privacy exemption in section 49(b) of the *Act*.[73]

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[72] Section21(2)(a) supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny. It promotes transparency of government actions.

[73] For clarity, the information that is exempt from disclosure is highlighted in red in the copy of records provided to Metrolinx with this order. I note that although Metrolinx does not specifically indicate that it exercised its discretion under section 49(b), it did consider the fact that the information at issue was also the personal information of the appellant in exercising its discretion to withhold information under the personal privacy exemption.

Issue F: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the exemptions at section 49(a), read with section 13(1), section 13(1) on its own, and/or section 49(b)?

[162] The appellant submits that there is a public interest in the records that overrides the purpose of the exemptions applied by Metrolinx. Section 23 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

> An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[163] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records, and
- this interest must clearly outweigh the purpose of the exemption.

[164] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[74] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[75]

[165] The existence of a compelling public interest is not enough to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the exemption in the specific circumstances. An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[76]

Metrolinx's representations

[166] Metrolinx denies that any of the information at issue engages a compelling public interest. It says the withheld information contains advice or recommendations. It says that in many cases, the final decision or step taken in response to the advice or recommendation was in the records it disclosed to the appellant, but the internal discussions leading up to it were not. Metrolinx asserts that there is no compelling public

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[74] Orders P-984 and PO-2607.
[75] Orders P-984 and PO-2556.
[76] Order P-1398, upheld on judicial review in *Ontario v. Higgins,* 1999 CanLII 1104 (ONCA), 118 OAC 108.

interest in disclosure of this type of information, or in the personal information it withheld.

The appellant's representations

[167] The appellant submits that "the public interest is already confirmed." She says that "it is only Metrolinx incorrectly denying this and improperly withholding the Part 2 records" under sections 13(1), or 21(1).[77]

[168] The appellant emphasizes that if conflicts of interest and financial breach of contract investigations are not based solely on facts, then that confirms that Metrolinx conducted inadequate, incompetent or improper investigations. She submits that potential violations of code of conduct and public contracting misconduct are matters of public interest and that records cannot be withheld for "fear of embarrassment if incompetence and mismanagement come to light" or "fear of exposing corruption or perceptions of corruption in the procurement process."

Analysis and findings

[169] After reviewing the representations of the parties and considering the withheld information I have found exempt under sections 49(a), read with section 13(1), section 13(1) on its own, and 49(b), I find that the public interest override in section 23 does not apply in the circumstances of this appeal.

[170] I have considered the information at issue that Metrolinx withheld and have also considered the appellant's arguments about the public's interest in public contracting misconduct and corruption. I accept that, generally, there is a public interest in matters such as these.

[171] However, assuming without deciding that this interest rises to the level of a "compelling" public interest within the meaning of section 23, I cannot conclude that the interest in disclosure of the information at issue here would clearly outweigh the purpose of the exemptions applied to withhold it. The withheld information at issue does not directly respond to the public interest concerns identified by the appellant. I am not persuaded that its disclosure would have the effect of informing or enlightening the public on these broader issues. In these circumstances, I conclude that the public interest override at section 23 of the *Act* does not apply.

Issue G: Did Metrolinx conduct a reasonable search for records?

[172] The appellant asserts that additional records that are responsive to her request

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[77] I note that the appellant also argues that the public interest override should apply to information Metrolinx withheld under sections 17(1) and/or 19. As explained in footnote 32 above, I determined that the information Metrolinx claimed section 17(1) applied to is not responsive to the appellant's request. As a result, section 17(1) is not at issue in this inquiry and there is no need to consider it here. Regarding section 19, it is not included the public interest override at section 23 which applies only to sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1. Section 23 does not apply to information subject to section 19.

should still exist. When a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.[78] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[173] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[79]

[174] The *Act* does not require the institution to prove with certainty that further records do not exist.[80] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[81] that is, records that are "reasonably related" to the request.[82]

Metrolinx's representations

[175] Metrolinx says it conducted a reasonable search for responsive records and identified 140 potentially responsive records. It explains that the appellant expected there to be a stand-alone investigative report setting out findings and conclusions responsive to the complaint she made about the Vendor. Metrolinx submits that no such report exists. It says that what exists is the legal opinion provided by the LS Director. It says that the legal opinion is responsive but was withheld under section 19 of the *Act*.[83]

[176] Metrolinx says that the appellant has expressed concern that its search was "overinclusive" based on the volume of the Part 2 records. Metrolinx submits that the number of responsive records is a direct result of the wording of the request.

The appellant's representations

[177] The appellant submits that Metrolinx has not made a reasonable effort to identify and locate all the responsive records. She submits that there should be financial breach of contract investigation records between the Vendor and a specific employee at Metrolinx, including communications not shared with others.

[178] She also argues that there should be procurement records for the Vendor relating to the financial breach of contract and "evaluations" completed by insurance staff to confirm financial compliance before and after the investigation closed. Additionally, she submits that there should be records pertaining to illegal commissions.

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[78] Orders P-85, P-221 and PO-1954-I.
[79] Order MO-2246.
[80] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[81] Orders P-624 and PO-2559.
[82] Order PO-2554.
[83] I note that I upheld Metrolinx's decision to withhold the legal opinion above.

Analysis and findings

[179] As set out above, the issue before me is whether the institution conducted a search that is reasonable in the circumstances. In this case, Metrolinx did not provide detailed representations describing the specific steps it took to locate responsive records or the employees involved. However, considering it identified more than 2,500 pages of responsive records, it is clear that it did, in fact, conduct a search. The appellant's submissions do not raise concerns about how Metrolinx conducted its search, generally. Instead, they focus on her belief that additional specific records "should" exist.

[180] Specifically, the appellant says that there should be "financial breach of contract investigation records between the Vendor and a specific employee at Metrolinx." I accept Metrolinx's characterization of what the appellant is looking for as a "standalone investigation report." I also accept Metrolinx's submission that this report does not exist. The evidence before me indicates that the LS Director conducted a review of the matters subject to the appellant's complaint in response to a request for legal advice. As such, to the extent that some of the records the appellant seeks exist, it is possible that they comprise the information that I concluded is subject to solicitor-client privilege at section 19 of the *Act*.

[181] With regard to the appellant's assertion that there should also be procurement records for the Vendor relating to the breach of contract and evaluations by insurance staff to confirm financial compliance "before and after the investigation closed," my view is that while these records may or may not exist within the legal review, I am satisfied that they do not exist as part of a separate investigation.

[182] In summary, I find that the appellant's assertion that additional records ought to exist is not, on its own, sufficient to require Metrolinx to conduct further searches. The question before me is whether there is a reasonable basis, on the evidence, to conclude that additional responsive records exist but were not located. On the materials before me, I find no such basis. Metrolinx located a significant volume of records, and the appellant has not provided evidence that would lead me to conclude that ordering a further search is warranted. Accordingly, I uphold Metrolinx's search as reasonable, in the circumstances.

Issue H: Should the IPC uphold Metrolinx's fee?

[183] The appellant challenges the fee Metrolinx issued. Institutions are required to charge fees for requests for information under the *Act*. Section 57 governs fees charged by institutions to process requests. Under section 57(3), an institution must provide a fee estimate where the fee is more than $25. The purpose of the fee estimate is to give the requester enough information to make an informed decision on whether or not to pay the fee and pursue access.[84]

[84] Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

[184] The institution must include a detailed breakdown of the fee and a detailed statement as to how the fee was calculated. The IPC can review an institution's fee and can decide whether it complies with the *Act* and regulations. Section 57(1) sets out the items for which an institution is required to charge a fee:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure; …
>
> (c) any other costs incurred in responding to a request for access to a record.

[185] More specific fee provisions are found in section 6 of Regulation 460. Section 6 applies to general access requests:

> 6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record: …
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.

Metrolinx's representations

[186] Metrolinx says that its fee should be upheld because it was properly calculated and the final fee was lower than its estimate. Metrolinx says it sent the appellant a fee estimate of $1,072.00. It says this accounted for 24 hours of search time and 11.75 hours of record preparation at the prescribed rate of $30 per hour. It submits the appellant was advised that a preliminary review of the records indicated that several exemptions might apply to the information contained in the records identified by the search. Metrolinx says that the appellant paid the initial deposit of $536.25 without requesting a fee waiver.

[187] Metrolinx says its final fee was reduced from $1072.00 to $765.00. It says this was the result of Metrolinx's decision to only charge the appellant for 1.5 hours of record preparation time. Metrolinx says it excluded the time spent preparing records that were withheld. Metrolinx says the appellant paid the outstanding fees and was granted access to the responsive records, subject to redactions for exemptions and information that was not responsive to her request. Metrolinx submits that there is no reason to depart from the fees charged to the appellant because it complied with the applicable regulations and appropriately adjusted its fee.

The appellant's representations

[188] The appellant submits that the fee should be decreased. She says that out of the 101 pages released in response to Part 1, approximately 75 pages fell outside the scope of her request and/or are duplicates.[85]

[189] The appellant submits that to ensure an accurate page count for the Part 2 records, Metrolinx must confirm the "number of pages of voluminous duplicates and work experience records removed." The appellant says that the fees for actual costs of processing, collecting and copying all duplicates in the Part 2 records should be refunded. She says she should not be charged fees for duplicates or for any employment history records in the Part 2 records.

Analysis and findings

[190] As noted above, section 57(1) of the *Act* provides that an institution shall charge fees for the costs of processing a request and institutions are expected to use their discretion when determining whether to waive fees. In this appeal, Metrolinx revised its fee and removed most of the costs for preparing the records for disclosure. As a result, the majority of Metrolinx's fee consists of its search time.

[191] Metrolinx calculated the fee for searching for records based on 24 hours of search time. In circumstances where it identified over 2,500 pages of potentially responsive records, my view is that 24 hours of search time is reasonable. This represents a significant volume of records, and Metrolinx staff would have been required to conduct a substantial search to locate them.

[192] I have considered the appellant's assertion that costs associated with "voluminous duplicates and work experience records" should be removed. I disagree. Because many of the records responsive to Part 2 of her request were duplicative, Metrolinx shared the chart describing the Key Records in Exhibit C of the LS Director's affidavit with the appellant and invited her to narrow the scope of the appeal. The appellant declined to do so. In my view, it is not appropriate for her to now ask not to be charged for search time for duplicative records. Regardless of whether these items were duplicated in part or whole, Metrolinx nonetheless spent time searching for them and the appellant continued to seek access to them.

[193] Regarding the appellant's claim that the fees for actual costs of processing, collecting and copying all duplicates in the Part 2 records should be refunded, my view is that Metrolinx has already done this. It has reduced its fee for processing the entire request from 11.75 hours of preparation time to 1.5 hours. I do not agree that the fee

[85] The appellant says she agreed to "waive excess fee charges for Part 1 duplicates and irrelevant documents." It is not clear to me how this statement fits into the appellant's argument and as a result, I have not considered it when making my decision.

for preparing the records for disclosure should be further reduced.

[194] Having reviewed Metrolinx's calculations, I am satisfied that its fee consists of charges that are permitted under section 57(1) of the *Act*, that the search time claimed is supported by the scope of the records located, and that the amounts charged were based on the amounts prescribed in section 6 of Regulation 460. In the circumstances, I find that Metrolinx charged an appropriate fee and properly applied its discretion by waiving most of the preparation costs.

[195] In making this decision, I considered the fact that an institution is not permitted to charge fees for searching for records or preparing them for disclosure if a requester is seeking their own personal information. In this case, the appellant's request was for general records. Although some of the responsive records contained the appellant's personal information, my view is that it is unnecessary to reduce the fee further given that Metrolinx has already significantly reduced its fee and the request was not specifically made for the appellant's personal information. I decline to make an order for any additional fee adjustments.

ORDER:

1. I order Metrolinx to provide an access decision to the appellant regarding access to the information highlighted in the copy of records 95 and 107 provided to it with this order, in accordance with the requirements of the *Act*, and treating the date of this order as the date of the request.

2. I uphold Metrolinx's decision to withhold all the remaining information at issue, except for certain information in records 28 (and related records 49, 76, 77, 78, 104, 129 and 137), and 116 (and related records 133, 135, 139 and 140).

3. I order Metrolinx to disclose the information that is not redacted or highlighted in red in the copies of records 28, 49, 76, 77, 78, 91, 104, 112, 116, 129, 133, 135, 137, 139 and 140 provided to it with this order to the appellant by **February 3, 2026** but not before **January 29, 2026**.

4. To verify compliance with provision 3, I reserve the right to require Metrolinx to provide me with a copy of the records disclosed to the requester upon request.

Original Signed by: December 30, 2025

Meganne Cameron
Adjudicator