March 31, 2008 **A-2008-002**

NEWFOUNDLAND AND LABRADOR

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT A-2008-002

Public Service Secretariat

Summary: The Applicant applied under the *Access to Information and Protection of Privacy Act* (the "*ATIPPA*") for access to records relating to his two grievances filed against his former employer (the "Employer"). The requested records were in the possession of the Public Service Secretariat (the "Secretariat") because Staff Relations Specialists with the Secretariat were representing the Employer at an arbitration hearing dealing with the grievances. The Secretariat disclosed some of the responsive records but denied access to certain information, claiming the exceptions to disclosure set out in sections 20, 21, 22, 24, 27, and 30 of the *ATIPPA*. The Commissioner concluded that the Secretariat could not rely on the exceptions set out in sections 22, 24, or 27. The Commissioner found that the exception in section 20(1)(a) allowed the Secretariat to deny access to certain information when that information contained advice or recommendations developed by or for a public body. The Commissioner discussed the solicitor-client privilege exception in section 21(a) and determined that this exception covers two separate privileges: legal advice privilege and litigation privilege. The Commissioner reaffirmed the three criteria that must be met for information to be subject to legal advice privilege, and found that information is subject to litigation privilege when that information is found in a document created for the dominant purpose of pending or apprehended litigation. The Commissioner ruled that the Secretariat was entitled to refuse disclosure of certain information because it was subject to legal advice privilege and/or litigation privilege. The Commissioner found that some of the information in the responsive record was personal information and the Secretariat was prohibited from disclosing this information by section 30(1). The Commissioner determined that the Secretariat had been inconsistent with regard to the information that it severed in that the same information was severed on some pages but not severed on other pages. As a result, the Commissioner

recommended that the Secretariat attempt to be more consistent in future access requests.

Statutes Cited: *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A – 1.1, as am, ss. 2(o), 20, 21, 22, 24, 27, 30, 46, 47, 52(3) and 64; *Access to Information Act*, R.S.C. 1985, c. A-1, s. 23.

Authorities Cited: Newfoundland and Labrador OIPC Reports 2005-002, 2005-003, 2005-005, 2600-001, 2006-014, 2007-001, 2007-003, 2007-004, 2007-012, and 2007-015; British Columbia OIPC Orders 00-27, 03-37, and F06-16; *Blank v. Canada (Minister of Justice)*, [2006] 2 S.C.R. 319; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (Ont. C.A.); *Hodgkinson v. Simms* (1988), 55 D.L.R. (4th) 577 (B.C. C.A.); *Alberta Treasury Branches v. Ghermezian*, 1999 ABQB 407 (CanLII); *Morrissey v. Morrisey*, 2000 NFCA 67 (CanLII); *Gordon v. Sexton*, 2007 NLTD 216 (CanLII).

Other Sources Cited:

Brown, Donald J. M., and David M. Beatty. *Canadian Labour Arbitration*, 3rd ed. Aurora, Ont.: Canada Law Book, 2006.

Government of Manitoba's *Freedom of Information and Protection of Privacy Act Resource Manual*. Available online at: *http://www.gov.mb.ca/chc/fippa/manuals/resourcemanual/index.html*

I BACKGROUND

[1] Under authority of the *Access to Information and Protection of Privacy Act* (the "*ATIPPA*") the Applicant submitted an access to information request to the Public Service Secretariat (the "Secretariat") on 22 January 2007, wherein he sought disclosure of records as follows:

> *All communications including but not limited to emails, letters, memos, notices, press releases, etc. to or from* [*Employee's Name*] and/or [*Employee's Name*] *containing any reference to me, including* [*Various forms of the Applicant's Name*]. *The time period I wish searched is between August 1, 2004 and the present day.*

[2] The Secretariat sent to the Applicant correspondence dated 23 March 2007 indicating that it was denying access to some of the requested information pursuant to a number of exceptions to disclosure set out in the *ATIPPA* and making the following comments on the exceptions claimed:

> *1. Section 20: Policy Advice or Recommendations. Some of our records contain advice or recommendations developed by or for a public body or a minister.*
>
> *2. Section 21: Legal Advice. A portion of our records contain information that is subject to solicitor and client privilege or that would disclose legal opinions provided to a public body by a law officer of the Crown.*
>
> *3. Section 22: Disclosure Harmful to Law Enforcement. A portion of our records contain information harmful to the conduct of existing or imminent legal proceedings.*
>
> *4. Section 24: Disclosure Harmful to the Financial or Economic Interests of a Public Body. A portion of our records contain information about negotiations carried on by or for a public body or the government of the province.*
>
> *5. Section 27: Disclosure Harmful to Business Interests of a Third Party. A portion of our records contain information supplied to, or the report of, an arbitrator, mediator, labor relations officer or other person or body appointed to resolve or inquire into a labor relations dispute.*
>
> *6. Section 30: Disclosure of Personal Information. A portion of our records contain personal information related to individuals other than yourself or reveals the opinions of a third party.*

[3] On 30 March 2007 this Office received from the Applicant a Request for Review in which he asked for a review of the Secretariat's decision to deny access to some of the requested information.

[4] Attempts to resolve this Request for Review by informal means were not successful and by letters dated 31 July 2007 the Applicant and the Secretariat were both advised that the Request for Review had been referred for formal investigation pursuant to section 46(2) of the *ATIPPA*. As part of the formal investigation process, both parties were given the opportunity to provide written submissions to this Office pursuant to section 47.

[5] In order to put the Applicant's access to information request in perspective it is necessary for me to set out some additional background information. The Applicant has filed two grievances against his former employer (the "Employer"), which is a public body within the meaning of the *ATIPPA.* The two employees named in the Applicant's access request are Staff Relations Specialists with the Secretariat who are representing the Employer in relation to the Applicant's grievances.

[6] There have been a number of attempts to resolve the issues raised by the Applicant's grievances, including mediation. The grievances are now set for an arbitration hearing and one of the named employees of the Secretariat is scheduled to represent the Employer at the arbitration hearing. Much of the responsive record consists of documents that were provided to the Staff Relations Specialists by the Employer for the purpose of having the Staff Relations Specialists represent the Employer at the arbitration hearing.

II APPLICANT'S SUBMISSION

[7] The Applicant's submission is set out in correspondence dated 14 July 2007. The Applicant expresses a concern for what he refers to as "the great lengths [to which] these government agencies" (referring to his former employer and the Secretariat) have gone "in an attempt to

thwart a perfectly legal recourse for a fair and just disclosure of evidence in my quest for justice."

[8] The Applicant quotes one of the mandates of the Secretariat as follows:

> *It is recognized that one of the keys to sustained high performance is the way people are managed. People management is an investment in organizational success, not just an overhead cost that must be accepted. Effective people management involves creating a positive work environment where employees are valued as individuals and managed and developed as organizational resources.*

The Applicant indicates that he believes that the Secretariat and, in particular the Staff Relations Specialist, "has to recognize mismanagement to an extreme in the handling of my case."

III PUBLIC BODY'S SUBMISSION

[9] The submission of the Secretariat is set out in correspondence dated 20 August 2007 from its Access and Privacy Coordinator (the "Coordinator"), from which I will quote in order to accurately set forth the position taken:

> *. . . As you know from our discussions during our meeting of July 24th, 2007, it is our position that the documents in question should not be disclosed because they were created in contemplation of litigation and are therefore documents to which litigation privilege extends.*
>
> *One of the roles of a Staff Relations Specialist . . . is to represent the employer at arbitration. Arbitration is an adversarial process and the release of documents created or collected by* [*the Staff Relations Specialist*] *for arbitration would be detrimental to the employer and would severely prejudice its position at arbitration. Jurisprudence on this issue is clear: documents created or gathered for the dominant purpose of preparation for litigation are subject to litigation privilege and need not be disclosed.*
>
> *Further, non-disclosure of these documents continues until the litigation privilege is either waived or until the litigation has concluded. We submit that until all avenues of appeal have been exhausted or until time frames for such have elapsed, the requested documents are not subject to disclosure under the Access to Information and Protection of Privacy Act.*

> *Therefore, in accordance with sections 22(1)(p) and 24 of the Access to Information and Protection of Privacy Act . . . it is our submission that no further disclosure of records is required.*

[10] It should be noted that the Secretariat made no written submission in relation to the other sections of the *ATIPPA* on which it originally relied to deny disclosure of information to the Applicant. In addition, the Secretariat did not initially claim litigation privilege as an exception for all the information to which disclosure was denied.

IV DISCUSSION

[11] Before discussing the issues arising in this Request for Review, I will discuss briefly the burden of proof as set out in section 64(1) of the *ATIPPA* as follows:

> *64. (1) On a review of or appeal from a decision to refuse access to a record or part of a record, the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record.*

[12] Therefore, when a public body has denied access to a record and the Applicant has requested a review of that decision by this Office then the public body bears the burden of proving that the applicant has no right of access to the record or part of the record.

[13] As my predecessor indicated in Report 2007-004, the *ATIPPA* does not set out a level or standard of proof that has to be met by a public body in order to prove that an applicant has no right of access to a record under section 64(1). In Report 2007-004, my predecessor adopted the civil standard of proof as the standard to be met by the public body under this section. Therefore, in order for the public body to meet the burden of proof in section 64(1), the public body must prove on a balance of probabilities that the applicant has no right to the record or part of the record.

[14] I will now discuss the issues before me in this Request for Review.

[15] As indicated, the Secretariat initially denied disclosure of information by relying on sections 20, 21, 22, 24, 27, and 30 of the *ATIPPA.* For convenience, I will now set out these provisions and briefly discuss each.

Section 20 (Policy advice or recommendations)

[16] Section 20 sets out an exception to disclosure for information that constitutes policy advice or recommendations and provides in part as follows:

> *20. (1) The head of a public body may refuse to disclose to an applicant information that would reveal*
>
> *(a) advice or recommendations developed by or for a public body or a minister; or*
>
> *(b) draft legislation or regulations.*
>
> *(2) The head of a public body shall not refuse to disclose under subsection (1)*
>
> *(a) factual material*;
>
> . . .

[17] My predecessor discussed section 20 in Report 2005-005 at paragraphs 21 to 22 and 26 to 27 and determined that the use of the phrase "advice and recommendations" in section 20(1)(a) of the *ATIPPA* allows public bodies to protect a suggested course of action, and not factual information, regardless of where this factual information may be found within the record.

[18] As part of its reliance on section 20, the Secretariat appears to have denied access to a number of drafts of correspondence and other documents. I say "appears" because the Secretariat has not discussed in its submission its reliance on section 20 in relation to the draft correspondence or, in fact, in relation to any of the information it has severed in accordance with that section. The only discussion of its reliance on the exception set out in section 20 was in the letter dated 23 March 2007 in which it advised the Applicant of the exceptions to disclosure on which it was relying and stated in relation to section 20:

> . . .
>
> *1. Section 20: Policy Advice or Recommendations. Some of our records contain advice or recommendations developed by or for a public body or a minister.*
>
> . . .

[19] The issue of when draft documents constitute advice or recommendations was discussed by the British Columbia Information and Privacy Commissioner in Order 00-27. The Commissioner stated on page 6:

> *It is immaterial for the purposes of s. 13(1) that a record is, in some sense, a draft. If the record contains information that qualifies as advice or recommendations, its status as a draft or final document does not matter. But the fact that a record is only a draft, in some sense, does not mean that all of the record can be withheld under s. 13(1). The usual principles apply and a public body can withhold only those parts of the draft that actually are advice or recommendations within the meaning of the section.*
>
> *In this instance, only the paragraph actually setting out the advice or recommendations of the Branch can be withheld. . . . It is equally clear that the background portion of the record sets out factual material which, as contemplated by s. 13(2) of the Act, cannot be withheld by the Ministry under s. 13(1). Section 13(2)(a), specifically, provides that a public body must not refuse to disclose "factual material" under s. 13(1). This is not a case where disclosure of such material could be said to disclose the actual underlying advice or recommendations.*

I note that sections 13(1) and 13(2)(a) of the British Columbia access legislation are substantially similar to section 20(1) and 20(2)(a) of the *ATIPPA.*

[20] The British Columbia Commissioner also discussed the advice and recommendations exception in relation to draft correspondence in Order 03-37 and stated at paragraphs 59 to 61:

> *[59] The Commissioner has, however, also made it clear that s. 13(1) does not apply to drafts simply because they are drafts. See, for example, Order 00-27, [2000] .C.I.P.C.D. No. 30, at p. 6. He said there that a public body can withhold only those parts of a draft which actually are advice or recommendations.*

> *[60] UBC does not explain here why it retained these so-called draft letters. It also does not explain how, in its view, the records contain advice or recommendations. It simply asserts that they do. UBC did not point to specific portions of the records that, in its view, constitute advice or recommendations. UBC also did not provide me with affidavit evidence to support its argument that s. 13(1) applied, for example, by setting out the context for the advice or recommendations and how, in UBC's view, the records fall within the continuum of the deliberative process and contain advice or recommendations. While I accept that the annotations on some records constitute advice, if innocuous editorial advice for the most part, it is by no means clear that all of the records are drafts. In any case, the fact that a record is a draft does not make the entire record advice or recommendations, as the Commissioner has noted.*
>
> *[61] Much of the information in the so-called draft letters is factual, for example, recounting what happened in various dealings with the applicant or repeating what she said in her own correspondence to UBC. Both in the case of the records which are marked draft and those which give the appearance of being final versions of letters, I am not able to glean from their face what advice or recommendations the records might contain (apart from the annotations). UBC should not expect me to divine this sort of thing but should support its position with argument and evidence and should specify what the advice or recommendation is and where it is to be found. Mere assertions do not suffice. UBC has failed, in my view, to demonstrate that the so-called draft letters are, in their entirety, advice or recommendations as the Commissioner has interpreted these terms in his orders, . . . except for the handwritten annotations on records 000978, 200029 and 200096.*

[21] I agree with the position taken by the British Columbia Commissioner and find that the advice and recommendations exception found in section 20(1) does not apply to drafts simply because they are drafts and a public body can only withhold those parts of a draft which are actually advice or recommendations. Furthermore, it is not sufficient for a public body to make the mere assertion that a document contains advice or recommendations. In order to meet the onus imposed on it by section 64(1) of the *ATIPPA*, a public body must specify which information in a document constitutes advice or recommendations and provide argument and evidence to support its position. In addition, factual and background information do not constitute advice or recommendations and, therefore, cannot be withheld as provided for in section 20(2)(a).

Section 21 (Legal advice)

[22] The Secretariat also relies on section 21 of the *ATIPPA*, which sets out a protection against disclosure of information subject to solicitor-client privilege as follows:

> *21. The head of a public body may refuse to disclose to an applicant information*
>
> *(a) that is subject to solicitor and client privilege; or*
>
> *(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.*

[23] In *Blank v. Canada (Minister of Justice)*, [2006] 2 S.C.R. 319, the Supreme Court of Canada discussed the principle of solicitor-client privilege as found in section 23 of the federal *Access to Information Act*, which provides as follows:

> *23. The head of a government institution may refuse to disclose any record requested under this Act that contains information that is subject to solicitor-client privilege.*

[24] In *Blank*, the Supreme Court of Canada discussed the related concepts of solicitor-client privilege and litigation privilege at paragraphs 1 to 4:

> *1 This appeal requires the Court, for the first time, to distinguish between two related but conceptually distinct exemptions from compelled disclosure: the solicitor-client privilege and the litigation privilege. They often co-exist and one is sometimes mistakenly called by the other's name, but they are not coterminous in space, time or meaning.*
>
> *2 More particularly, we are concerned in this case with the litigation privilege, with how it is born and when it must be laid to rest. And we need to consider that issue in the narrow context of the Access to Information Act, R.S.C. 1985, c. A-1 ("Access Act"), but with prudent regard for its broader implications on the conduct of legal proceedings generally.*
>
> *3 This case has proceeded throughout on the basis that "solicitor-client privilege" was intended, in s. 23 of the Access Act, to include the litigation privilege which is not elsewhere mentioned in the Act. Both parties and the judges below have all assumed that it does.*

> *4 As a matter of statutory interpretation, I would proceed on the same basis. The Act was adopted nearly a quarter-century ago. It was not uncommon at the time to treat "solicitor-client privilege" as a compendious phrase that included both the legal advice privilege and litigation privilege. This best explains why the litigation privilege is not separately mentioned anywhere in the Act. And it explains as well why, despite the Act's silence in this regard, I agree with the parties and the courts below that the Access Act has not deprived the government of the protection previously afforded to it by the legal advice privilege and the litigation privilege: In interpreting and applying the Act, the phrase "solicitor-client privilege" in s. 23 should be taken as a reference to both privileges.*

[25] Given the similar wording of section 23 of the federal *Access to Information Act* and section 21 of the *ATIPPA*, I am of the view that section 21 of the *ATIPPA* provides protection against disclosure of documents subject to either legal advice privilege or litigation privilege. In other words, the phrase "solicitor and client privilege" in section 21 includes both of these privileges.

[26] In Report 2007-012, my predecessor discussed the three criteria established by the Supreme Court of Canada in *Solosky* that must be met in order for information to be subject to solicitor-client privilege under section 21 and stated these at paragraph 69:

> . . .
>
> *(i) it is a communication between solicitor and client,*
> *(ii) which entails the seeking or giving of legal advice, and*
> *(iii) which is intended to be confidential by the parties.*

[27] These three criteria are, of course, applicable only to legal advice privilege and not to litigation privilege, because litigation privilege is not limited to communications between a solicitor and client, as was stated by the Supreme Court of Canada in *Blank* at paragraph 27:

> *27 Litigation privilege, on the other hand, is not directed at, still less, restricted to, communications between solicitor and client. It contemplates, as well, communications between a solicitor and third parties or, in the case of an unrepresented litigant, between the litigant and third parties. Its object is to ensure the efficacy of the adversarial process and not to promote the solicitor-client relationship. And to achieve this purpose, parties to litigation, represented or not, must be left to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure.*

[28] At this point it is necessary to comment on a statement in the Secretariat's submission as to which documents are subject to litigation privilege, as follows:

> *Jurisprudence on this issue is clear: documents* ***created or gathered*** *for the dominant purpose of preparation for litigation are subject to litigation privilege and need not be disclosed.*
>
> [Emphasis added]

[29] With the greatest respect to the Secretariat, I must disagree with the comment that the jurisprudence is clear as to whether litigation privilege applies to documents created **or** gathered for the purpose of litigation. The Supreme Court of Canada discussed that issue in *Blank* at paragraphs 62 to 64:

> *62 A related issue is whether the litigation privilege attaches to documents gathered or copied — but not created — for the purpose of litigation. This issue arose in Hodgkinson, where a majority of the British Columbia Court of Appeal, relying on Lyell v. Kennedy (1884), 27 Ch. D. 1 (C.A.), concluded that copies of public documents gathered by a solicitor were privileged. McEachern C.J.B.C. stated:*
>
> > *It is my conclusion that the law has always been, and, in my view, should continue to be, that in circumstances such as these, where a lawyer exercising legal knowledge, skill, judgment and industry has assembled a collection of relevant copy documents for his brief for the purpose of advising on or conducting anticipated or pending litigation he is entitled, indeed required, unless the client consents, to claim privilege for such collection and to refuse production. [p. 142]*
>
> *63 This approach was rejected by the majority of the Ontario Court of Appeal in Chrusz.*
>
> *64 The conflict of appellate opinion on this issue should be left to be resolved in a case where it is explicitly raised and fully argued. Extending the privilege to the gathering of documents resulting from research or the exercise of skill and knowledge does appear to be more consistent with the rationale and purpose of the litigation privilege. That being said, I take care to mention that assigning such a broad scope to the litigation privilege is not intended to automatically exempt from disclosure anything that would have been subject to discovery if it had not been remitted to counsel or placed in one's own litigation files. Nor should it have that effect.*

[30] As indicated by the Supreme Court of Canada in *Blank*, the Ontario Court of Appeal has taken a different approach than the British Columbia Court of Appeal as to whether documents gathered or copied for the purpose of litigation are subject to litigation privilege. In *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (Ont. C.A.), the Court stated at paragraphs 33 to 39:

> *33 An important element of the dominant purpose test is the requirement that the document in question be created for the purposes of litigation, actual or contemplated. Does it apply to a document that simply appears in the course of investigative work? The concept of creation has been applied by some courts to include copying of public documents and protection of the copies in the lawyer's brief. In Hodgkinson v. Simms (1988), 55 D.L.R. (4th) 577 (B.C. C.A.) the majority of the British Columbia Court of Appeal applied the dominant purpose test but then, relying principally on Lyell v. Kennedy (No. 3) (1884), 27 Ch. D. 1 (Eng. C.A.) , held that copies of public documents gathered by a solicitor's office attained the protection of litigation privilege. . . .*
>
> *34 The majority reasons in Hodgkinson were written by McEachern C.J.B.C. who, at p. 578, identified the issue as being:*
>
> > *... whether photocopies of documents collected by the plaintiff's solicitor from third parties and now included in his brief are privileged even though the original documents were not created for the purpose of litigation.*
>
> *35 After a thorough analysis of the authorities, the principal one of which is Lyell v. Kennedy (No. 3), the Chief Justice observed at p. 583:*
>
> > *In my view the purpose of the privilege is to ensure that a solicitor may, for the purpose of preparing himself to advise or conduct proceedings, proceed with complete confidence that the protected information or material he gathers from his client and others for this purpose, and what advice he gives, will not be disclosed to anyone except with the consent of his client.*
> >
> > . . .
>
> *36 Craig J.A., in dissenting reasons, put aside the older cases as not manifesting the modern approach to discovery and espoused a rigid circumscribing of litigation privilege. He bluntly concluded at p. 594:*

> *I fail to comprehend how original documents which are not privileged (because they are not prepared with the dominant purpose of actual or anticipated litigation) can become privileged simply because counsel makes photostatic copies of the documents and puts them in his "brief." This is contrary to the intent of the rules and to the modern approach to this problem. If a document relates to a matter in question, it should be produced for inspection.*
>
> *37 I agree with the tenor of Craig J.A.'s reasons. The majority reasons reflect a traditional view of the entitlement to privacy in a lawyer's investigative pursuits. It is an instinctive reflex of any litigation counsel to collect evidence and to pounce at the most propitious moment. That's the fun in litigation! But the ground rules are changing in favour of early discovery. Litigation counsel must adjust to this new environment and I can see no reason to think that clients may suffer except by losing the surprise effect of the hidden missile.*
>
> *38 Returning to the specific topic, if original documents enjoy no privilege, then copying is only in a technical sense a creation. Moreover, if the copies were in the possession of the client prior to the prospect of litigation they would not be protected from production. Why should copies of relevant documents obtained after contemplation of litigation be treated differently? . . .*

[31] The Court of Appeal in this province discussed the nature of litigation privilege in *Morrissey v. Morrisey*, 2000 NFCA 67 (CanLII) and Madam Justice Cameron stated at paragraph 14:

> *XIV. The privilege was succinctly described by Reed J. in Canada (Director of Investigation & Research) v. Southam Inc. 1991 CanLII 2396 (C.T.), (1991), 38 C.P.R. (3d) 68 at 84:*
>
> > *Litigation privilege protects from disclosure documents which were **brought into existence** for the dominant purpose of litigation (actual or contemplated): ... The purpose for the privilege is to ensure effective legal representation by counsel for his or her client.*
> >
> > [Emphasis added]

[32] The principles of litigation privilege were more recently discussed by Mr. Justice Handrigan of the Supreme Court of Newfoundland and Labrador, Trial Division in *Gordon v. Sexton*, 2007 NLTD 216 (CanLII) at paragraph 33:

> *[33] These are the most important attributes of "litigation privilege":*

> *It attaches to documents* ***created*** *for the "dominant" purpose of pending or apprehended litigation.*
>
> *It generally begins when the client retains counsel to advise about possible litigation but the privilege may also arise before counsel is retained.*
>
> *It exists to create a "zone of privacy" for pending or apprehended litigation.*
>
> *It relates directly to the trial process and facilitates an adversarial advocate as he investigates and prepares his case for trial.*
>
> *It applies only in the context of the litigation itself and is neither absolute in scope nor permanent in duration.*
>
> *It applies to communications of a non-confidential nature between the solicitor and third parties and even includes material of a non-communicative nature.*
>
> *It ceases when the litigation which spawned it ends.*
>
> *It does not end if the parties "…remain locked in what is essentially the same legal combat".*
>
> [Emphasis added]

[33] Mr. Justice Handrigan in applying these acknowledged principles stated at paragraph 39:

> *[39] Let me sum up the discussion thus: I agree with Mr. Gordon, for the reasons which follow, that litigation privilege attaches to those documents which were* ***created*** *for the dominant purpose of litigation, whether it was his or the Crown's apprehended, pending or ongoing litigation: . . .*
>
> [Emphasis added]

[34] Following the rationale from the discussed decisions, in particular those of our Court of Appeal and the Supreme Court of Newfoundland and Labrador, Trial Division, I find that litigation privilege as an exception to disclosure set out in section 21 applies only to those documents created for the dominant purpose of pending or apprehended litigation; it does not apply to documents merely gathered or copied for the purpose of litigation.

[35] I note at this point in the discussion that the privilege in section 21(a) is a **solicitor** and client privilege and the cases discussing litigation privilege make reference to such matters as "litigation counsel" and "lawyer's brief." Given that the Staff Relations Specialist who is representing the Employer at the arbitration is not a lawyer or counsel (that is, not a Barrister and Solicitor) and that the position of the Secretariat is that all the records sent to the Staff Relations Specialist are protected by litigation privilege, it is necessary to discuss the issue of whether documents are subject to litigation privilege when the advocate involved in the litigation is not a lawyer.

[36] The issue of whether there can be litigation privilege when there is no solicitor involved in the litigation was discussed by the Supreme Court of Canada in *Blank* at paragraph 32, where the Court stated:

> *32 Unlike the solicitor-client privilege, the litigation privilege arises and operates even in the absence of a solicitor-client relationship, and it applies indiscriminately to all litigants, whether or not they are represented by counsel: see Alberta (Treasury Branches) v. Ghermezian (1999), 242 A.R. 326, 1999 ABQB 407. A self-represented litigant is no less in need of, and therefore entitled to, a "zone" or "chamber" of privacy. . . .*

[37] I understand the above distinction made by the Supreme Court of Canada to mean that litigation privilege can arise in the absence of a solicitor-client relationship but legal advice privilege can only operate in the context of a solicitor-client relationship. Therefore, while the phrase "solicitor and client privilege" found in section 21 encompasses both legal advice privilege and litigation privilege, only the latter can arise and operate in the absence of a solicitor-client relationship.

[38] As a result, I find that litigation privilege, as included as part of solicitor and client privilege in section 21, can be claimed by the Secretariat despite the fact that the advocate involved is not a solicitor.

[39] Another issue that must be discussed is the type of proceeding in which a claim for litigation privilege can be made. In a meeting on 24 July 2007 with an Investigator from my Office,

officials of the Secretariat indicated that the arbitration process is quite adversarial, so much so that there is no disclosure or exchange of documents by the parties prior to an arbitration hearing.

[40] The position taken by the Secretariat regarding the absence of disclosure rules in arbitration proceedings is confirmed in Brown and Beatty, *Canadian Labour Arbitration*, 3d ed. at paragraph 3:1420 under the heading "Production of Documents":

> *The purpose of production of documents is somewhat different from the requirement that particulars be provided, in that production of documents assists a party in actually preparing its case, whereas particulars simply inform the other side of the case it will be required to meet. And unless specifically mandated by the collective agreement, the only requirement for production of documents in grievance arbitrations rests with the common law duty of disclosure. That requirement, however, does not impose the same positive obligation to produce documents and physical evidence as is customarily compelled by the Rules of Practice in civil case, . . . Indeed, in the absence of legislation or the collective agreement so providing, until ordered by a arbitrator there is no specific requirement to provide the other party with any documents or material prior to tendering them as exhibits at the hearing.*

[41] I accept the position of the Secretariat that there is no legal obligation imposed on it by the legislation governing the arbitration process or the collective agreement under which the arbitration was being conducted to disclose any documents to the Applicant prior to the arbitration hearing.

[42] In *Alberta Treasury Branches v. Ghermezian*, 1999 ABQB 407 (CanLII), the Alberta Court of Queen's Bench discussed the type of proceedings for which litigation privilege can be claimed and stated at paragraphs 18 to 21:

> *[18] In determining whether these particular proceedings constitute litigation for the purpose of establishing litigation privilege, it is necessary to understand why litigation privilege exists in the first place. The purpose of granting privilege over documents made in anticipation of litigation is to allow a party to freely prepare its case. This privilege is also necessary to override the requirement in civil litigation that parties exchange all relevant documents. If a party is not afforded the protection provided by litigation privilege, it would be required to forward to its opponent unfavourable information which it has developed while preparing its*

case. As stated in The Law of Evidence in Canada (Sopinka J., J. Lederman and A. Bryant, Toronto: Butterworths, 1992):

> *The adversarial system is based on the assumption that if each side presents its case in the strongest light the court will be best able to determine its truth. Counsel must be free to make the fullest investigation and research without risking disclosure of his opinions, strategies and conclusions to opposing counsel....Indeed, if counsel knows he must turn over to the other side the fruits of his work, he may be tempted to forego conscientiously investigating his own case in the hope he will obtain disclosure of the research, investigations and thought processes compiled in the trial brief of opposing counsel. (at 654)*

[19] However, if there is no requirement that a party provide all documents to the other side, the need for litigation privilege disappears. The mandatory disclosure requirement is an important aspect of "traditional litigation" insofar as the entitlement to litigation privilege is concerned. Therefore, for litigation privilege to attach to documents prepared in contemplation of a proceeding which is not traditionally classified as litigation, a party must demonstrate that his opponent has a right to access any material prepared in contemplation of that proceeding. If a certain proceeding does not have a sufficiently similar disclosure requirement to that of "traditional litigation", it follows that it should not be characterized as "litigation" for the purpose of finding litigation privilege.

[20] There is no evidence before me that parties involved in a dispute before the Municipal Tax Assessment Board are required to exchange relevant documents or make any type of disclosure akin to that in a civil action. As such, the policy justifications underlying litigation privilege are not brought into play in this case. WEM was free to gather any information it required to [sic] *prior to the hearing, and was able to choose which information it disclosed to the City and to the Board. There is no need for privilege because a party is not required to exchange documents with the opposing parties.*

[21] Under this test, it is possible that the material may become privileged if at some point in the regular course of the proceedings the parties become obliged to disclose all relevant documents to the other side. At that point the rational [sic] *for instigating litigation privilege would come into play. However, the proceedings in this action did not reach a point where there was any requirement of disclosure, and it is unlikely that such a requirement would ever have come into existence. As such, I find that the Appraisal is not covered by litigation privilege.*

[43] In the matter before me, the evidence, as clearly stated by the Secretariat, is that in the pending arbitration proceeding there is no requirement for a party to disclose documents to the

other side prior to the arbitration hearing. If I adopt the rationale of the Alberta Court of Queen's Bench in *Ghermezian*, then I would have to find that litigation privilege is not applicable to this case. However, to make such a finding would allow the Applicant to have access not only to the documents sent to the Staff Relations Specialist by the Employer but also to any records which would contain information created by the Staff Relations Specialist during her preparation for the arbitration hearing. This is a finding that I am not prepared to make for the reasons that follow.

[44] The Alberta Court of Queen's Bench stated in *Ghermezian* that material may become privileged if at some point in the proceedings the parties become obligated to disclose documents. As indicated, the authors of Brown and Beatty's *Canadian Labour Arbitration* offer the view that absent legislation or a provision in a collective agreement there is no requirement in arbitration proceedings for pre-hearing disclosure of documents but that an arbitrator once he or she has jurisdiction over the matter (usually at the hearing itself) can order a party to produce documents. Following the rationale provided in *Ghermezian*, at the point where the arbitrator orders disclosure, litigation privilege becomes operative. This would lead to the anomalous situation that documents that were not subject to litigation privilege prior to the arbitration hearing are, at the point where disclosure is ordered by the arbitrator, now subject to litigation privilege. This anomaly is unacceptable in the context of an access to information request such as I am dealing with in this Review.

[45] The Applicant in this case has made an access request to the Secretariat for information which the Staff Relations Specialists have in their possession for the purpose of representing the Employer at an arbitration hearing. If the rationale set out in *Ghermezian* is applied, then the Secretariat cannot rely on the litigation privilege exception provided for in section 21(a) prior to the arbitration hearing because there are no pre-hearing disclosure rules, but if the arbitrator at the hearing makes an order requiring the Secretariat to disclose documents, then litigation privilege comes into play. This could result in the unusual situation in which the Secretariat would be obligated to release documents to the Applicant only to discover at the hearing that because of the arbitrator's disclosure order the released documents are now subject to litigation privilege.

[46] Given the irregular circumstances that could follow from the application of the reasoning in *Ghermezian*, I am unable to adopt its rationale in the case before me.

[47] In addition, I am of the opinion that there is another reason why the rationale in *Ghermezian* should not be followed in the circumstances of this case. In the traditional civil litigation process the rules of discovery apply equally to both sides. Each side has pre-hearing discovery of the other side's documents, and each can claim litigation privilege where applicable. To adopt the *Ghermezian* approach to arbitration proceedings would mean that neither side could avail of litigation privilege. However, while the Applicant in this case could in an access request made under the *ATIPPA* have the equivalent of pre-hearing discovery, the Secretariat has no such right of access to the Applicant's documents, as the *ATIPPA* does not apply to him. At least the operation of litigation privilege goes some way toward restoring the balance between the parties.

[48] It follows, therefore, that it might be appropriate to simply say that the access to information request itself brings into existence an obligation to disclose pursuant to section 7. This necessarily invokes all of the other provisions of the *ATIPPA*, including section 21, which now operates if there exists pending or contemplated litigation. As such, there is no requirement that for section 21 to operate there must be an obligation to disclose arising out of the rules of the particular litigation involved. All that is required for section 21 to operate is an obligation to disclose documents (which arises under an access request), in response to which the litigation privilege can be claimed, provided there is existing or apprehended litigation. I believe this approach is preferable to that taken in *Ghermezian* and is in accord with the law of privilege as I understand it, in that a claim of privilege can be invoked in one proceeding, even though the document was prepared in contemplation of a different proceeding (which has not yet ended).

[49] I wish to make one final comment on the *Ghermezian* decision. I found that decision to be useful in my discussion of the issue as to which type of proceedings litigation privilege can be claimed. However, as it is a decision of a court from another jurisdiction it is not binding on me.

[50] As such, I find that litigation privilege does operate in relation to the pending arbitration proceeding and that documents that were created for the dominant purpose of preparing for the

arbitration proceeding are subject to litigation privilege, thereby being excepted from disclosure to the Applicant.

[51] At this point it is necessary for me to comment on the Secretariat's reliance on the legal advice aspect of the solicitor-client privilege exception set out in section 21(a). The Secretariat relied on this exception to sever information, including the name and e-mail address of the in-house legal counsel of the Employer. In Report 2007-015, my predecessor discussed the issue of whether the name of a solicitor is subject to solicitor-client privilege and stated at paragraph 47:

> *[47] On a similar note, the Federal Court of Appeal, in discussing the severability of a record that is subject to solicitor-client privilege, said that certain general information may be disclosed. In Blank v. Canada (Minister of Justice) (2004), 244 D.L.R. (4th) 80, Létourneau J.A. said at paragraph 66 that*
>
> > *[66] …general identifying information such as the description of the document, the name, title and address of the person to whom the communication was directed, the closing words of the communication and the signature block can be severed and disclosed. As this Court pointed out in Blank, at paragraph 23, this kind of information enables the requester "to know that a communication occurred between certain persons at a certain time on a certain subject, but no more".*

[52] My predecessor then continued in Report 2007-015 and stated at paragraph 48 that he could not accept the public body's position that the names of individuals acting for or on behalf of that public body were protected by solicitor-client privilege. Likewise, I do not accept that the name and e-mail address of the in-house counsel of the Employer are subject to solicitor-client privilege. Therefore, the Secretariat is not entitled to rely on section 21(a) to sever that name and e-mail address.

[53] Also, I wish to point out that not everything in a communication between a person who is a solicitor and another individual is subject to legal advice privilege. As my predecessor stated in Report 2007-015 at paragraphs 39 and 41:

> *[39] The Supreme Court is clear in this regard and it is for this reason that I fully support the exception set out in section 21 of the ATIPPA. The Supreme Court,*

however, has also clearly established the limitations to information protected by the privilege. I again refer to Solosky:

> *There are exceptions to the privilege. The privilege does not apply to communications in which legal advice is neither sought nor offered, that is to say, where the lawyer is not contacted in his professional capacity. Also, where the communication is not intended to be confidential, privilege will not attach, O'Shea v. Woods, at p. 289.*

. . .

[41] Mr. Justice Green also spoke specifically to the limitations of information protected by the privilege. At paragraphs 61 and 63 he commented as follows:

> *[61] The type of information protected is only that information that is necessary to achieve the purpose of the privilege, i.e., information that is "pertinent to the case" – the information platform, as it were – that the lawyer should have to be able to advise the client properly.*
> …
>
> *[63] It is incumbent on the Minister in this case to bring the government's claim of privilege within the umbrella of the privilege's underlying purpose i.e. to show that disclosure would jeopardize communications for the purpose of obtaining legal advice within the solicitor-client relationship.*

[54] I have made these comments on the limitations placed upon the information that is protected by legal advice privilege because the Secretariat has relied upon the exception in section 21(a) to deny access to information contained in communications between the in-house legal counsel for the Employer and other individuals. However, such information was not communicated to or from the legal counsel in his/her capacity as a solicitor who was to provide legal advice.

Section 22 (Disclosure harmful to law enforcement)

[55] The Secretariat has also relied on section 22, which provides an exception for information that could be harmful to law enforcement and reads in part as follows:

> *22. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to*
>
> . . .
>
> *(h) deprive a person of the right to a fair trial or impartial adjudication;*
>
> . . .
>
> *(p) harm the conduct of existing or imminent legal proceedings.*

[56] The Secretariat relies specifically on paragraphs (h) and (p) of section 22(1).

[57] First, I will discuss the Secretariat's reliance on section 22(1)(h). In order to rely on this exception the Secretariat must show that the disclosure of the information at issue could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication. As indicated, the Secretariat in its written submission has not advanced any arguments in favour of its reliance on any of the exceptions claimed other than for its position on litigation privilege. I am therefore left to assume that the argument is that in relation to the pending arbitration hearing, the release of some of the records will deprive either the Applicant or his former employer of an impartial adjudication. I cannot accept that the disclosure of any of the records to the Applicant could reasonably be expected to in some manner deprive the Applicant of an impartial adjudication in a hearing before the arbitrator. Therefore, in order for the Secretariat to rely on the exception in section 22(1)(h) it must show that the "person" to be deprived of an impartial adjudication is the Employer, which is the only other party to the arbitration.

[58] My predecessor discussed the meaning of section 22(1)(h) in Report 2006-014 and determined that the public body involved was not a "person" within the meaning of that paragraph and, therefore, the public body could not rely on that paragraph to deny access to the information in question.

[59] As a result, I conclude, as my predecessor did in Report 2006-014, that the Employer being a public body is not a "person" within the meaning of section 22(1)(h) and, therefore, it cannot be deprived of a fair trial or impartial adjudication by the disclosure of the information in question.

As such, the Secretariat is not entitled to rely on section 22(1)(h) to deny the Applicant access to information. Even if I had accepted that the Secretariat was a "person" within the meaning of section 22(1)(h), the Secretariat has failed to put forth any convincing argument as to how any person would be deprived of a fail trial or impartial adjudication by release of information in the responsive record.

[60] This brings me to a discussion of the Secretariat's reliance on the exception to disclosure set out in section 22(1)(p). In order to prove that it is entitled to rely on this section, the Secretariat must show that the disclosure of information to the Applicant could reasonably be expected to harm the conduct of an existing or imminent legal proceeding. The first issue to be discussed is whether the Applicant's pending arbitration hearing is a legal proceeding within the meaning of section 22(1)(p).

[61] My predecessor discussed section 22(1)(p) in Report 2006-014 and at paragraph 50 discussed the definition of "legal proceeding" set out in the Government of Manitoba's *Freedom of Information and Protection of Privacy Act Resource Manual.*

[62] I adopt the definition of "legal proceeding" set out in Manitoba's manual and find that for the purpose of section 22(1)(p) of the *ATIPPA* a legal proceeding includes any civil or criminal proceeding or inquiry in which evidence is given or may be given and any proceeding authorized or sanctioned by law and brought or instituted for the acquiring of a right or the enforcement of a remedy. This definition would include, as indicated in Manitoba's manual, an arbitration hearing.

[63] Having found that an arbitration hearing is a legal proceeding, I must now decide if the release of any of the information in the responsive record could reasonably be expected to harm the conduct of that legal proceeding as provided for in paragraph (p) of section 22(1).

[64] My predecessor discussed the harms test set out in section 22(1)(p) in Report 2006-014 and stated at paragraph 49 that he did not believe that section 22(1)(p) of the *ATIPPA* is meant to

protect public bodies from harm, but rather to protect the conduct of the existing or imminent hearing itself.

[65] My predecessor commented on the harms test in section 22(1)(p) in relation to the onus placed on the public body by section 64(1) in Report 2007-003 and stated at paragraph 108 that in the context of section 64(1), a public body relying on section 22(1)(p) must prove that releasing the records would result in a reasonable expectation of probable harm to the conduct of the legal proceedings and to do so must present clear and convincing evidence over and above the mere fact that a legal proceeding exists.

[66] Therefore, in this Request for Review I must decide whether the Secretariat has presented clear and convincing evidence that release of information in the responsive record could reasonably be expected to harm the conduct of the pending arbitration hearing involving the Applicant and his former employer.

[67] In its written submission, the Secretariat maintains that all of the responsive record is subject to litigation privilege because all of the documents were created or gathered for the purpose of litigation. The Secretariat then states in its submission that, therefore, section 22(1)(p) is applicable to allow for a denial of access to the records. Although the argument is not stated explicitly, the Secretariat's submission appears to be that to reveal to the Applicant the documents that are protected by litigation privilege would amount to an interference with the conduct of the arbitration proceeding. As previously stated, officials of the Secretariat have indicated that the arbitration process is quite adversarial, so much so that there is no disclosure or exchange of documents prior to the arbitration hearing. Therefore, the Secretariat's argument seems to be that to allow the Applicant access to the documents in the file of the Staff Relations Specialist would be to subvert the principle of non-disclosure and thereby interfere with the normal arbitration process in which a party does not have access to the documents of the other party. This interference with the normal process, the argument goes, amounts to giving the Applicant an unfair advantage, thereby resulting in harm to the conduct of the arbitration process.

[68] The argument by the Secretariat that it would be unfair to allow one adversary involved in litigation to use the access to information process to obtain the documents of the other adversary was discussed by the British Columbia Information and Privacy Commissioner in Order F06-16, where he stated in paragraph 32:

> *[32] Before considering the merits of the s. 14 issue, I will first address the Ministry's suggestion that SE2's use of the right to make an access request under the Act would somehow give SE2 unfair access to government information. It is not wrong or inappropriate at all for someone to use the right of access in the Act to gain access to records from a public body for the purpose of a process—adversarial or non-adversarial, public or private—in which the person and the public body are both involved. That is what happened here and, in its own good time, the Ministry released three disclosure packages to SE2.*

[69] I agree with the comments of the British Columbia Commissioner in Order F06-16 and find that it is not inappropriate or improper per se for the Applicant to have access to the records in the custody of the Secretariat that relate to the Applicant even though the Applicant and the Secretariat are involved in the litigation process. However, there may be exceptions to disclosure set out in the *ATIPPA* that apply to allow the Secretariat to refuse disclosure (such as litigation privilege pursuant to section 21(a)), but the mere fact that the parties are involved in adversarial litigation does not in and of itself prevent disclosure of the records. Thus, in relation to the Secretariat's claim for exception under section 22(1)(p), there is not convincing evidence to persuade me that to release any of the information in the responsive record would harm the conduct of the arbitration process.

Section 24 (Disclosure harmful to the financial or economic interests of a public body)

[70] The Secretariat also relies on the exception to disclosure set out in section 24 of the *ATIPPA* which allows a public body to deny disclosure of information that could be harmful to its financial or economic interests and provides in part as follows:

> *24. (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of*

> *the province or the ability of the government to manage the economy, including the following information:*
>
> . . .
>
> *(e) information about negotiations carried on by or for a public body or the government of the province.*

[71] As I have indicated, the Secretariat in its letter to the Applicant dated 23 March 2007 indicated that it was denying access to certain information on the basis of a number of exceptions set out in the *ATIPPA* and stated as follows in relation to its reliance on section 24:

> . . .
>
> *4. Section 24: Disclosure Harmful to the Financial or Economic Interests of a Public Body. A portion of our records contain information about negotiations carried on by or for a public body or the government of the province.*
>
> . . .

[72] In its submission dated 30 August 2007, the Secretariat discussed its reliance on litigation privilege and then stated:

> *Therefore, in accordance with sections 22(1)(p) and 24 of the Access to Information and Protection of Privacy Act . . . it is our submission that no further disclosure of records is required.*

[73] In Report 2005-002 at paragraphs 23 to 25, my predecessor discussed the evidence of expected harm that must be presented by the public body in a claim for exception under section 24(1). Following my predecessor's reasoning, I determine that in this case the Secretariat must present evidence that establishes a clear and direct linkage between the disclosure of information about negotiations carried on by or for a public body and the probable harm to the financial or economic interests of a public body. In order to prove this linkage the Secretariat is required to give an explanation of how or why the alleged harm would result from the disclosure of specific information.

[74] The noted comments in its submission and those in its letter to the Applicant represent the Secretariat's stated position on the claim for exception under section 24. There is no discussion by the Secretariat as to which specific information in the responsive record is about negotiation

carried on by a public body. There is no indication by the Secretariat as to what harm to its financial or economic interests is likely to occur if the information is disclosed to the Applicant. Nor is there any attempt to establish a clear and direct linkage between the disclosure of specific information and the alleged harm. Therefore, I must find that the Secretariat has not met the burden imposed upon it by section 64(1) of proving that because of the operation of section 24(1) the Applicant has no right of access to information in the responsive record.

Section 27 (Disclosure harmful to business interests of a third party)

[75] The Secretariat also relies on section 27(1) of the *ATIPPA*, which contains a mandatory exception dealing with information harmful to the business interests of a third party as follows:

> *27. (1) The head of a public body shall refuse to disclose to an applicant information*
>
> *(a) that would reveal*
>
> *(i) trade secrets of a third party, or*
>
> *(ii) commercial, financial, labour relations, scientific or technical information of a third party;*
>
> *(b) that is supplied, implicitly or explicitly, in confidence; and*
>
> *(c) the disclosure of which could reasonably be expected to*
>
> *(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,*
>
> *(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,*
>
> *(iii) result in undue financial loss or gain to any person or organization, or*
>
> *(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.*

[76] In Report 2005-003 at paragraph 38, my predecessor discussed the three-part harms test that must be met in order for the exception set out in section 27 to be applicable. The three parts of the test may be stated as follows:

> (a) disclosure of the information will reveal trade secrets or commercial, financial, labour relations, scientific or technical information of a third party;
>
> (b) the information was supplied to the public body in confidence, either implicitly or explicitly; *and*
>
> (c) there is a reasonable expectation that the disclosure of the information would cause one of the four injuries listed in 27(1)(c).

[77] My predecessor also pointed out in Report 2005-003 that all three parts of the test must be met in order for a public body to deny access to information in reliance on section 27(1) and that if a record fails to meet even one of the three parts, it does not meet the test, and the public body is not entitled to rely on section 27(1) to sever information in the responsive record.

[78] The Secretariat in its written submission has not discussed its reliance on section 27(1) but in its letter dated 23 March 2007 it indicated to the Applicant that it was refusing disclosure of information based on a number of exceptions and stated as follows in relation to its reliance on section 27:

> . . .
>
> *5. Section 27: Disclosure Harmful to Business Interests of a Third Party. A portion of our records contain information supplied to, or the report of, an arbitrator, mediator, labor relations officer or other person or body appointed to resolve or inquire into a labor relations dispute.*
>
> . . .

[79] As a result of the absence of any discussion of the Secretariat's reliance on section 27 in its submission, I can only assume that the Secretariat takes the position that the third party whose business interests will be harmed by the disclosure of information is the Employer.

[80] Therefore, in order to meet the required three-part test the Secretariat must establish that disclosing information in the responsive record would do each of the following:

(a) reveal the labour relations information of a third party,

(b) reveal information that was supplied in confidence, and

(c) reveal information supplied to or the report of a person or body appointed to resolve or inquire into a labour relations matter.

[81] The meaning of the term "third party" is provided in section 2(t) of the *ATIPPA* as follows:

> *(t) "third party", in relation to a request for access to a record or for correction of personal information, means a person, group of persons or organization* ***other than***
>
> *(i) the person who made the request, or*
>
> *(ii)* ***a public body****.*
>
> [Emphasis added]

[82] Thus, in order to meet the first part of the three-part test, the Secretariat must establish that disclosing information in the responsive record would reveal the labour relations information (or other information specified in 27(1)(a)) of a third party. As I have indicated the Employer is a public body as defined by the *ATIPPA.* As such, it does not fit the definition of a third party in section 2(t) of the *ATIPPA*, which requires a third party to be a person, group of persons or organization other than a public body.

[83] Therefore, the labour relations information that the Secretariat wishes to sever is not the information of a third party as defined in the *ATIPPA* and as a result the first part of the three-part test has not been met. Therefore, I must find that the Secretariat has not met the burden imposed upon it by section 64(1) of proving that because of the operation of section 27(1) the Applicant has no right of access to the responsive record. Thus, the Secretariat is not entitled to rely on section 27(1) to deny access to any information in the responsive record.

Section 30 (Disclosure of personal information)

[84] The Secretariat also relies on section 30 of the *ATIPPA* which deals with the disclosure of personal information as follows:

30. (1) The head of a public body shall refuse to disclose personal information to an applicant.

(2) Subsection (1) does not apply where

(a) the applicant is the individual to whom the information relates;

(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;

(c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is mailed to the last known address of the third party to whom the information relates;

(d) an Act or regulation of the province or Canada authorizes the disclosure;

(e) the disclosure is for a research or statistical purpose and is in accordance with section 41;

(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;

(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;

(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;

(i) public access to the information is provided under the Financial Administration Act;

(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;

(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit; or

(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

(i) personal information that is supplied in support of the application for the benefit, or

> *(ii) personal information that relates to eligibility for income and employment support under the Income and Employment Support Act or to the determination of assistance levels.*

[85] Section 2(o) provides a definition of personal information as follow:

> *(o) "personal information" means recorded information about an identifiable individual, including*
>
> *(i) the individual's name, address or telephone number,*
>
> *(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,*
>
> *(iii) the individual's age, sex, sexual orientation, marital status or family status,*
>
> *(iv) an identifying number, symbol or other particular assigned to the individual,*
>
> *(v) the individual's fingerprints, blood type or inheritable characteristics,*
>
> *(vi) information about the individual's health care status or history, including a physical or mental disability,*
>
> *(vii) information about the individual's educational, financial, criminal or employment status or history,*
>
> *(viii) the opinions of a person about the individual, and*
>
> *(ix) the individual's personal views or opinions*;

[86] A reading of section 30(1) indicates that it contains a prohibition against the disclosure of personal information. In Report 2600-001, my predecessor discussed the operation of sections 30(1) and 30(2) and indicated at paragraph 34 that once it has been determined that information fits the definition of personal information, it is subject to the prohibition against disclosure set out in section 30(1) unless that personal information is covered by section 30(2), which establishes a number of specific exemptions to the protection provided by section 30(1).

[87] Therefore, if I find that the responsive record contains personal information as defined in section 2(o), I must then look to section 30(2) to determine if the personal information is covered by one of the paragraphs in that provision and, therefore, exempted from the mandatory non-disclosure rule set out in section 30(1).

[88] I will note here that the Secretariat has indicated on a number of pages in the responsive record that it is relying on "section 30(1)(h)" to deny access to information. There is no section 30(1)(h) in the *ATIPPA*. However, section 30(2)(h) contains one of the specific exemptions to the rule of non-disclosure of personal information set out in section 30(1). Given the reliance by the Secretariat on "section 30(1)(h)", I will discuss the interaction of section 30(2)(h) with paragraphs (viii) and (ix) of section 2(o) and with section 30(2)(a), which provides an exemption from the prohibition in section 30(1) when "the applicant is the individual to whom the information relates."

[89] Paragraphs (viii) and (ix) of section 2(o) read together mean that personal information consists of both "the opinions of a person about the individual" and "the individual's personal views or opinions." In Report 2007-001, my predecessor discussed the paradox created by paragraphs (viii) and (xi) of section 2(o) and stated at paragraphs 35 to 36 and at paragraph 40:

> *[35] . . . In other words, the way the ATIPPA is worded, the Applicant would have a right of access to another person's opinion about him, because it is an opinion about him, yet at the same time he does not have a right of access to the same opinion because it is also the personal information of the person who expressed the opinion, according to the ATIPPA definition.*
>
> *[36] This leaves public bodies in a quandary when attempting to determine whether an Applicant in such a circumstance would have a right of access to the personal information. As noted above, section 2(o)(viii) and (ix) of the ATIPPA say that personal information includes both opinions about the individual, and the individual's personal views or opinions, thus leading to the paradox of the same information being considered the personal information of two different individuals.* ***A public body must start with the premise that applicants have a right of access to their own personal information****. In order to disclose the information to one of them, the public body must violate the right of the other not to have his or her personal information disclosed.*
>
> . . .
>
> *[40] As Commissioner, it is my role to make recommendations in order to ensure compliance with the ATIPPA. The contradiction inherent in the definition of personal information in the ATIPPA as I have outlined above means that I am forced to decide, because of the paradoxical wording of the legislation, whether the opinion of person A about person B is the personal information of person A or person B. The mandatory prohibition against the disclosure of another person's*

> *personal information as found in section 30 of the ATIPPA prevents me from interpreting it as being the personal information of both.*
>
> [Emphasis added]

[90] In Report 2007-001, my predecessor discussed section 30(2)(h) in an effort to resolve the paradox created by the operation of paragraphs (viii) and (xi) of section 2(o). He stated at paragraphs 44 to 45:

> *[44] One potential source of clarification in the ATIPPA which might be useful in slightly different circumstances is found in section 30(2)(h):*
>
> > *… the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual.*
>
> *[45] This clarifies that a* ***public body cannot withhold the personal information of an applicant if the personal information constitutes the opinions or views of a person given in the course of performing services for a public body****. The "except" in this provision refers to a situation where the person giving the opinion or view is doing so about a person other than the Applicant, ie, a third party. . . . .*
>
> [Emphasis added]

[91] In his resolution of the paradox created by the operation of paragraphs (viii) and (xi) of section 2(o) of the *ATIPPA,* in Report 2007-001 my predecessor stated at paragraph 50:

> *[50] In terms of my decision regarding the definition of personal information, the necessity of introducing this interpretation is an unavoidable consequence of a contradiction inherent in the legislation. I have chosen to resolve this contradiction in favour of deciding that* ***an opinion about the Applicant is the Applicant's personal information, rather than the personal information of the person offering the opinion****. I believe this to be consistent with the purpose of the ATIPPA, the overall legislative context of access legislation in other jurisdictions, as well as relevant case law.*
>
> [Emphasis added]

[92] I agree with the rationale given by my predecessor in Report 2007-001 and state that pursuant to section 30(2)(a) the prohibition against the disclosure of personal information does not apply when "the applicant is the individual to whom the information relates." This is in line

with my predecessor's statement that "[a] public body must start with the premise that applicants have a right of access to their own personal information." Furthermore, an opinion about the Applicant is the Applicant's personal information, rather than the personal information of the person offering the opinion. In addition, a public body cannot withhold the personal information of an applicant if the personal information constitutes the opinions or views of another person given in the course of performing services for a public body.

Applicability of Claimed Exceptions

[93] Having discussed the exceptions to disclosure claimed by the Secretariat, I must now determine which of these claimed exceptions are applicable to the responsive record. I have already found that the Secretariat is not entitled to rely on the following exceptions: paragraphs (h) and (p) of section 22(1), section 24, section 27, or section 30(1)(h) (which is not found in the *ATIPPA*). Therefore, any information that the Secretariat is entitled to withhold must either constitute advice or recommendations pursuant to section 20(1)(a), be subject to solicitor-client privilege (either legal advice privilege where there is a communication with a lawyer or litigation privilege) pursuant to section 21(a), or must be the personal information of a person other than the Applicant and thereby subject to the prohibition against disclosure of personal information in section 30(1).

[94] The responsive record consists of 354 pages. My comments on the information that has been severed by the Secretariat will consist of a reference to the page number and an indication of whether or not it should have been severed, along with my reasons for that indication. These comments are found in an Appendix attached to this report. Having already found that the Secretariat is not entitled to rely on the claimed exceptions under section 22, 24, 27, or 30(1)(h), where the Secretariat has relied on these sections I will in some instances simply indicate that these sections cannot be relied on to deny disclosure of information. If the Secretariat has relied on the exception in section 20(1)(a), which provides that a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body, and I find that the Secretariat is not entitled to rely on that section, then that finding has been made because the severed information does not contain such advice or recommendations. In addition,

the Secretariat indicated on a number of pages that it is claiming the solicitor-client privilege exception in section 21(a) (which includes legal advice privilege and litigation privilege). Subsequent to the Applicant's filing of a Request for Review, the Secretariat indicated to our Office that it is claiming litigation privilege for all of the responsive record. As a result, I have found in some instances that the exception in section 21(a) applies to severed information even though the Secretariat has not specifically claimed the exception for that information.

V CONCLUSION

[95] The Secretariat has shown inconsistency in the severing of information by severing information on one page of the responsive record but not severing the same information occurring on another page. In addition, the Secretariat has claimed different exceptions for the same severed information on various pages. Furthermore, the Secretariat has indicated on the copy of the responsive record set to my Office that certain information was severed and not disclosed to the Applicant when, in fact, the information had not been severed on the copy of the records set to the Applicant.

[96] The Secretariat is not entitled to rely on the claimed exceptions in section 22(1)(h), 22(1)(p), 24(1), 24(1)(e), 27, or 30(1)(h) (which is not found in the *ATIPPA*).

[97] The Secretariat is entitled to rely on the exception in section 20(1)(a) when the severed information contains advice or recommendations developed by or for a public body. I have concluded that some on the severed information contains advice or recommendations and should not be disclosed. However, some of the information for which the Secretariat has claimed the exception in section 20(1)(a) does not contain advice or recommendations and should, therefore, be disclosed.

[98] The solicitor-client privilege exception in section 21(a) allows the Secretariat to deny access to information that is subject to either legal advice privilege or to litigation privilege. The Secretariat is entitled to claim that information is subject to legal advice privilege when that

information meets the three-part test set out in *Solosky* by the Supreme Court of Canada. I conclude that information is only subject to litigation privilege when that information is created for the dominant purpose of pending or apprehended litigation. Litigation privilege does not apply to information merely gathered or copied for the purpose of litigation. I conclude that some of the severed information is subject to legal advice privilege and some is subject to litigation privilege.

[99] I conclude that some of the information severed by the Secretariat is the personal information of individuals other than the Applicant and the Secretariat is prohibited from disclosing this information pursuant to section 30(1) of the *ATIPPA*.

[100] Also, as part of my conclusions, I wish to comment upon the Secretariat's submission in support of its reliance on the exceptions claimed. The *ATIPPA* is clear in establishing that the burden of proof is on public bodies to prove that access to information can be denied. I was disappointed to see that little attempt was made by the Secretariat to support its claim for most of the relied upon exceptions. Why a public body would rely on an exception, yet remain silent when given an opportunity to support its use, is puzzling to me. I would suggest that if a public body determines during the review process that a relied upon exception does not apply, then it would reflect the spirit and intent of the *ATIPPA* to indicate that this is the case and to release the records to which it had originally denied access. If a public body maintains that such exceptions do apply, then I would expect at least a minimal amount of effort to be expended by that public body in discharging the burden of proof imposed upon it by the *ATIPPA*.

VI RECOMMENDATIONS

[101] Under the Authority of section 49(1) of the *ATIPPA*, I hereby make the following recommendations:

1. That the Secretariat in future access requests use more care to ensure consistency with regard to the information that it severs when that same information appears on different pages of the

responsive record and with regard to the exceptions claimed when the same information appears on different pages.

2. That the Secretariat in future Requests for Review be mindful of the burden of proof imposed upon it by the *ATIPPA* and inform the Applicant and this Office of its intention to abandon reliance upon a claimed exception if it is appropriate to do so. In addition, the Secretariat should endeavour to provide evidence and argument in support of all the exceptions it claims to be applicable.

3. That the Secretariat release to the Applicant the information I have indicated should be disclosed as set out in the attached Appendix.

[102] Under authority of section 50 of the *ATIPPA* I direct the head of the Secretariat to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the Secretariat's final decision with respect to this Report.

[103] Please note that within 30 days of receiving a decision of the Secretariat under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador, Trial Division in accordance with section 60 of the *ATIPPA*.

[104] Dated at St. John's, in the Province of Newfoundland and Labrador, this 31st day of March 2008.

E. P. Ring
Information and Privacy Commissioner
Newfoundland and Labrador

APPENDIX

The following are the pages on which information has been severed by the Secretariat and my comments on the exceptions claimed by the Secretariat:

Pages 2, 4, 10 and 27 - Handwritten Notations

The Secretariat has severed handwritten notations made by the Staff Relations Specialist who is representing the Employer at the arbitration hearing and claimed the exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p) 24(1) 24(1)(e) and 30(1)(h). The Secretariat is not entitled to rely on either of these sections. However, I find that these notations were made by the Staff Relations Specialist for the dominant purpose of preparing for litigation and are subject to litigation privilege pursuant to section 21(a). The severed information should not be disclosed.

Page 12 - Handwritten Notations

The Secretariat has severed the handwritten notation in the top right-hand corner made by the Staff Relations Specialist, another notation in the centre of the page in reference to the in-house legal counsel of the Employer made by an unidentified individual, and two other shorter notations indicating that a letter was copied to another employee and that another employee already has a copy. The Secretariat has claimed exceptions under sections 20(1)(a), 21(a), 22(1)(h) and 22(1)(p). I find that the notation made by the Staff Relations Specialist was made in contemplation of litigation and is subject to litigation privilege and was properly severed under section 21(a). The note by the unidentified individual is subject to legal advice privilege and was properly severed under section 21(a), but the other two short notations are not covered by any of the exceptions claimed and should be disclosed to the Applicant.

Page 18 – Severing Information in Handwritten Notes

The Secretariat has severed information in notes made by the Staff Relations Specialist under the heading "2004/08/24" and claimed exceptions under sections 22(1)(h), 22(1)(p), 24(1), 24(1)(e), and 30(1)(h). The Secretariat is not entitled to rely on either of these sections and, therefore, these handwritten notes should be disclosed.

Also on page 18 there are other notes made by the Staff Relations Specialist but these relate to matters other than the Applicant's and disclosure of these was properly denied as they are not responsive to the Applicant's request.

Page 21 – Severing Information in E-mail

The Secretariat has severed information in an e-mail and claimed exceptions under section 20(1)(a), 22(1)(h), 22(1)(p) and 30(1)(h). The Secretariat is not entitled to rely on either of these sections and the information should be disclosed.

Page 22 - Handwritten Notations

The Secretariat has severed notations made by the Staff Relations Specialist and claimed the exception under section 22(1)(p). The Secretariat is not entitled to rely this section and the information should be disclosed.

Page 24 - Handwritten Names

The Secretariat has severed the names of persons written on a letter from the Applicant's union representative. These persons are not connected to the Applicant's grievances and their names were properly severed as the information is not responsive to the Applicant's request.

Page 26 - Handwritten Notation

The Secretariat has severed a handwritten notation made by an unidentified individual and claimed exceptions under section 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 30(1)(h). The Secretariat is not entitled to rely on either of these sections and the information should be disclosed.

Page 27 - Handwritten Notations

The Secretariat has severed handwritten notations made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 30(1)(h). The Secretariat is not entitled to rely on either of these sections and the information should be disclosed, with the exception of a name in the last line of the notations, which is personal information excepted from disclosure by section 30(1).

Page 30 - Severed of E-mails dated October 17, 2005

The Secretariat has severed information in an e-mail exchange involving the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), and 24(1)(e). I have already indicated that the Secretariat cannot rely on the exceptions in section 22 or section 24. I find that the information in the body of the e-mail at the top of the page does constitute advice or recommendation and was properly severed pursuant to section 20(1)(a).

The Secretariat has severed the name and e-mail address of one of the persons involved in the e-mail exchange, who is an official of the Employer. Neither of the exceptions claimed entitles the Secretariat to sever this information.

The information in the e-mail at the bottom of the page is not related to the Applicant's matter and was properly severed as being non-responsive to the request.

Page 33 - Severed Portions of E-mails Dated October 25, 2005

The Secretariat has severed information in e-mails and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1), and 24(1)(e).

The Secretariat has claimed an exception under section 21(a) (solicitor-client privilege) in relation to the name, initial, and e-mail address of the individual who was at the time the General Counsel for the Employer. As I have found, the Secretariat cannot rely on the solicitor-client privilege exception to deny disclosure to this information and it should be disclosed.

The Secretariat has claimed the exception in section 20(1)(a) in relation to information contained in the e-mail copied to the Staff Relations Specialist. I find that the information severed in the first two sentences of the e-mail constitutes advice or recommendations and was properly severed. But the information severed in the next two sentences does not contain advice or recommendations and should be disclosed to the Applicant.

Page 34 - Severed Portions From E-mail dated October 25, 2005

The Secretariat has severed portions of an e-mail and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), 24(1)(e), and 30(1).

The Secretariat has claimed the exceptions in section 20(1)(a) and section 30 in relation to the first two lines of the e-mail. I find that the name of the individual referred to was properly severed under section 30(1). But the remainder of the information (including the Applicant's name) should not have been severed because it does not contain the personal information of a person other than the Applicant and does not contain advice or recommendations.

The Secretariat has claimed the exceptions in sections 22(1)(p), 24(1), and 24(1)(e) in relation to information severed in the second paragraph of the e-mail. As indicated, the Secretariat is not entitled to rely on section 22 or section 24 and this information should be disclosed.

In relation to the last paragraph, the Secretariat has claimed the exception in section 20(1)(a). I find that this severed information does contain advice or recommendations and was properly severed.

Page 35 - Severing of Name and E-mail Address

The Secretariat has severed the name and e-mail address of the individual who at the time was the General Counsel of the Employer and claimed solicitor-client privilege under section 21(a). As I have indicated, the exception in section 21(a) does not allow the Secretariat to deny disclosure of this type of information and it should be disclosed.

Page 36 - Severed portions of E-mail Dated October 25, 2005

The Secretariat has severed information in an e-mail and claimed exceptions under sections 21(a), 22(1)(h), 22(1)(p), 24(1) and 24(1)(e).

This is a copy of the same e-mail that is found on page 33 of the responsive record. The Secretariat has severed additional information on this page that was not severed on page 33, namely: the first names of the three persons to whom the e-mail was sent (but not the full names of and e-mail addresses of two of those persons as they appear after the word "To:" in the e-mail

heading) and the name of the Applicant followed by the word "issue". This information has already been provided to the applicant on page 33, but I find that this information is not covered by any of the exceptions claimed and should be disclosed.

The Secretariat relies on the solicitor-client privilege exception in section 21(a) to deny disclosure of the name and e-mail address of the individual who was at the time the General Counsel of the Employer. I find, as I did previously, that section 21(a) cannot be relied on to withhold this type of information and it should be disclosed.

I note that the Secretariat has not relied on the exception in section 20(1)(a) in relation to this page as it did on page 33. However, I find as I did in relation to the information on page 33, that the information severed in the first two sentences of the e-mail (with the exception of the previously disclosed last three words of the first sentence, that is, the Applicant's name and the word "issue") contain advice or recommendations and it should not be disclosed. Again, as I found in relation to page 33, the next two severed sentences do not contain advice or recommendations and should be disclosed.

Pages 36-37 – Severing Information in E-mail

The Secretariat has severed information in an e-mail found on the bottom of page 36 and the top of page 37 and claimed the exceptions under section 20(1)(a), 22(1)(p), 24(1), and 24(1)(e). This e-mail is the same e-mail found on page 34 with the same information severed. My findings in relation to page 34 are applicable to the information on these two pages.

Page 38 - Severing of Information in E-mail

This e-mail is the same as that found on page 34 and 36-37 and my findings in relation to page 34 are applicable to page 38.

Page 39 - Severing of Information in E-mail

The Secretariat has severed a portion of the e-mail claiming exceptions under sections 20(1)(a), 22(1)(p), 24(1), and 24(1)(e).

I find that the severed information does contain advice or recommendations and is, therefore, excepted from disclosure by section 20(1)(a).

Page 42 - Severing of Information in E-mail

This is the same e-mail that appears on page 39 with additional portions severed on this page. I find that only the portion of the e-mail that was severed on page 39 contains advice or recommendations and only that portion should be excepted from disclosure.

Page 47 - Severing of Information in E-mail

The Secretariat has severed information and claimed exceptions under section 21(a) and 30(1)(h).

In relation to the claim for solicitor-client privilege, I note that there are several references to the first name of the General Counsel for the Employer. However, the information severed does not contain a communication between a solicitor and a client and is not subject to litigation privilege and, therefore, it is not covered by the exception set out in section 21(a).

I have already indicated that section 30(1)(h) is not found in the *ATIPPA* and if this was meant to be a reference to section 30(2)(h), then this section does not contain an exception to disclosure.

I note that there is the first name of an individual referenced as the first word of the second line and this constitutes personal information, which pursuant to the prohibition in section 30(1) should not be disclosed.

In conclusion, all the severed information on this page should be released with the exception of the first name as indicated.

Page 48 - Severing Information in Letter dated May 30, 2005

The Secretariat has severed information in a letter sent to the Applicant's union representative about the Applicant's grievance and of which the Applicant received a copy. The claimed exceptions are under section 20(1)(a), 21(a), and 22(1)(a). I have previously indicated that section 22 is not available to the Secretariat.

In relation to the claim that section 20(1)(a) is applicable, I will indicate that there is no advice or recommendations developed by or for a public body contained in the severed information. Nor would one expect to find such advice or recommendations in a letter sent to the Applicant's union representative and to the Applicant.

In relation to the claim that section 21(a) is applicable, I cannot accept that such a letter would meet the three requirements necessary for information to be subject to solicitor-client privilege; there is no communication between a solicitor and a client which entails the seeking or giving of legal advice and certainly no intention that the information be confidential. Nor is such a letter created for the purpose of litigation such that litigation privilege would be applicable. In short, there is no basis for a claim for the solicitor-client exception provided for in section 21(a). The severed information should be disclosed.

Page 64 - Severing Information in Letter

The Secretariat has severed information in a letter claiming an exception under section 30(1)(h). I have indicated that this is not a proper claim for exception. However, section 30(1) of the *ATIPPA* contains a prohibition against the disclosure of personal information and the letter contains the personal information of a number of individuals and should not be disclosed.

Page 65-66 - Severing Contents of Letter and Handwritten Notations

The Secretariat has severed the contents of the letter and the handwritten notations on the letter claiming exceptions under sections 22(1)(p) and section 30(1)(h). I have already indicated on a number of occasions that the Secretariat is not entitled to rely on either of the claimed exceptions. However, the severed portions of the letter contain the personal information of a number of individuals and access to them was properly denied pursuant to section 30(1).

In relation to the four handwritten notations made by the Staff Relations Specialist in the top right hand corner, I find that these were made in contemplation of litigation and are protected by litigation privilege pursuant to section 21(a).

There is one other handwritten notation made by an unidentified individual indicating that the letter was copied for two other individuals. This notation is not excepted from disclosure and should be disclosed.

Page 67 - Severing Portions of Letter dated June 2, 2004

The Secretariat has severed portions of the letter claiming exceptions under section 22(1)(p) and section 30(1)(h). I have already indicated on a number of occasions that the Secretariat is not entitled to rely on either of the claimed exceptions. However, the severed portions of the letter contain the personal information of a number of individuals and these were properly severed pursuant to section 30(1).

Page 71-73 - Severing Contents of and Handwritten Notations on a Letter

The Secretariat has severed most of the contents of the letter and the handwritten notations on the letter claiming exceptions under sections 20(1)(a), 21(a), 22(1)(h), 22(1)(p), 24(1), and 30(1)(h). I have already indicated that the Secretariat is not entitled to rely on the claimed exceptions in section 22, 24, or 30(1)(h).

The first paragraph of the letter indicates that a meeting was held, the names of the individuals who attended the meeting (including the name of the General Counsel of the Employer), and what was discussed at the meeting. Apart from the name of another individual (which is personal information and excepted from disclosure by section 30(1)), none of the information is covered by the exceptions claimed and should be disclosed to the Applicant.

The second paragraph on page 1 of the letter (including the numbers and the information opposite those numbers) contains advice or recommendations and is excepted from disclosure pursuant to section 20(1)(a).

Under the heading "Background" there is information that is exactly that – background, and this information is not excepted from disclosure by section 20(1) or section 21(a) and should be disclosed, with the exception of the name of the same individual referred to in paragraph 1, which is excepted from disclosure by section 30(1).

The information under the heading "Follow-Up" on page 2 of the letter is not covered by either section 20(1)(a) or section 21(a). However, the name of the same individual referred to in paragraph 1 is excepted from disclosure by section 30(1).

The last part of the letter is under the heading "Conclusion." The second last paragraph on page 3 of the letter contains advice or recommendations and is, therefore, excepted from disclosure by section 20(1)(a). The remainder of the information under that heading is not excepted from disclosure, with the exception of the name of the individual previously mentioned, which is excepted under section 30(1).

The signature and the names of the persons to whom the letter was sent are not excepted from disclosure.

I note that the letter indicates that the General Counsel of the Employer attended the meeting referred to in the letter and was sent a copy of the letter. This appears to be the basis on which the Secretariat claimed the solicitor-client exception in section 21(a). I find that this information does not meet the three necessary requirements for information to be subject to solicitor-client privilege.

I note that the letter appears to be in draft form and I will reiterate what I stated earlier; the advice and recommendations exception found in section 20(1) does not apply to drafts simply because they are drafts, and a public body can only withhold those parts of a draft which are actually advice or recommendations. In that regard, I note that on page 2 of the letter (page 72 of responsive record) there are handwritten notations, which I find to be advice or recommendations and excepted from disclosure by section 20(1)(a).

In addition, there are handwritten notations on page 1 of the letter that I find to be subject to litigation privilege and excepted from disclosure by section 21(a).

Page 78 - Severed Information in an E-mail dated October 25, 2005

The Secretariat has severed information in the e-mail and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), 24(1)(e), and 30(1)(h). The Secretariat is not entitled to rely on any of these exceptions and the information should be disclosed.

In addition, the information in paragraphs 2 and 3 of the e-mail constitutes the personal information of the Applicant, which obviously must be disclosed.

Pages 80-81 - Severing of Information in E-mails dated November 24, 2005

The Secretariat has severed information in three e-mails and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As I have indicated, the Secretariat is not entitled to rely on the exceptions set out in sections 22 or 24.

I find that the longest of the three e-mails which begins on the bottom of page 80 and continues on page 81 does contain information subject to solicitor-client privilege. The e-mail was sent by

the Staff Relations Specialist to the General Counsel of the Employer and other officials of the employer. The General Counsel responded in the e-mail found on page 80. I find that the information contained in the body of both these e-mails is subject to solicitor-client privilege and is excepted from disclosure by section 21(a).

The Secretariat has severed the body of the first e-mail on page 80 which was a two-word e-mail sent by an official of the Employer in reply to an e-mail from the Staff Relations Specialist. I find that this reply is not subject to solicitor-client privilege and should be disclosed.

The Secretariat has severed the name and e-mail address of the General Counsel for the Employer in the first two of the three e-mails in reliance on the exception in section 21(a). Interestingly, the Secretariat has not severed the name of the General Counsel in the third e-mail nor in the signature portion of the second e-mail on page 80 (this signature provides the name of the General Counsel, his address, telephone and fax numbers, and his title as General Counsel and Corporate Secretary). As I have indicated, the Secretariat is not entitled to rely on the solicitor-client exception in section 21(a) to deny access to the name and e-mail of the General Counsel and this information should be disclosed.

Pages 82-84 - Severing of E-mail

The Secretariat has severed information in an e-mail and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e).

Most of the severed information in the e-mail that begins on page 82 and continues on pages 83 and 84 is the same as that in the e-mail on pages 80 and 81, which I have found to be subject to solicitor-client privilege. This information is, therefore, covered by the exception in section 21(a) and should not be disclosed. However, the Secretariat has also severed a line in the e-mail that indicates to whom a draft e-mail is to be sent. This line is not contained in the e-mail on pages 80-81 and it is not covered by any of the exceptions claimed. Therefore, this should be disclosed.

Page 89 - Handwritten Notes

The Secretariat has severed information contained in handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). I find that the severed information was created for the dominant purpose of litigation and is, therefore, except from disclosure by section 21(a).

Page 94 Severing Information in E-mails

In relation to the first e-mail on this page, the Secretariat has severed information in an e-mail exchange between the Staff Relations Specialist and an official of the Employer and claimed exceptions under section 24(1)(e). As I have already indicated, the Secretariat is not entitled to rely on section 24. I find, therefore, that the severed information should be released to the Applicant.

The Secretariat has claimed that the first line of on the second e-mail is personal information and, therefore, excepted from disclosure under section 30(1). I may have been inclined to accept this position but the issue is now moot, given that this same e-mail appears on pages 298 and 299 with the information disclosed.

Also, the Secretariat has claimed that the information in the second paragraph of the second e-mail is not responsive to the request. I agree with the Secretariat in that regard and that information should not be disclosed.

In relation to the third paragraph of the second e-mail, the Secretariat has severed all the information and claimed exceptions under sections 22(1)(a) and 24(1)(e). I have already indicated that the Secretariat is not entitled to rely on these two exceptions. In addition, I note that this same e-mail appears on pages 298 and 299 with only the last sentence of this paragraph severed.

Page 96 - Severing of Information in E-mails

The Secretariat has severed information in an e-mail exchange between the Staff Relations Specialist and an official with the Employer and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), 24(1)(e) and 30.

I find that the Secretariat has properly severed the information found in the first e-mail on page 96 as personal information excepted from disclosure by section 30(1).

As for the remainder of the severed information, it is not covered by any of the claimed exceptions and should be disclosed to the Applicant.

Note: This same e-mail exchange is also found on pages 98, 293 and page 296.

Page 97 - Severing Information in Letter dated December 19. 2005

The Secretariat has severed information in a draft letter from the Staff Relations Specialist to the Applicant's union representative and claimed the exception in section 20(1)(a). I have already indicated that the advice and recommendations exception found in section 20(1) does not apply to drafts simply because they are drafts and a public body can only withhold those parts of a draft which are actually advice or recommendations. I find that there is no "advice or recommendations developed by or for a public body" in the severed information, nor would I expect to find any in a letter sent to the Applicant's union representative. Therefore, the information should be disclosed to the Applicant.

Page 98-99 - Severing Information in E-mails

The Secretariat has severed information in three e-mails involving the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1)(e) and 30.The Secretariat is not entitled to rely on the exceptions in sections 20, 22 or 24 to deny access. However, I find that the

Secretariat is entitled to rely on the personal information exception in section 30(1) and the severed information for which this exception was claimed should not be disclosed.

Page 101 - Severing of Information in Handwritten Notes

The Secretariat has severed information contained in handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). I find that the information contained in the notes was created for the dominant purpose of litigation and, therefore, it was properly severed under section 21(a).

Page 102 - Severing Information from E-mails

The Secretariat has severed information in an e-mail exchange involving the Staff Relations Specialist and claimed exceptions under section 20(1)(a), 21(a), 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h).

In relation to the first e-mail on page 102, the Secretariat has severed the name and e-mail address of the General Counsel for the Employer (however, not his name in the second e-mail on that page). I have already made a finding that the Secretariat is not entitled to rely on the solicitor-client exception in section 21(a) to deny disclosure of such information and it should be disclosed. (I note that this same e-mail appears on page 306 without the name and e-mail address of the General Counsel severed)

Also, in the first e-mail the Secretariat has severed information in the body of the e-mail (sent by an official of the Employer) and claimed an exception under section 30(1)(h) and claimed that the information is "3rd party opinion." I have already indicated there is no section 30(1)(h) in the *ATIPPA*. However, there is a section 30(2)(h) which provides one of the exemptions to the prohibition against the disclosure of personal information set out in section 30(1). This exemption provides that the opinions or views of a third party, which are personal information pursuant to section 2(o)(ix) and ordinarily excepted from disclosure by section 30(1), may be disclosed when the views or opinions are given in the course of performing services for a public body.

I find that the information severed in the body of the first e-mail is the opinion of the named official about the Applicant and, as I have indicated, such an opinion is the personal information of the Applicant and not the personal information of the official who gave the opinion. Therefore, the Applicant is entitled to his own personal information. Furthermore, as I have indicated, a public body cannot withhold the personal information of an applicant if the personal information constitutes the opinions or views of a person given in the course of performing services for a public body (even if the views or opinions are about the Applicant). I find that the official who expressed the views and opinions in the e-mail, as an employee of the Employer (which is a public body) offered those view or opinions while performing services for a public body. As such, the severed information should be disclosed to the Applicant.

The second e-mail on page 102 was sent by the Staff Relations Specialist to a number of officials of the Employer, including the General Counsel. The Secretariat has severed information in the

second and third paragraphs of the e-mail and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on the exceptions in section 22 or 24.

In relation to the claim for solicitor-client privilege under section 21(a), I find that although the e-mail was sent to the General Counsel, it was not sent for the purpose of seeking legal advice. Therefore, the severed information is not subject to solicitor-client privilege.

In relation to the claim for exception under section 20(1)(a), I find that the last sentence in the second paragraph and all of the third paragraph contain advice or recommendations and should not be disclosed. The remainder of the severed information should be disclosed.

Page 103 - Severing Information from E-mails

The Secretariat has severed information in the first e-mail on the page, which was sent by the Staff Relations Specialist, claiming the personal information exception under section 30(1). I find that the severed information is personal information and should not be disclosed.

In relation to the last e-mail on the page, the Secretariat has severed information and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat cannot rely on the exceptions in sections 22 or 24. (I note that this same e-mail is found on page 102, with different information severed)

The Secretariat has severed the name of the General Counsel of the Employer and claimed the solicitor-client privilege exception in section 21(a). I have already indicated that the Secretariat is not entitled to do this. In any case this information was not severed in this same e-mail on page 102.

The Secretariat has severed the first three paragraphs of this last e-mail (only the second and third were severed in the same e-mail on page 102). The comments I made on this e-mail when dealing with page 102 are applicable to page 103.

Page 105 - Severing Information from E-mail

The Secretariat has severed information and claimed the personal information exception under section 30(1). I find that the severed information is personal information and should not be disclosed.

Page 107 - Severing Information from E-mail

The Secretariat has severed information from two e-mails dated January 13, 2006 and claimed exceptions under sections 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat cannot rely on the exceptions in sections 22 or 24 and the information should be disclosed.

Page 108-109 - Severing Information in E-mails

The Secretariat has severed information from the e-mails and claimed an exception under 21(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat cannot rely on the exceptions in sections 22 or 24.

The two emails on pages 108-109 are an exchange between the Staff Relations Specialist and the General Counsel for the Employer. I find that the e-mail from the General Counsel is subject to solicitor-client privilege (that is, legal advice privilege) and is excepted from disclosure by section 21(a). In addition, I find that the e-mail from the Staff Relations Specialist is subject to both legal advice privilege and litigation privilege and is excepted from disclosure by section 21(a).

On page 109 the Secretariat has severed the name and e-mail address of an official with the Employer. This name is included with a list of other officials who were sent copies of an e-mail. This information is not covered by any of the claimed exceptions and should be disclosed.

Page 111 - Severing Information in E-mail

The Secretariat has severed information in an e-mail and claimed the exceptions under sections 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h). As indicated, the Secretariat is not entitled to rely on these exceptions and, therefore, the severed information should be disclosed.

Pages 131-132 - Severing Portions of E-mails

The Secretariat has severed information in the first e-mail on page 131, which was sent by the Staff Relations Specialist, and claimed exceptions under sections 22(1)(h), 22(1)(p) and 24(1)(e). As indicated, the Secretariat is not entitled to rely on these exceptions and, therefore the severed information should be disclosed.

The e-mail exchange that starts on the bottom of page 131 and continues on page 132 is the same as that between the Staff Relations Specialist and the General Counsel found on pages 108 to 109, with the same information severed. The comments I made in relation to those pages are applicable here.

Page 134 - Severing Information in E-mail

The e-mail on page 134 has the same contents as the e-mail on page 111 (but with different portions severed) and the Secretariat has claimed the same exceptions under sections 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h). The comments I made in relation to the email on page 111 would be applicable here, but I would make the additional comment that the e-mail on page 134 was also copied to the Applicant's union representative.

Page 136 - Severing Information in E-mail

The Secretariat has severed portions of the e-mail and relied on the exceptions found in section 22(1)(h) and 22(1)(p). As indicated, the Secretariat is not entitled to rely on these exceptions and the severed information should be disclosed.

Page 142 - Severing Information in E-mail

The Secretariat has severed information and claimed an exception under section 30(1). I find that the severed information is personal information and should not be disclosed.

Page 159 - Severing Handwritten Notation

The Secretariat has severed a handwritten notation made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(p) and section 24(1)(e). The Secretariat is not entitled to rely on these exceptions. However, I do find that the handwritten notation was created for the dominant purpose of litigation and, therefore, was properly severed as being subject to litigation privilege pursuant to the exception in section 21(a).

Page 162 - Severing Handwritten Notations

The Secretariat has severed handwritten notations made by the Staff Relations Specialist and claimed an exception under sections 20(1)(a), 22(1)(p), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on the exceptions in section 22 or 24. The last notation following the handwritten arrow contains advice or recommendations and should not be disclosed because it is covered by the exception in section 20(1)(a). The other handwritten notations should be disclosed.

Page 163 - Severing Information in Letter

The Secretariat has severed information in a letter and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), 24(1)(e), 27(1), and 30(1)(h). As indicated, the Secretariat is not entitled to rely sections 22, 24, 27(1), or 30(1)(h) to deny disclosure.

In relation to the exception under section 20(1)(a), the only advice or recommendations contained in the severed information is in the last sentence and this information should not be disclosed. The remainder of the severed information should be disclosed.

Page 171 - Severing Information from two E-mails

In the first e-mail, the Secretariat has severed the name, telephone number, and e-mail address of one of the members of the panel hearing the Applicant's grievance arbitration and the body of the e-mail, claiming exceptions under sections 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on these exceptions. Furthermore, the name and e-mail address are disclosed in two other e-mails found on this page. The severed information in this e-mail

should be disclosed with the exception of the telephone number, which is subject to the prohibition against the disclosure of personal information in section 30(1).

In relation to the severed information in the last e-mail on this page, the Secretariat has claimed that this information is personal information and I agree that this information is prohibited from disclosure by section 30(1).

Page 173 - Severing of Information from E-mail

The Secretariat has severed information in an e-mail sent by the Staff Relations Specialist and claimed exceptions under sections 22(1)(p), 24(1), 24(1)(e), 30(1) and 30(1)(h). As indicated, the Secretariat is not entitled to rely on sections 22, 24, or 30(1)(h).

The severed information in the first paragraph of the e-mail should be disclosed.

The severed information in the third paragraph should be disclosed with the exception of the name of the individual referred to, which is personal information and disclosure is prohibited by section 30(1).

The severed information in the fourth paragraph is personal information and disclosure was properly denied pursuant to section 30(1).

The severed information in paragraphs 5 to 7 is subject to litigation privilege and the Secretariat was entitled to deny disclosure pursuant to section 21(a).

Page 174 – 175 - Severing Information in E-mails

The Secretariat has severed information in e-mails sent by the Staff Relations Specialist and claimed exceptions under sections 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on the exceptions in sections 22 or 24. However, I find that the severed information on these two pages is subject to litigation privilege and the Secretariat is entitled to deny disclosure pursuant to section 21(a).

Page 176-177 - Severing Information in E-mail

The Secretariat has severed information in an e-mail sent by the Staff Relations Specialist and claimed exceptions under sections 21(a), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on the exceptions in sections 22 or 24.

The severed information is not subject to either legal advice privilege or litigation privilege and, therefore, the Secretariat is not entitled to rely on section 21(a). I note that the Secretariat has relied on section 21(a) to refuse disclosure of the name of the General Counsel. As indicated, this section does not allow a public body to deny access to the name of its solicitor on the basis of solicitor-client privilege. Thus, all the severed information on these two pages should be disclosed.

Page 197 - Severing Information from E-mail

The Secretariat has severed the contents of the e-mail and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on the exceptions in section 22 or 24. In relation to the claim under section 20(1)(a), I find that the only advice or recommendations contained in the severed information is that portion following the ellipsis, which should not be disclosed. The remainder of the severed information should be disclosed.

Page 198 - Severing Information in two E-mails

The Secretariat has severed information in the first e-mail on this page claiming that it is personal information. I find that the severed information is personal information and the Secretariat was obligated to deny disclosure pursuant to the prohibition in section 30(1).

In relation to the last e-mail on this page, which was sent by the Staff Relations Specialist, the Secretariat has severed information in the e-mail and claimed exceptions under sections 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on these sections. However, I find that the severed information is subject to litigation privilege and the Secretariat was entitled to deny disclosure pursuant to section 21(a).

Page 201 - Severing Portions of Draft Letter Dated June 13, 2006

The Secretariat has severed information in a draft letter by an official of the Employer intended to be sent to the Applicant's union representative concerning the Applicant's grievance and claimed exceptions under sections 20(1)(a) 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on the exceptions in section 22 or 24.

In relation to the claim for exception under section 20(1)(a), I will state again that the advice and recommendations exception found in section 20(1) does not apply to drafts simply because they are drafts and a public body can only withhold those parts of a draft which are actually advice or recommendations. I find that the draft letter contains no advice or recommendations developed by or for a public body, nor would I expect to find any in a letter intended to be sent to the Applicant's union representative.

I note that a letter dated June 19, 2006 (found on page 211 of responsive record and disclosed to the Applicant) was actually sent to the Applicant's union representative with contents identical to the severed information, with the exception three words which were in the draft but not in the final version of the letter. Thus, the Secretariat was not entitled to deny disclosure of the severed information in the draft.

I note that the Secretariat has severed a handwritten notation on page 201 made by the Staff Relations Specialist. I find that this notation is subject to litigation privilege and was properly severed pursuant to section 21(a).

Page 202 - Severing Portions of Draft Letter Dated June 15, 2006

The Secretariat has severed information in a draft letter by an official of the Employer intended to be sent to the Applicant's union representative concerning the Applicant's grievance and claimed exceptions under sections 20(1)(a) 22(1)(h), 22(1)(p), 24(1), and 24(1)(e).

The contents of the draft letter are identical to a letter dated June 19, 2006 (found on page 211 of the responsive record and disclosed to the Applicant) that was actually sent to the Applicant's union representative.

In relation to the exceptions claimed, the comments I made in relation to another draft of the same letter are applicable here. Again, the Secretariat is not entitled to deny access to the severed information.

I note that as with page 201, there are handwritten notations on this page made by the Staff Relations Specialist. However, unlike those on page 201, the notations on this page are not covered by the claimed exceptions or by litigation privilege and should be disclosed.

Page 203-204 Severing Information in Draft Document dated June 15, 2006

The Secretariat has severed information in a draft document dated June 15, 2006 and claimed exceptions under sections 20(1)(a) 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h). As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22, 24, or 30(1)(h).

In relation to the claim for exception under section 20(1)(a), I have already commented on the fact that the Secretariat cannot rely on this exception to deny access unless there is information in the draft document that constitutes advice or recommendations and such is not found in this draft document. Furthermore, the draft document is identical to a document dated June 19, 2006 sent to the Applicant's union representative and which has been disclosed to the Applicant (see pages 214-215 of the responsive record). Thus, there is no basis for the Secretariat to deny access to the severed information on these two pages.

Page 205-206 Severing of Information in Draft Document Dated June 9, 2006

The Secretariat has severed information in the draft document and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and section 30(1)(h).The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. Furthermore, the draft document is practically identical to a document dated June 19, 2006 sent to the Applicant's union representative and which has been disclosed to the Applicant (see pages 214-215 of the responsive record). Thus, there is no basis for the Secretariat to deny access to the severed information on these two pages.

Page 207 - Severing Contents of Draft Letter Dated June 16, 2006

The Secretariat has severed the contents of the draft letter and claimed exceptions under sections 20(1)(a) 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. Furthermore, the draft document is practically identical to a document dated June 19, 2006 sent to the Applicant's union representative and which has been disclosed to the Applicant (see page 216 of the responsive record). Thus, there is no basis for the Secretariat to deny access to the severed information on this page.

Page 208-209 - Severing Information In Draft Document Dated June 13, 2006

The Secretariat has severed information in the draft document and claimed exceptions under sections 20(1)(a) 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. Furthermore, all the information severed in the draft document is found in a document dated June 19, 2006 sent to the Applicant's union representative and which has been disclosed to the Applicant (see pages 212-213 of the responsive record). Thus, there is no basis for the Secretariat to deny access to the severed information on these pages.

Pages 217-218 - Severing of Information in Draft Document Dated June 1, 2006

The Secretariat has severed information in the draft document and the handwritten notations on page 217 and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. Furthermore, the information severed in the draft document is, with minor differences, found in a document dated June 19, 2006 sent to the Applicant's union representative and disclosed to the Applicant (see pages 214-215 of the responsive record). Thus, there is no basis for the Secretariat to deny access to the severed information in the draft document.

In relation to the handwritten notations, which were made by the Staff Relations Specialist, I find that these are subject to litigation privilege and protected from disclosure by section 21(a) and these notations also contain information that constitutes advice or recommendations such that they are also protected from disclosure by section 20(1)(a).

Pages 219-220 - Severing Information In Draft Document dated June 1, 2006

The Secretariat has severed information in the draft document and the handwritten notations at the top of page 219 and the bottom of page 220 and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. Furthermore, the information severed in the draft document is, with minor differences, found in a document dated June 19, 2006 sent to the Applicant's union representative and disclosed to the Applicant (see pages 214-215 of the responsive record). Thus, there is no basis for the Secretariat to deny access to the severed information in the draft document.

In relation to the handwritten notations, which were made by the Staff Relations Specialist, I find that these are subject to litigation privilege and protected from disclosure by section 21(a) and that these notations contain information that constitutes advice or recommendations such that they are also protected from disclosure by section 20(1)(a). Thus, the Secretariat is entitled to deny access to the severed information.

Page 221 – Severing of Handwritten Notations

The Secretariat has severed the handwritten notations made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), 24(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. However, I find that the notations are subject to litigation privilege and protected from disclosure by section 21(a) and that these notations contain information which constitutes advice or recommendations such that they are also protected from disclosure by section 20(1)(a). Thus, the Secretariat is entitled to deny access to the severed information.

Page 222 – Severing Information in Draft Letter dated June 15, 2006

The Secretariat has severed information in the draft letter and claimed exceptions under sections 20(1)(a) 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and section 30(1)(h). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. Furthermore, the information severed in the draft document is identical to that found in a document dated June 19, 2006 sent to the Applicant's union representative and disclosed to the Applicant (see page 216 of the responsive record). Thus, there is no basis for the Secretariat to deny access to the severed information in the draft document.

Page 223 – Severing Information in E-mail

The Secretariat has severed information in the e-mail and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22 or 24. In relation to the claim under section 20(1)(a), I find that the only advice or recommendations is contained in the last sentence of the severed information and this sentence should not be disclosed. The remainder of the severed information should be disclosed.

Pages 224-225 – Severing Information in E-mails

The Secretariat has severed information in two e-mails and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22 or 24.

In relation to the claim for exception under section 20(1)(a), in the first e-mail on page 224 sent to the Staff Relations Specialist the only advice is contained in the second sentence of the severed information and this sentence should not be disclosed. The remainder of the severed information in that e-mail should be disclosed.

In relation to the second e-mail which begins on page 224 and continues on page 225, I find that the severed information does constitute advice or recommendations and should not be disclosed.

Page 226-227 – Severing Information in E-mail

This is the same e-mail from the Staff Relations Specialist that is found on page 224-225 and my comments given in relation to those pages are applicable. The severed information should not be released.

Page 229 – Severing Handwritten Notations Regarding a Teleconference

The Secretariat has severed information contained in notes taken by the Staff Relations Specialist during a teleconference with the Applicant's union representative and an official of the Employer concerning the Applicant and claimed exceptions under sections 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22 or 24 and these notes should be released.

Page 235 – Severing of Information in Draft Letter Dated June 27, 2006

The Secretariat has severed information in a draft letter intended to be sent to the Applicant's union representative by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). There is no evidence that the letter was actually sent. As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22 or 24.

In relation to the claim for exception under section 20(1)(a), the severed information does not contain any advice or recommendations developed by or for a public body, nor would I expect to find any in a letter intended to be sent to the Applicant's union representative. Therefore, the severed information should be released.

Pages 236-237- Severing Information in E-mails

The Secretariat has severed information in two e-mails and claimed exceptions under sections 22(1)(h), 22(1)(p), 24(1)(e), and 30. As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22 or 24.

In relation to the first e-mail on page 236 sent to the Staff Relations Specialist, I find that the severed information in paragraphs 1 and 4 is personal information and section 30(1) prohibits its disclosure. I also find that the name severed in paragraph 2 is subject to litigation privilege and the Secretariat was entitled to deny access to it on the basis of section 21(a).

In relation to the second e-mail sent by the Staff Relations that begins on page 236 and continues on page 237, I find that the severed information in paragraphs 1 to 3 is subject to litigation privilege and the Secretariat was entitled to deny disclosure on the basis of section 21(a). I also find that the information severed on page 237 is personal information and section 30(1) prohibits its disclosure.

Page 238 – Severing Information in E-mail

The Secretariat has severed information in an e-mail sent by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), and 24(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. However, I find that the last sentence in paragraph 1 and all of paragraph 2 are subject to litigation privilege and the Secretariat was entitled to deny access on the basis of section 21(a).

Page 239-243 – Severing Information in E-mail

The Secretariat has severed information in an e-mail exchange between the Staff Relations Specialist and a solicitor with the Department of Justice and claimed exceptions under sections 21(a) and 22(1)(p). I find that the severed information is subject to both litigation privilege and legal advice privilege and the Secretariat was entitled to deny access on the basis of section 21(a).

Page 244 – Severing Information in E-mail

The Secretariat has severed information in an e-mail and claimed an exception under section 30. I find that the severed information is personal information and section 30(1) prohibits its disclosure.

Page 245 – Severing Information in E-mail

The Secretariat has severed information in an e-mail sent by the Staff Relations Specialist and claimed exceptions under sections 22(1)(p), 24(1), 24(1)(e), 30, and 30(1)(h). As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22, 24, or 30(1)(h).

I find that the information severed in paragraph 2 is personal information and section 30(1) prohibits its disclosure.

I find that the name severed in paragraph 1 and the information severed in the last two paragraphs of the e-mail are subject to litigation privilege and the Secretariat was entitled to deny access on the basis of section 21(a).

I find that the severed information in paragraph 3, which consists of two views or opinions expressed by the Staff Relations Specialist and which the Secretariat has claimed is "3rd party opinion" under section "30(1)(h)", constitutes the view or opinions of a "third party given in the course of performing services for a public body" pursuant to section 30(2)(h). Therefore, this severed information should be disclosed.

Page 247 – Severing Information in E-mails

The Secretariat has severed information in two e-mails and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1) and 24(1)(e). As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22 or 24.

In relation to the first e-mail sent to the Staff Relations Specialist, the Secretariat has severed the first names of three officials of the Employer (two of whom were solicitors for the Employer and a third who was not a solicitor) and claimed the solicitor-client privilege exception in section 21(a). As I have indicated, the Secretariat is not entitled to rely on that exception to deny access to the names of its solicitors and these three names should be disclosed.

In relation to the e-mail at the bottom of the page sent by the Staff Relations Specialist, I find that the first line of the severed information is not covered by any of the claimed exceptions and should be disclosed. The next five lines and the last two lines of the e-mail contain advice or recommendations and are protected by section 20(1)(a) and are also subject to litigation privilege pursuant to section 21(a). The Secretariat was entitled to deny disclosure of these five lines and the last two lines on the basis of both these exceptions. I find that lines 7 and 8 are not covered by any of the claimed exceptions and should be disclosed.

Page 249 – Severing Information in E-mail

The Secretariat has severed information in an e-mail and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1) and 24(1)(e). This is the same e-mail that is found on the bottom of page 247 and the comments I made in relation to that page are applicable here.

Page 250 – Severing Information in E-mail

The Secretariat has severed information in an e-mail and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1), 24(1)(e) and 30(1). The severed information includes the first names of four officials of the Employer, including the former General Counsel and the present General Counsel. As I have indicated, the Secretariat is not entitled to deny access on the basis of sections 22 or 24. Also, I have indicated that the Secretariat cannot rely on the solicitor-client privilege exception in section 21(a) to deny access to the names of its solicitors and these should be disclosed, along with the other two severed names.

In relation to the claim under section 20(1)(a), the severed information does not contain any advice or recommendations and, therefore, this exception cannot be relied upon to deny access.

The four names are provided by reason of those individual's professional capacities as employees of a public body and while the names are personal information they relate to those individual's positions and functions as officers or employees of a public body within the meaning of section 30(2)(f). Therefore, the names are not prohibited from disclosure by section 30(1). Thus, the severed information should be disclosed.

Page 251 – Severing Information from E-mails

The Secretariat has severed information in two e-mails (one received by the Staff Relations Specialist and the other sent by her) and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1), and 24(1)(e). I find that the severed information constitutes advice or recommendations and is therefore excepted from disclosure by section 20(1)(a), and is also subject to litigation privilege and excepted from disclosure by section 21(a). The Secretariat was entitled to deny access on the basis of both of these exceptions.

Page 252 – Severing Information in E-mail

The Secretariat has severed information and claimed that it is personal information. I find that the severed information is personal information and section 30(1) prohibits its disclosure.

Page 253 – Severing Information in Two E-mails

The first e-mail is the same one that appears on page 247, for which the Secretariat has severed the first names of three officials of the Employer (two of whom were solicitors and a third who was not a solicitor) and claimed a number of exceptions. On this page the Secretariat has severed the same three names claiming that the names are personal information and excepted from disclosure by section 30(1). I find that the names are provided by reason of the individual's professional capacities as employees of a public body, and while the names are personal information, they relate to those individual's positions and functions as officers or employees of a public body within the meaning of section 30(2)(f). Therefore, the names are not prohibited from disclosure by section 30(1) and should be disclosed.

The second e-mail is the same one that is found on the bottom of page 247 and for which the Secretariat has claimed the same exceptions. The comments I made in relation to that e-mail on page 247 are applicable here.

Page 255-256 – Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by the Staff Relations Specialist and claimed exceptions under 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions.

In relation to the severed information on the top portion of page 255, I find that this information is subject to litigation privilege and the Secretariat is entitled to deny access on the basis of section 21(a). In relation to the severed information on the bottom portion of page 255 (opposite the notation "not applicable to the Applicant", I find that this information is not responsive to the Applicant's request and should not be disclosed. In relation to the information severed on page 256, I find that this information is subject to litigation privilege and the Secretariat is entitled to deny access on the basis of section 21(a). Thus, none of the severed information should be disclosed.

Page 257 and 259 – Severing of Handwritten Notations

The Secretariat has severed two handwritten notations made by the Staff Relations Specialist and claimed an exception under sections 20(1)(a) and 22(1)(p). The Secretariat is not entitled to deny access on the basis the claimed exceptions. Therefore, the information in the notations should be disclosed, with the exception of the name in the notation on page 259, which is personal information and excepted from disclosure by section 30(1).

Page 260-261 – Severing Information from E-mail and Handwritten Notations

The Secretariat has severed information in two e-mails and in handwritten notations on these pages and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions.

I note that most of the severed information is the personal information of the Applicant and should therefore be disclosed. Also, the Secretariat has severed the name of an official of the Employer involved in the e-mail exchange as it appears on page 261, but has not severed it on page 260. In any event, the name is not covered by any of the exceptions claimed. Thus, all the severed information should be disclosed, with the exception of the name that appears in the notation at the top right-hand corner of page 260. This name constitutes personal information and is subject to the mandatory exception in section 30(1).

Page 262 – Severing Information in E-mail from General Counsel

The Secretariat has severed the contents of an e-mail from the General Counsel for the Employer and claimed exceptions under sections 21(a), 22(1)(p), 24(1), and 24(1)(e). As I have indicated, the Secretariat is not entitled to rely on sections 22 or 24 to deny disclosure.

In relation to the claim under the solicitor-client privilege exception in section 21(a), I note that the General Counsel was responding to information in an e-mail which indicated that the information was being forwarded to the General Counsel "FYI." Furthermore, the information sent by the General Counsel in the e-mail does not contain legal advice. Therefore, I find that the information sent by the General Counsel is not a communication which entails the seeking or giving of legal advice and, as such, is not subject to solicitor-client privilege. Thus, the severed information should be released.

Page 272-275 – Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by the Staff Relations Specialist and claimed exceptions under 20(1)(a), 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions.

I note that the severed information on pages 272 to 274 (excluding the last 8 lines on page 274) contains notes made by the Staff Relations Specialist in relation to a conversation she had with

the Applicant's union representative. This severed information should be disclosed with the exception of the names of three individuals that appear on pages 273 and 274.

I find that the last 8 lines of the notes (including the name in the left-hand margin) on page 274 and the information severed on the top portion of page 275 are subject to litigation privilege and the Secretariat was entitled to deny access to these lines on the basis of section 21(a).

In relation to the severed information on the bottom portion of page 275 opposite the notation "not related to applicant", I find that this information is not responsive to the Applicant's request and should not be disclosed.

Page 276 – Severing of Handwritten Notation on Fax Transmission Sheet

The Secretariat has severed three lines of a handwritten note on this sheet, including the first name of the General Counsel of the Employer, and claimed exceptions under sections 21(a), 20(1)(a), 22(1)(h), 22(1)(p), and 24(1). As indicated, the Secretariat is not entitled to rely on the exceptions in sections 22 or 24. In addition, the information does not contain any advice or recommendations which would allow the Secretariat to rely on the exception in section 20(a)(a).

As for the claim under the solicitor-client privilege exception in section 21(a), the fax was sent by the Staff Relations Specialist to an official of the Employer and is, therefore, not a communication between a solicitor and a client. Nor is the information subject to litigation privilege. In addition, as I have indicated, the Secretariat is not entitled to rely on the exception in section 21(a) to deny access to the name of its solicitor. Thus, all of the severed information should be released.

Page 283 – Severing Handwritten Notation

The Secretariat has severed the handwritten notation made by a person unknown and claimed the exceptions set out in sections 20(1)(a), 22(1)(p) and 24(1). This is the same notation that appears on page 26 where the Secretariat claimed the same exceptions (and others). The comments I made in relation to page 26 are applicable here.

Page 284-285 – Severing Information in draft E-mail

The Secretariat has severed information in a draft e-mail and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), 24(1)(e) and 30(1)(h).

This is the draft of an e-mail that appears on pages 80-81 and that was sent to the General Counsel of the Employer. The Secretariat claimed the solicitor-client privilege exception set out in section 21(a) in relation to the e-mail on pages 80-81 and I found that this exception did apply to that e-mail. I also find that this e-mail is subject to solicitor-client privilege and the Secretariat is entitled to deny access based on the exception in section 21(a).

Page 286-288 – Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by a person or persons unknown and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), 24(1)(e), and 30(1)(h). As I have indicated, the Secretariat is not entitled to rely on the exception in sections 22, 24, or 30(1)(h).

In relation to the claim for exception under section 20(1)(a), I note that there is no evidence as to who made the notes or for what purpose. An Investigator with my Office asked the Secretariat to identify the author of the notes but the Secretariat was unable to do so. Given that the burden of proof is on the Secretariat to prove that a particular exception applies to information that is severed, I find that there is not sufficient evidence for me to find that the severed information contains advice or recommendations developed by or for a public body. Thus, the severed information should be disclosed.

Page 289-290 – Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by a person or persons unknown and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e).

The only severed information on these two pages for which the Secretariat has claimed the exceptions is contained in the first two lines on page 289. As I have indicated the Secretariat is not entitled to deny access on the basis of sections 22 or 24. In relation to the claim for exception under section 20(1)(a), I find that the information does not contain any advice or recommendations which would allow the Secretariat to rely on that exception. Thus, the information in those two lines should be released.

The remainder of the severed information on page 289 and that on the top of page 290 is not responsive to the Applicant's request and should not be disclosed.

Page 293 – Severing Information in E-mail

The Secretariat has severed information in an e-mail and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e).

This same e-mail appears on page 96 with more information severed there than on this page. The comments made in relation to this e-mail on page 96 are applicable here.

Page 294 – Severing Information in Draft Letter dated December 14, 2005

The Secretariat has severed the body of the draft letter and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on the exceptions in sections 22 or 24.

I note that on page 295 there is a copy of a letter dated December 19, 2005 dealing with the Applicant's grievances that was sent to the Applicant's union representative. The contents of this

letter are identical to the draft letter on this page. Therefore the severed information on this page has already been disclosed to the Applicant. Nevertheless, I will indicate that the severed information does not contain any advice or recommendations and the Secretariat is not entitled to rely on the exception in section 20(1)(a).

Page 296 – Severing Information in E-mails

The Secretariat has severed information in the first e-mail on this page and claimed an exception for personal information under section 30(1). I note that this same e-mail is found on page 96 and the comments I made there would be applicable here.

In relation to the second e-mail on this page, which was sent by the Staff Relations Specialist, the Secretariat has severed information and claimed an exception under section 30(1)(h). I note that this e-mail is also found on pages 96 and 293 (with less information severed on page 293) and for which the Secretariat has claimed different exceptions. I have already indicated that the Secretariat is not entitled to rely on section 30(1)(h) (which is not found in the *ATIPPA*) and my comments in relation to page 96 are also applicable here.

Page 297 – Severing Information in E-mails

I note that the two e-mails on this page also appear on page 296 with the same information severed in the second e-mail but with different information severed in first e-mail (The phrase "but may be checking her emails today" was disclosed on page 296 but was severed on this page). The Secretariat has claimed the exception under section 30(1) in relation to the first e-mail and claimed section 30(1)(h) in relation to the second e-mail. These two e-mails also appear on pages 96 and 296 and the comments I made there are applicable here.

Page 298 – Severing Information in E-mail

The Secretariat has severed information in an e-mail from the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1), and 24(1)(e). I note that this e-mail appears as well on pages 94 and 299 (with more information severed on page 94). The comments I made in relation to page 94 are applicable here.

In addition, I must comment here on the claims under sections 20(1)(a) and 21(a) because these exceptions were not relied on by the Secretariat on page 94. In relation to the claim for exception under section 20(1)(a), the severed information does not contain any advice or recommendations and, therefore, this exception cannot be used to deny access to the information. In relation to the claim under section 21(a), the severed information does not include a communication between a solicitor and a client (the e-mail was sent by the Staff Relations Specialist to an official with the Employer) and, therefore, the information is not subject to legal advice privilege under section 21(a). Also, the severed information is not subject to litigation privilege under section 21(a), As such, the Secretariat cannot rely on section 21(a) to deny disclosure.

Page 299 – Severing Information in E-mails

The Secretariat has severed information in the first e-mail on this page and indicated that it is "not relevant to applicant." I cannot accept this position. The same e-mail appears on page 94 with a smaller portion of the information severed and with a claim for exception made under section 24(1)(e). In addition, the subject line of this e-mail indicates that it concerns the Applicant. Therefore, I find that the severed information is responsive to the Applicant's request and should be disclosed.

In relation to the second e-mail on this page, the Secretariat has severed information and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1), and 24(1)(e). I note that this e-mail also appears on pages 94 and 298 and the comments I made in relation to those pages are applicable here.

Page 300-301 – Severing Information in E-mails

The Secretariat has severed information in the first e-mail on page 300 and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), 24(1)(e) and 30. I note that this email is also found on pages 98 and 302 (with some different information severed and different exceptions claimed on page 98).

I agree with the Secretariat that the information in paragraph 1 of the first e-mail is personal information and its disclosure is prohibited by section 30(1).

In relation to the second paragraph, the Secretariat has severed information and claimed exceptions under 20(1)(a), 22(1)(p), 24(1), and 24(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions and the severed information should be disclosed.

In relation to the severed information in the third e-mail (sent to the Staff Relations Specialist and others), I agree that the information is personal information and should not be disclosed.

In relation to the e-mail from the Staff Relations Specialist which begins on page 300 and continues on page 301, the Secretariat has severed information and claimed exceptions under sections 24(1), 24(1)(e), and 30(1)(h). I have already stated that the Secretariat is not entitled to rely on these sections and, thus, the severed information should be disclosed.

Page 302-303 – Severing Information in E-mails

The Secretariat has severed information in the first e-mail on page 302 and claimed that it is personal information. I agree that the severed information is personal information and subject to the prohibition in section 30(1). However, I note that on the copy of the responsive record provided to my Office more information is severed than was actually severed on the copy of page 302 sent to the Applicant. In any case, the Secretariat is entitled to deny access to the information in the e-mail that was not disclosed to the Applicant.

In relation to the second e-mail on page 302 (which was sent by the Staff Relations Specialist), the Secretariat has severed information and denied access on the basis of sections 20(1)(a), 22(1)(p), 24(1), 24(1)(e) and 30(1). I note that this e-mail also appears on page 98 with different portions of the information severed. In relation to paragraph 1, I agree that the severed information is personal information and is subject to the prohibition against the disclosure of personal information in section 30(1). In relation to the second paragraph, the Secretariat is not entitled to rely on sections 22 or 24 and the severed information does not contain any advice or recommendations that would allow for reliance on section 20(1)(a). Therefore, the information should be disclosed.

In relation to the e-mail at the bottom page 302, I agree with the Secretariat that the information is personal information and should not be disclosed.

In relation to the e-mail from the Staff Relations Specialist found on page 303, the Secretariat has severed information and claimed exceptions under sections 20(1)(a), 22(1)(e), 24(1), 24(1)(e) and 30(1)(h). I note that this same e-mail also appears on pages 96, 293, 296, and 297, and in my discussion of these pages I have indicated that none of these claimed exceptions (apart from section 22(1)(e)) applies. In relation to section 22(1)(e), there is no basis whatsoever, for a claim for exception under section 22(1)(e), which allows a public body to refuse a disclosure that could reasonably be expected to "reveal law enforcement intelligence information." In short, the Secretariat is not entitled to deny access to the severed information on page 303.

Page 304 – Severing Information in E-mail

The Secretariat has severed information in an e-mail from the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), and 24(1)(e). I note that this e-mail also appears on pages 102 and 103 (with additional information severed on page 103). The comments on this e-mail on page 102 would be applicable here to my decision that the Secretariat is entitled to deny access to the last sentence in paragraph 2 and all of paragraph 3.

Page 306 – Severing Information in E-mails

The Secretariat has severed information in the e-mail from an official of the Employer and claimed an exception under section 30(1)(h). I note that this e-mail appears on page 102 and the comments I made there are applicable to my decision that the severed information should be disclosed.

In relation to the e-mail from the Staff Relations Specialist at the bottom of page 306, the Secretariat has severed information in paragraphs 2 and 3 and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(p), 24(1), and 24(1)(e). I note that this e-mail also appears on pages 102, 103, and 304. The comments on this e-mail on page 102 are applicable here to my decision that the Secretariat is entitled to deny access to the last sentence in paragraph 2 and all of paragraph 3.

Page 307 – Severing Information in E-mails

In relation to the first e-mail on this page, which was sent to the Staff Relations Specialist, the Secretariat has severed information and claimed an exception for personal information under section 30(1). I agree that it is personal information and should not be disclosed.

In relation to the second e-mail from the Staff Relations Specialist, the Secretariat has severed information and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), 24(1)(e) and 30(1). In relation to paragraph 1, I agree that the severed information is personal information and should not be disclosed. In relation to paragraph 2, I agree that the information severed in the first sentence is personal information and should not be disclosed. Also, I find that the information severed in the second sentence is subject to litigation privilege and the Secretariat was entitled to deny access to it pursuant to section 21(a). In relation to paragraph 4, I find that the severed information is personal information and should not be disclosed. In relation to paragraph 5, I find that the severed information is subject to litigation privilege and the Secretariat is entitled to deny access to it pursuant to section 21(a).

Page 309 – Severing Information in E-mail dated December 4, 2006

The Secretariat has severed information in an e-mail sent to the Applicant's union representative by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1)(e), and 30(1).

I find that the Secretariat was obligated to deny access to the information severed in paragraphs 1, 2, and 4 because it is personal information. In relation to paragraph 3, I have already indicated that the Secretariat is not entitled to rely on the exceptions in section 22 or 24. In addition, I find that the severed information does not contain advice or recommendations such that the Secretariat would be able to rely on the exception in section 20(1)(a). Therefore, the severed information in this paragraph should be disclosed.

Page 310 - 311– Severing Information in E-mails

The Secretariat has severed information in the e-mails on these two pages and claimed exceptions for personal information under section 30(1). I agree that the severed information is personal information and should not be disclosed.

Page 313 – Severing Name from E-mail

The Secretariat has severed the name of an official with the Secretariat to whom an e-mail was sent and claimed an exception under section 22(1)(p). As I have indicated, the Secretariat is not entitled to rely on the exception in section 22(1)(p). Furthermore, the Secretariat has provided no explanation as to why this name should not be disclosed. I find that the name should be disclosed.

Page 314 – 317 – Severing Information in E-mails

The Secretariat has severed information in four e-mails on these pages and claimed an exception for personal information under section 30(1). I agree that the e-mails contain personal information that should not be disclosed.

Page 318 - 319 – Severing Information in E-mails

The Secretariat has severed information in an e-mail exchange involving the Staff Relations Specialist and claimed exceptions under sections 22(1)(p), 24(1), and 24(1)(e). I find that the severed information is subject to litigation privilege and the Secretariat is entitled to deny access on the basis of section 21(a).

Page 320 – Severing Information in E-mails

The Secretariat has severed information in two e-mails on this page and claimed exceptions under sections 20(1)(a) and 30(1). I agree that the severed information in the first e-mail on the page is personal information and should not be disclosed. In relation to the severed information in the second e-mail, I find that the severed information does not contain any advice or recommendations that would entitle the Secretariat to rely on the exception in section 20(1)(a) and this information should be disclosed.

Page 321 – Severing Information in E-mail

The Secretariat has severed information on this page and claimed exceptions under sections 22(1)(p), 24, and 24(1)(e). I note that this e-mail also appears on page 319 and I find, as I did in relation that page, that the Secretariat is entitled to sever the information under the exception in section 21(a) because it is subject to litigation privilege.

Page 322 – Severing Information in E-mails

The Secretariat has severed information in two e-mails and claimed exceptions under section 20(1)(a) and section 30(1)(h).

In relation to the information severed under section 20(1)(a), I find that this information does not contain any advice or recommendations and, therefore, the Secretariat is not entitled to rely on this exception.

In relation to the information severed under section 30(1)(h), I have already stated that the Secretariat is not entitled to rely on this section. In addition, the severed information contains an opinion about the Applicant given by an official of the Employer and for the reasons outlined earlier, this type of information should be released to the Applicant. As well, section 30(2)(h) is applicable because the severed information contains an opinion about the Applicant given by a third party while performing services for a public body. Thus, it is clear that the severed information should be disclosed to the Applicant.

Page 323 – Severing Information in E-mail

The Secretariat has severed information in an e-mail and claimed the exception under section 20(1)(a). I find that the severed information does not contain any advice or recommendations and, in fact, contains a question requesting an opinion about the Applicant. Therefore, the severed information should be disclosed to the Applicant.

Page 324 – Severing Information in E-mail

The Secretariat has severed information in an e-mail from the Staff Relations Specialist and claimed exceptions under sections 22(1)(p), 24(1), and 24(1)(e). As indicated, the Secretariat is not entitled to rely on the exceptions in sections 22 or 24. However, this same e-mail also appears on page 321 with the same information severed and I find, as I did in relation to that page, that the severed information on this page is subject to litigation privilege. Thus, the Secretariat is entitled to sever the information here pursuant to section 21(a).

Pages 327-329 – Severing Information in E-mails

The Secretariat has severed information in an e-mail exchange between the Staff Relations Specialist and a solicitor with the Department of Justice and claimed exceptions under sections 21(a) and 22(1)(p). I find that most of the severed information involves communications between a solicitor and a client for the purpose of seeking or giving legal advice and is subject to solicitor-client privilege pursuant to section 21(a). However, the severed information in the e-mail from the solicitor found at the top of page 327 does not contain information that involves the giving of legal advice and is, therefore, not subject to solicitor-client privilege and should be released. The Secretariat was entitled to deny access to all the other severed information on these pages.

Page 333 – Severing Information in Handwritten Notations

The Secretariat severed information in handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. However, I find that the severed information is subject to litigation privilege and the Secretariat was entitled to deny access pursuant to section 21(a).

Page 334– Severing Information in Handwritten Notations

The Secretariat has severed information in nine lines of handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. However, I find that the first seven lines of the information are subject to litigation privilege and the Secretariat is entitled to deny access on the basis of section 21(a). I also find that the last two lines constitute personal information. Therefore, the Secretariat was entitled to deny access to the severed information on this page.

Page 335 - Severing Information in Handwritten Notations

The Secretariat has severed information in sixteen lines of handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), 24(1)(e), and 30(1)(h). I note that the first 10 lines of the severed information are based on a conversation the Staff Relations Specialist had with the Applicant's union representative and that the last six lines contain information about the Applicant. As indicated the Secretariat is not entitled to rely on the exceptions in sections 22, 24, or 30(1)(h). I find that the severed information does not contain any advice or recommendations such that the Secretariat would be entitled to rely on the exception in section 20(1)(a). Thus, the severed information should be disclosed to the Applicant, with the exception of the name that appears in line 6, which constitutes personal information and should not be released.

Page 336 – 339 - Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions. However, I find that the severed information is subject to litigation privilege and the Secretariat is entitled to rely on the exception in section 21(a) to deny access to the severed information on these pages.

Page 340 - Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 22(1)(p), 24(1), and 24(1)(e). The Secretariat is not entitled to deny access on the basis of any of the claimed exceptions and the severed information should be released.

Page 341-342 - Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 22(1)(p), 24(1), and 24(1)(e). The Secretariat is not entitled to rely on the claimed exceptions. However, I find that the severed information is subject to litigation privilege and the Secretariat is entitled to deny access on the basis of the exception in section 21(a).

Page 343 – 353 - Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by the Staff Relations Specialist and claimed exceptions under sections 20(1)(a), 21(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). I find that the severed information is subject to litigation privilege and, therefore, the Secretariat is entitled to rely on the exception in section 21(a) to deny access.

Page 354 - Severing Information in Handwritten Notes

The Secretariat has severed information in handwritten notes made by the Staff Relations Specialist in relation to a conversation she had with the Applicant's union representative and claimed exceptions under sections 20(1)(a), 22(1)(h), 22(1)(p), 24(1), and 24(1)(e). The Secretariat is not entitled to rely on these exceptions and the severed information should be released.