

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4456

Appeal PA22-00013

William Osler Health System - Peel Memorial Hospital

November 6, 2023

Summary: The appellant sought access under the *Act* to records about the handling of a whistleblower complaint he made to the hospital alleging improper external influences in the hospital's decision regarding his position at the hospital. The hospital decided to withhold information, in part, denying access to some information on the basis of the discretionary exemptions at sections 13(1) (advice or recommendations) and 19 (solicitor-client privilege). In this order, the adjudicator upholds the hospital's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2(1) (definition of personal information), 49(a), 13(1) and 19.

OVERVIEW:

[1] The appellant, a staff member at William Osler Health System - Peel Memorial Centre (Osler or the hospital), filed a complaint with the hospital's board of directors (the board) pursuant to its whistleblower complaint policy. In the complaint, the appellant sought an independent review of what he refers to as external pressure exerted on the hospital's senior leadership to silence the appellant's public criticism of the Ontario Government in their response to the COVID-19 pandemic. The hospital determined that the appellant's whistleblower complaint did not warrant a review under its whistleblower complaint policy.

[2] Later, the appellant made a request to the hospital under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for:

... any documents or records referring to any [nine named individuals]

Any incoming, outgoing or internal communications in the form of emails, text messages, documents, records or minutes of meetings, agendas of meetings, records or schedule of phone calls, HR [human resources] records, memos, letters, briefing notes or any other communications regarding the above listed individuals/organizations and the William Osler Health System's Whistleblower Policy during the time period from May 25, 2021, through to and including September 21, 2021.

[3] The hospital issued a decision disclosing the records, in part.¹

[4] The appellant appealed the hospital's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[5] The hospital issued a revised decision in relation to the records that it had partially disclosed. The hospital decided to disclose additional portions of these records. The hospital no longer claimed section 21(1) of the *Act* to withhold portions of these records but continued to withhold information under sections 13(1) (advice or recommendation) and 19 (solicitor-client privilege). The hospital for the first time also raised the application of section 18(1)(f) (economic or other interests).²

[6] The hospital advised that there would be no further disclosure.

[7] The appellant advised that he wished to pursue the withheld portions of the records at adjudication. The appellant advised that he also wished to challenge the hospital's late claiming of the discretionary exemption at section 18(1)(f) of the *Act*. The appellant also advised that he wished to pursue the records withheld in full pursuant to section 19 of the *Act* at adjudication.

[8] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process. I decided to conduct an inquiry and I sought the parties' representations, which were shared between them in accordance with the IPC's *Practice Direction 7*. The hospital's representations included confidential representations, which were not shared with the appellant in accordance with the confidentiality criteria in *Practice Direction 7*.

[9] As the appellant's whistleblower complaint that gave rise to the creation of the

¹ The hospital withheld information under sections 13(1), 19 and 21(1). The hospital's decision letter referred also to the employment and labour relations exclusion at section 65(6) of the *Act*; however, it later clarified that this reference was in error and that no records were withheld on that basis. The appellant accepted the hospital's position on section 65(6); therefore, this exclusion is not at issue in this appeal.

² As set out below, it is not necessary for me to consider the late raising of section 18(1)(f), as I found the information for which this exemption was claimed otherwise exempt by reason of section 13(1).

records at issue contain the personal information of the appellant, I sought and received the parties' representations on the application of section 49(a) (discretion to refuse requester's own information). I have added the application of section 49(a) to the issues on appeal.³

[10] In this order, I find that the information at issue in the responsive email records is exempt by reason of section 49(a), read with sections 13(1) or 19, and dismiss the appeal.

RECORDS:

[11] The records are internal hospital emails or emails between hospital staff and the hospital's external legal counsel all generated in response to the appellant's complaint.

[12] Withheld in full by the hospital are 49 email chain records on the basis of solicitor-client privilege under section 19.

[13] Additionally, the hospital withheld 16 email chains in part on the bases of sections 19, 13(1), and/or 18(1)(f). These 16 partially withheld records contain a total of nine redacted passages, each of which appears in more than one record. The hospital has partially redacted one of these passages on the basis of section 13(1) alone, three passages under both sections 13(1) and 18(1)(f), and five passages under both sections 13(1) and 19.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1)?
- B. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 13(1) exemption, apply to the information at issue?
- C. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 19 solicitor-client exemption, apply to the information at issue?
- D. D: Did the hospital exercise its discretion under sections 49(a) with 13(1) and 19?

³ I will consider the parties' section 49(a) representations in detail in my analysis of the hospital's exercise of discretion.

DISCUSSION:

Issue A: Do the records contain “personal information” as defined in section 2(1)?

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

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

[16] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁴

[17] 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.⁵

[18] 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.⁶

[19] 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.⁷

[20] Section 2(1) of the *Act* gives a list of examples of personal information:

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

⁴ See the definition of “record” in section 2(1).

⁵ Orders P-257, P -427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also sections 2(3) and 2(4), which state:

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

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

⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

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

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[21] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."⁸

[22] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.⁹ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.¹⁰

The parties' positions

[23] The hospital's position is that although the records at issue refer to the appellant,

⁸ Order 11.

⁹ Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

¹⁰ See sections 21(1) and 49(b).

they pertain to a workplace whistleblower complaint that the appellant brought in relation to his work at the hospital and as such do not contain personal information about him.

[24] Although the appellant does not consider his complaint that gave rise to the records at issue to be a personal matter, he agrees that the records may contain his personal information.

Findings

[25] All the records at issue were generated as a result of a complaint made by the appellant about the hospital's processes, including circumstances that pertain to him in a personal capacity. The disclosure of the records would reveal information of a personal nature about the appellant.

[26] Based on my review of the records, I find that the records contain the appellant's personal information, specifically his employment history and his personal opinions or views as contemplated by paragraphs (b) and (e) of the definition of personal information in section 2(1) of the *Act*.¹¹

[27] As the records contain the personal information of the appellant, I will consider the appellant's right of access to the records under Part III of the *Act*.

Issue B: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 13(1) exemption, apply to the information at issue?

[28] 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.

[29] 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.

[30] 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.¹²

¹¹ The records do not contain the personal information of identifiable individuals other than the appellant.

¹² Order M-352.

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

[32] As set out above, upon review of the records for which section 13(1) has been claimed, these records contain the personal information of the appellant. Therefore, I will consider the application of section 49(a) to this information when considering the hospital's exercise of discretion.

[33] 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 policymaking.¹³

[34] 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.

[35] "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.

[36] "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.¹⁴

[37] "Advice" involves an evaluative analysis of information. Neither "advice" nor "recommendations" include "objective information" or factual material.

[38] 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.¹⁵

¹³ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

¹⁴ See above at paras. 26 and 47.

¹⁵ 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,

[39] The relevant time for assessing the application of section 13(1) is the point when the public servant or consultant prepared the advice or recommendations. The institution does not have to prove that the public servant or consultant actually communicated the advice or recommendations. Section 13(1) can also apply if there is no evidence of an intention to communicate, since that intention is inherent to the job of policy development, whether by a public servant or consultant.¹⁶

[40] Section 13(2) contains 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). Only the following exception is relevant to this appeal:

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

(a) factual material...

Representations

[41] The hospital provided both confidential and non-confidential details in its representations regarding each of the nine redacted passages in the 16 partially withheld records. These passages are contained within emails exchanged between Osler staff or between Osler staff and the Chair and Vice-Chair of the Osler board of directors. All of the records concern the handling of the appellant's whistleblower complaint that he made to Osler's board.

[42] The hospital describes redactions 1 to 5 as being advice and recommendations contained within an email chain between the Director, Board Relations & Volunteer Services, two Vice-Chairs and the Chair of the Osler Board about the appropriate procedure and approach for processing and addressing the whistleblower complaint.

[43] The hospital describes redactions 6 and 7 as advice and a recommendation contained in a second email chain, in which Osler's Chief Legal and Risk Officer forwards to a Vice-Chair of the Osler Board and the Director, Board Relations & Volunteer Services, correspondence sent to and received from the appellant in connection with his whistleblower complaint. According to the hospital, in these redacted passages, the group discusses the appropriate procedure and approach for responding to the correspondence received from the appellant.

[44] The hospital describes redactions 8 and 9 as recommendations contained in a third email chain, in which Osler's Chief Legal and Risk Officer provides recommendations to a Vice-Chair of the Osler Board and Osler's Director, Board Relations & Volunteer Services, as to how the appellant's correspondence should be

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.

¹⁶ *John Doe v. Ontario (Finance)*, cited above, at para. 51.

responded to.

[45] The appellant did not address this issue directly. Instead, he summarizes his whistleblower complaint and describes how the hospital responded to him about it. He maintains his allegations made in the complaint. The appellant submits that by refusing to hear the whistleblower complaint, the Osler Board of Directors became complicit in working against the public interest.

[46] The appellant submits that the hospital's refusal to disclose information in the present appeal is motivated by the hospital's wish to avoid accountability for the way in which it responded to the whistleblower complaint.

Findings

[47] The hospital is governed and managed by a board of directors (the board). In addition to the appointed or elected members of the board, the following persons are members of the board:

- a. the administrator of the hospital;
- b. the president of the hospital's medical staff;
- c. the chief of staff of the hospital or, where there is no chief of staff, the chair of the hospital's medical advisory committee; and
- d. the chief nursing executive of the hospital.¹⁷

[48] The hospital's confidential representations detail each of the nine redactions. I have reviewed the redacted information itself together with the hospital's representations and agree that these passages each contain advice or recommendations of a board or staff member of the hospital within the meaning of section 13(1).

[49] In particular, the redactions include the views or opinions of a board or staff member as to the range of policy options to be considered by the decision maker or contain suggested courses of action that will ultimately be accepted or rejected by the person being advised.

[50] I also find that these redactions contain information that, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations in the records.

[51] The redacted information also discusses the hospital's appropriate procedure and approach for processing and addressing the whistleblower complaint and the other

¹⁷ See section 2 of R.R.O. 1990, Reg. 965: HOSPITAL MANAGEMENT under the *Public Hospitals Act*, R.S.O. 1990, c. P.40.

correspondence received from the appellant.

[52] I find that disclosure of the passages at issue would reveal advice or recommendations under section 13(1) of a public servant or another person employed in the service of the hospital, namely the advice or recommendations of the hospital's staff or of its board members as identified in the records.

[53] The exception for factual material at section 13(2)(a) does not apply in the circumstances of this case. The information at issue that I have found subject to section 13(1) is not factual information. It is not merely objective information, but rather information the disclosure of which would reveal advice or recommendations of a hospital board or staff member. The withheld information can be contrasted against the previously disclosed information in the records that may consist of factual information, such as the date of the complaint, its contents, and the hospital's actual response to the appellant.

[54] In summary, the passages at issue are exempt from disclosure under section 49(a), read with section 13(1). At Issue D, I will review the hospital's exercise of discretion regarding the information that I have found exempt by reason of sections 49(a), read with section 13(1).

[55] The hospital also claimed the section 18(1)(f) exemption for three of the passages at issue and the section 19 exemption for five of the passages at issue. Because I have found all of the passages at issue are exempt under section 13(1), there is no need for me to consider whether either of these alternative exemption claims apply.

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

[56] As set out above, 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.

[57] Upon review of the records for which section 19 has been claimed, these records contain the personal information of the appellant. Therefore, I will consider the application of section 49(a) to this information when considering the hospital's exercise of discretion.

[58] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. Sections 19(a) and (c) read:

A head may refuse to disclose a record,

(a) that is subject to solicitor-client privilege, [...] or

(c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[59] Section 19 contains three different exemptions, which the IPC has referred to in previous decisions as making up two “branches.”

[60] The first branch, found in section 19(a), (“subject to solicitor-client privilege”) is based on common law. The second branch, found in sections 19(b) and (c), (“prepared by or for Crown counsel” or “prepared by or for counsel employed or retained by an educational institution or hospital”) contains statutory privileges created by the *Act*.

[61] The hospital must establish that at least one branch applies.

Representations

[62] The hospital states that all of the 49 fully withheld records are withheld on the basis of solicitor-client privilege pursuant to sections 19(a) and 19(c) and that they consist of communications between:

- the Chief Legal and Risk Officer and external legal counsel,
- the Chief Legal and Risk Officer and staff,
- external legal counsel and staff, or
- Chief Legal and Risk Officer, Osler’s external legal counsel, and staff.

[63] The hospital submits that the records very clearly contain communications between solicitors and their clients.

[64] The appellant did not address this issue in his representations. As indicated above, his representations focus on why he made a whistleblower complaint to the hospital, why it is in the public interest that the complaint be heard by the hospital’s Board of Directors and why the hospital’s decision to withhold information in this appeal is motivated by a desire to avoid accountability.

Findings

[65] I will consider first whether the common law solicitor-client communication privilege (“subject to solicitor-client privilege”) in branch 1 applies.

[66] If branch 1 common law solicitor-client communication privilege applies, it is unnecessary for me to also consider whether branch 1 litigation privilege or branch 2 also apply. This is because to establish that information is exempt under section 19, it is

only necessary to establish one type of privilege.

[67] 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.¹⁸ 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.¹⁹ 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.²⁰

[68] 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.²¹ The privilege does not cover communications between a lawyer and a party on the other side of a transaction.²²

[69] Having reviewed the records themselves, I find that all of the records at issue contain legal advice being sought in a confidential manner from internal and external counsel by hospital staff related to the appellant's whistleblower complaint. The emails also contain communications between the lawyers and hospital staff aimed at keeping both informed so that the advice can be sought and given.

[70] I therefore find that all of the records remaining at issue are subject to branch 1 solicitor-client communication privilege. These emails were exchanged between the hospital's staff and its external or internal legal counsel or are internal hospital emails that contain information that, if disclosed, would reveal the legal advice sought or provided by the external or internal counsel to the hospital's staff.

[71] Considering the evidence provided by the hospital about the records at issue, and based on my review of the records at issue, I have no reasonable basis to conclude that privilege has been lost through waiver.

[72] Therefore, I find that all of the emails at issue are exempt under section 49(a), read with section 19, as they contain solicitor-client communication privileged information. I will consider the hospital's exercise of discretion below.

Issue D: Did the hospital exercise its discretion under sections 49(a) with 13(1) and 19?

[73] The section 49(a) exemption, read with either section 13(1) or 19 is discretionary, meaning that the institution can decide to disclose information even if the

¹⁸ Orders PO-2441, MO-2166 and MO-1925.

¹⁹ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

²⁰ *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.

²¹ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

²² *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.).

information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[74] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

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

[75] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²³ The IPC cannot, however, substitute its own discretion for that of the institution.²⁴

Representations

[76] In its initial representations, the hospital states that it considered the following factors that weigh in favour of disclosure:

- The purpose of *FIPPA*, which is to provide a right of access to information controlled by institutions in light of the principle that information should be publicly available and exemptions from the right of access limited and specific; and
- The fact that the appellant is seeking information relating to a complaint that he filed with Osler.

[77] The hospital states that it also considered the following factors, which it says weigh against disclosure:

- The purpose of the exemptions, which including nurturing the provision of full, free, and frank advice by public servants; fostering the neutrality of the public service; and protecting the “fundamental right” of confidentiality of communications between solicitor and client to safeguard a client’s ability to freely confide in their lawyer on a legal matter;
- The dispute between the appellant and Osler that has given rise to this [freedom of information] request, and several others, has been complex and acrimonious, and has involved a number of individuals at Osler, including members of senior leadership, all of which makes the information highly sensitive;
- The records were created relatively recently; and

²³ Order MO-1573.

²⁴ Section 54(2).

- Historically, Osler has consistently withheld information exempted under [sections 13(1) and 19].

[78] Regarding the withheld information, Osler says that it concluded that the factors weighing against disclosure outweighed those favouring disclosure.

[79] Regarding the right of the appellant to access his own personal information under section 47, the hospital maintains its position that it applied the sections 49(a) (read with sections 13(1) and 19) properly. It reiterates its representations above that in rendering its disclosure decision, one of the factors that the hospital considered, and a factor that weighed in favour of disclosure, was the fact that the appellant is seeking information relating to a complaint that he filed with the hospital.

[80] As indicated above, the appellant maintains that his whistleblower complaint was justified and that the hospital ought to have dealt with it. He continues to seek the reasons why the hospital board responded to the complaint the way it did. By refusing to hear the whistleblower complaint, he submits that the hospital is working against the public interest. Further, he believes that the hospital's lack of transparency and significant efforts to redact as many documents as possible reflects its desire to protect itself, not a desire to provide open access to information under the *Act*.

Findings

[81] Based on my review of the records and the parties' representations, I find that the hospital properly exercised its discretion in denying access to the information at issue in this appeal.

[82] First, I observe that the information the appellant seeks access to, namely the reasons why the hospital did not forward his whistleblower complaint to the Board of Directors, has already been provided in correspondence to him. Furthermore, this information was also provided to the appellant during meetings held between the hospital and the appellant.

[83] The only information remaining at issue is relatively discrete information related to hospital staff's advice and recommendations about the whistleblower policy, which I found to be exempt under section 13(1), or the seeking of or the obtaining of legal advice, which I found to be exempt under section 19.

[84] Based on my review of the hospital's representations, the records previously disclosed to the appellant, and the information that I have found to be exempt under sections 49(a) with 13(1) or 19(1), I find that the hospital exercised its discretion in a proper manner, taking into account relevant considerations, including the public interest, and not taking into account irrelevant considerations. I am satisfied that the hospital balanced the appellant's interest in the disclosure of the records with the importance of the solicitor-client privilege and the advice or recommendations exemptions.

[85] In particular, with respect to the information at issue, I find that the hospital considered that:

- information should be available to the public,
- exemptions from the right of access should be limited and specific,
- the wording of the specific exemptions at issue and the interests they seek to protect,
- whether the appellant has a sympathetic or compelling need to receive the information as the appellant is seeking information that includes information about himself,
- whether disclosure will increase public confidence in the operation of the hospital,
- the nature of the information and the extent to which it is significant and/or sensitive to the hospital, including information it considered privileged,
- the nature of the information and the extent to which it is significant and/or sensitive to the appellant's concern about a "justifiable reason" for the hospital's decision that its Board of Directors not hear his whistleblower complaint, and
- the historic practice of the hospital with respect to similar information.

[86] Accordingly, I uphold the hospital's exercise of discretion and I uphold the hospital's decision to withhold the information at issue.

ORDER:

I uphold the hospital's decision and dismiss the appeal.

Original signed by: _____
Diane Smith
Adjudicator

_____ November 6, 2023