



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
*for British Columbia*

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Order F14-38

**CITY OF COQUITLAM**

Ross Alexander, Adjudicator

September 17, 2014

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**Summary:** An applicant requested records from the City of Coquitlam regarding bylaw infraction complaints about a property occupied by the applicant. The City disclosed most of the information but withheld complainant identity information and some other information under ss. 12(3)(a), 13, 14, 15(1)(d) and 22 of FIPPA. The adjudicator determined that ss. 14 or 22 of FIPPA applied to nearly all of the withheld information in dispute. While s. 22 did not apply to a small amount of information withheld under s. 22, it was not necessary to consider the application of ss. 12, 13 or 15 to the records because all of the information withheld under those sections falls under ss. 14 or 22.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 14 and 22.

**Authorities Considered: B.C.:** Order F05-30, 2005 CanLII 32547 (BC IPC); Order P12-01, 2012 BCIPC 25 (CanLII); Order F07-02, 2007 CanLII 2529, (BC IPC); Order F05-18, 2005 CanLII 24734 (BC IPC); Order 01-53, 2001 CanLII 21607 (BC IPC); Order F14-17, 2014 BCIPC 20 (CanLII); Decision F10-10, 2010 BCIPC 49 (CanLII).

**Cases Considered:** *B. v. Canada*, [1995] 5 W.W.R. 374 (BCSC); *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31; *Camp Development Corp. v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88.

## INTRODUCTION

[1] This inquiry concerns a request to the City of Coquitlam (“City”) for the names, records, telephone conversations and subject matter of complaints about alleged bylaw infractions that were made to the City about a property occupied by the applicant.<sup>1</sup>

[2] The City disclosed some information to the applicant, but withheld other information under ss. 12(3)(a), 13(1), 14, 15(1)(d) and 22 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

[3] The applicant made a request for review to the Office of the Information and Privacy Commissioner (“OIPC”) about the City’s decision to withhold information. The review process did not resolve this matter, and the applicant requested that it proceed to inquiry.

## ISSUES

[4] The issues in this case are whether the City is:

- 1) required to refuse to disclose information because disclosure would be an unreasonable invasion of a third party’s personal privacy pursuant to s. 22 of FIPPA;
- 2) authorized to refuse access to information because it is subject to solicitor client privilege pursuant to s. 14 of FIPPA;
- 3) authorized to refuse access to information because disclosure would reveal a draft of a resolution, bylaw or other legal instrument by which the local public body acts, or a draft of a private Bill, pursuant to s. 12(3)(a) of FIPPA;
- 4) authorized to refuse access to information because disclosure would reveal advice or recommendations pursuant to s. 13 of FIPPA; and
- 5) authorized to refuse access to information because disclosure could reasonably be expected to reveal the identity of a confidential source of law enforcement information pursuant to s. 15(1)(d) of FIPPA.

[5] Pursuant to s. 57(1) of FIPPA, the City has the burden of proof to establish that ss. 12(3)(a), 13, 14 or 15(1)(d) authorizes it to withhold the requested information. However, s. 57(2) of FIPPA places the burden of proof on the applicant to establish that disclosure of personal information would not be an unreasonable invasion of a third party’s personal privacy under s. 22 of FIPPA.

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<sup>1</sup> The request for records was made by an agent for the applicant with the consent of the applicant. However, for simplicity, I will only refer to the applicant.

## DISCUSSION

[6] **Background**—The applicant resides on property in Coquitlam which he says is owned by his wife.

[7] There have been a number of complaints to the City about the property, including allegations that there is an unlawful secondary suite, unsightly construction debris, a retaining wall constructed on City property, failure to obtain or complete certain building permits, excessive construction noise, construction occurring outside of the permitted hours, damage to protected trees, and water sprinkling outside the permitted hours. The City investigated these complaints and determined that bylaws had been violated with respect to some, but not all, of the complaints.<sup>2</sup>

[8] The applicant believes that one or more of his neighbours have been making complaints to the City and the RCMP about bylaw infractions since he started doing home renovations in 1999. He is concerned about the frequency and intent of the complaints, and he believes the purpose of these complaints is to harass him and his family. He also believes that the complainant(s) are receiving preferred treatment from the City because one of his neighbours is connected to a City committee board member, and he speculates that this committee board member may be involved.

[9] The applicant retained two private investigators to help him determine who has been making the bylaw infraction complaints. The applicant's request for records under FIPPA that is at issue here comprises part of that investigation.

[10] **Records**—There are a number of different types of records in this inquiry relating to complaints about bylaw infractions at the property. Many of the records are internal City documents recording or taking action with respect to the complaints. The City describes these records as complaint logs, work flow records and work orders. There are also internal City emails, letters to the owner(s) of the property the applicant resides at, photographs of the property and a property survey. For many of these records, most of the information has already been disclosed to the applicant and only short excerpts have been withheld. This withheld information contains information relating to the identity of complainant(s) and the owner(s) of the property where the applicant resides, as well as four short excerpts of information the City says was supplied by the owner(s) ("four excerpts").<sup>3</sup> The City is also withholding the entirety of some records on the basis that solicitor client privilege (s. 14) applies.

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<sup>2</sup> This is apparent from the records that have already been disclosed to the applicant.

<sup>3</sup> The excerpts are at pp. 6, 14, 30, 32 and 34. The City is withholding 5 withheld excerpts on the basis that it was supplied by the owner(s), but pp. 30 and 32 are duplicate copies of the same record with the same information withheld from each page. For simplicity, I will address these two pages as one record.

[11] The City advised that one of the records in dispute no longer exists. The record was a draft report to City Council that the City was withholding under ss. 12(3)(a), 13(1) and 14 of FIPPA. The City provided sworn affidavits from two City employees explaining what happened to the record. Both parties provided submissions on this issue, and I addressed this issue in a July 16, 2014 letter to the parties. I concluded – among other things – that this record is no longer part of this inquiry because the issue of whether the City must disclose this record is moot now that it no longer exists, but that this finding does not in any way prejudice the applicant’s right to make a separate complaint to the OIPC on this issue.

[12] Further, the subject matter of five of the records is also outside of the subject matter of the applicant’s request. The applicant is requesting the “names, records, telephone conversations and matter of each complaint” and the applicant’s submissions revolve around why he should receive information that identifies the complainant(s).<sup>4</sup> Five of the records identified by the City do not contain this information, and I therefore will not consider these records because the subject matter is outside of the scope of the request.<sup>5</sup>

### *Section 22*

[13] The City is withholding most of the withheld information under s. 22. This information is the names, telephone numbers, addresses and other similar contextual identifying information (such as gender pronouns) of one or more individuals who have made bylaw infraction complaints against the property, as well as other similar types of information. There is also similar identifying information about the registered owner(s) of the property where the applicant resides, and the four excerpts which contain a small amount of information the City says was supplied by the owner(s) of the subject property. The content of the complaints have already been disclosed to the applicant.

[14] Numerous orders have considered the analytical approach to s. 22. The public body must first determine if the information in dispute is personal information because s. 22 only applies to “personal information” of third parties as defined by FIPPA. If so, the public body must consider whether the information meets the criteria identified in s. 22(4). If s. 22(4) applies, s. 22 does not require the public body to refuse to disclose the information. If s. 22(4) does not apply, the public body must determine whether disclosure of the information falls within s. 22(3). If s. 22(3) applies, disclosure is presumed to be an unreasonable invasion of third party privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether

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<sup>4</sup> The City has already disclosed the subject matter of the complaints to the applicant.

<sup>5</sup> Records 24 to 26, 29 and 30.

disclosing the personal information at issue would be an unreasonable invasion of a third party's personal privacy.

[15] The City's position is that s. 22 applies to the withheld information. It submits there is a presumption that disclosure of the information would be an unreasonable invasion of third party personal privacy because it is part of an investigation into a violation of law (s. 22(3)(b)). It also says the information was supplied in confidence (s. 22(2)(f)) and that disclosure may unfairly damage the reputation of third parties (s. 22(2)(h)), which support the City's view that disclosure of the withheld information would be an unreasonable invasion of personal privacy.

[16] The applicant's position is that s. 22 does not apply to the withheld information, particularly for the identity of the complainant(s) where the City did not determine that its bylaws were breached. He submits that disclosure of the personal information is not an unreasonable invasion of personal privacy because many of the complaints are unfounded, and disclosure may help him uncover potential harassment, a conflict of interest or an abuse of power. He states that the factors raised by the City do not apply to the withheld information, and that the City must disclose the withheld information to him.

#### *Personal Information*

[17] The term personal information under FIPPA means “recorded information about an identifiable individual other than contact information”.<sup>6</sup> FIPPA defines contact information as:

...information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

[18] The applicant submits that the name and other identifying information of the complainant(s) is not “personal information” for the purposes of FIPPA because the information is an integral part of a private investigation by two licensed private investigators. However, in my view, the existence of an ongoing private investigation is irrelevant for determining whether the withheld information is personal information as defined by FIPPA because it does not assist in either determining whether the information is about an identifiable individual or whether it is contact information.

[19] The City is withholding name, telephone number, address and other similar identifying information. Nearly all of this withheld information is about identifiable individuals and most of it is clearly not contact information as defined by FIPPA. This is because the names and other identifying information is about

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<sup>6</sup> Definitions are in Schedule 1 of FIPPA.

people in their personal rather than business capacities, and is their home telephone numbers and addresses. There is also a work telephone number listed for a third party, which would typically be contact information. However, I find that this telephone number is not contact information in its context because it was recorded for the purpose of having a way to contact the third party with respect to a bylaw complaint, which was a personal rather than business matter for the third party.

[20] There is also one short withheld excerpt the City is withholding because it provides contextual information about the identity(ies) of who complained about the property.<sup>7</sup> This information discloses whether a few of the complaints were from one or multiple complainants. In my view, this information is not personal information because it is not reasonably capable of identifying a particular individual or small group of identifiable people,<sup>8</sup> either alone or when combined with other available sources of information.<sup>9</sup> In my view, disclosure of whether one or more people made the subset of complaints referenced in this excerpt will not enable identification of the complainant(s) in this case, particularly given that the property is located in a suburban environment so there are a number of people who could have conceivably complained to the City.<sup>10</sup> Since this information is not personal information, I therefore find that s. 22 does not apply to this excerpt and that the City must disclose it.

[21] The City is also withholding four excerpts from its internal documents the City says was supplied by the owner(s) of the subject property in relation to the City investigations into complaints about construction on the property.<sup>11</sup> These excerpts record or reference three different statements made in relation to complaints about construction on the property by people associated with the property who are generally identified in the records as owners. The fourth withheld excerpt is a reference to one of these statements.<sup>12</sup> While these excerpts do not precisely state who made these statements, the context<sup>13</sup> points to the applicant as the source of two of the statements<sup>14</sup> and the applicant's wife as the person who made the third statement while she was with the applicant.<sup>15</sup> In my view these statements are about the applicant, his wife and any other

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<sup>7</sup> Page 20.

<sup>8</sup> See, for example, Order F05-30, 2005 CanLII 32547 (BC IPC) at para. 35.

<sup>9</sup> See Order P12-01, 2012 BCIPC 25 (CanLII) at para. 85.

<sup>10</sup> It is apparent that the property is located in a suburban environment from the photographs that are part of the records.

<sup>11</sup> Pages 6, 14, 30, 32 and 34. See footnote 3.

<sup>12</sup> The excerpt at p. 6 references the withheld information in the records at pp. 30 and 32.

<sup>13</sup> This context includes that the applicant and his wife reside at the property, the applicant says his wife owns the property, and many of the complaints relate to the applicant's home renovations: Affidavit of L. Reid at paras. 2 and 5, plus the records.

<sup>14</sup> Pages 14 and 34. These statements were made by a male.

<sup>15</sup> Pages 30 and 32. A portion of this record that has already been disclosed to the applicant refers to residents (plural) "at counter", which in the context of this record likely refers to the counter where City employees assist the public at City hall or a City office.

registered owner(s) of the property (if any). I therefore find that these four excerpts contain personal information of third parties.

*Subsection 22(4)*

[22] Subsection 22(4) specifies circumstances when disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. Neither of the parties suggests that s. 22(4) applies in this case. Based on my review of the materials, I find that none of the circumstances in s. 22(4) apply to the withheld information.

*Subsection 22(3)*

[23] Subsection 22(3) provides the circumstances in which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. It states in part:

A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

...

[24] The City submits that s. 22(3)(b) applies because the information is identifiable as part of an investigation into possible violations of City bylaws, which the City has statutory authority to investigate and enforce. The applicant submits that s. 22(3)(b) does not apply because the original complaints were made under false pretenses and with malicious intent.

[25] Consistent with previous orders,<sup>16</sup> in my view the City's investigations into alleged infractions of its bylaws are possible violations of law under s. 22(3)(b). I therefore find that s. 22(3)(b) applies to the information at issue here because it is identifiable as part of investigations into possible violations of City bylaws. Further, I note that whether these complaints were made with malicious intent is irrelevant to whether the presumption in s. 22(3)(b) applies in this case.<sup>17</sup>

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<sup>16</sup> For example, see Order F07-02, 2007 CanLII 2529 (BC IPC) at para. 58.

<sup>17</sup> For clarity, in stating that this is not a factor to be considered under s. 22(3)(b), I am not suggesting that this allegation is not relevant for the purpose of determining whether disclosure would be an unreasonable invasion of personal privacy under s. 22 of FIPPA.

*Subsection 22(2)*

[26] Section 22(2) states that all relevant circumstances, including those listed in s. 22(2), must be considered. Section 22(2) states in part:

In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,  
...
- (f) the personal information has been supplied in confidence,  
...
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, ...

[27] The City submits that ss. 22(2)(f) and (h) are relevant circumstances in favour of withholding the information. The applicant submits that these provisions do not apply. He also alleges the City may be giving preferred treatment to the person or persons making complaints against the property due to a connection between one of his neighbours and someone who is a City committee member. I take this to mean that the applicant believes the withheld information will disclose bias or unfair treatment by the City with respect to the complaints, so the City's actions should be subject to public scrutiny. Therefore, I will consider s. 22(2)(a).

*Section 22(2)(a)*

[28] Section 22(2)(a) is a factor that weighs in favour of disclosure if disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny. The rationale for s. 22(2)(a), as stated in Order F05-18, is that where disclosure of records would foster accountability of a public body, this may in some circumstances support a finding for the release of third party personal information.<sup>18</sup>

[29] The applicant alleges that the City may be providing preferred treatment in how it handles complaints against his property because a neighbour who the applicant suspects of making the complaints is connected to a City committee board member, and that there is a potential for an "abuse of power". My understanding of this submission is that the applicant believes his property has been unfairly subjected to frequent inspections and an enhanced level of

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<sup>18</sup> Order F05-18, 2005 CanLII 24734 (BC IPC).

bylaw enforcement. In his view, the complainant(s) are making complaints to harass the applicant rather than due to genuine concerns regarding bylaw infractions. He believes that many of the complaints are unfounded, so the City should not investigate them.

[30] The City's manager of bylaw, licensing and animal services ("bylaw manager") provided sworn evidence for this inquiry confirming that the City investigates and responds to possible bylaw infractions based on the complaints it receives from members of the public. It is apparent from the records that have already been disclosed to the applicant that there have been a number of complaints about bylaw infractions at the applicant's property. Therefore, given that the City has a reactive or "complaint-based" approach to enforcing its bylaws, it is not surprising that the City has conducted a number of investigations or inspections into the property occupied by the applicant. Further, the records disclose that there was a reasonable basis for most of the bylaw complaints, so I disagree with the applicant to the extent he submits that it is improper for the City to investigate bylaw complaints regarding the property due to a history of unfounded complaints. In my view, disclosure of the identity of the complainant(s) does not foster accountability of the City in this case. Further, while it might potentially serve the applicant's private interests to receive this information, disclosure would not serve to subject the public body to public scrutiny.

[31] Based on my review of the materials before me, I find that disclosure of the identity(ies) of the bylaw complainant(s) is not desirable for the purpose of subjecting the activities of the City to public scrutiny in this case.

*Section 22(2)(f)*

[32] Section 22(2)(f) requires consideration of whether personal information has been supplied in confidence when determining whether disclosure would be an unreasonable invasion of personal privacy.

[33] The City submits that the identifying information about the complainant(s) and the four excerpts were supplied in confidence, and that it has a policy and an operating practice that supports the confidentiality of its bylaw reporting regime. The applicant disagrees that the information was supplied in confidence, stating that the City's policy and operating practices are highly subjective with respect to whether the reporting of complaints is confidential.

[34] In support of its position, the City provided a section of its policy and procedure manual entitled "Release of Information Identifying Bylaw Infraction Complaints", which states the City's policy on the topic as follows:

The name/identity and written complaint of any person(s) registering a real or perceived complaint with the City regarding an infraction of a City bylaw shall

remain confidential. No information that may in anyway identify the complainant shall be publicly released unless authorized by the complainant or directed by the City Solicitor.

[Original is in bold type]

[35] The bylaw manager also deposes that the City maintains the confidentiality of complainants' names and personal information unless the law requires disclosure. She states that the City staff who routinely receive and process complaints have been instructed to advise complainants of the City's confidentiality policy when asked or when a complainant expresses a concern about being identified. Further, her belief is that this policy gives complainants some comfort in coming forward to report possible unlawful activities they observe with less fear of reprisal. She says, in her experience, the policy of keeping the identities of complainants confidential encourages the early reporting of concerns and complaints that, if left unchecked, could escalate into larger neighbourhood disputes.

[36] In my view, the City has a clear, objective policy that it does not disclose the names of complainants. Based on this policy, the bylaw manager's evidence, and the context of the complaints (i.e., possible bylaw infractions), I find that s. 22(2)(f) is a factor that weighs in favour of withholding the information about the complainant(s) because the information was supplied in confidence. However, the four excerpts contain information that is supplied to the City by either the applicant or his wife in the applicant's presence. Previous orders such as Order 01-53 have stated that s. 22(2)(f) does not support withholding information that was supplied by the applicant because he or she is the source of the information.<sup>19</sup> For these reasons I find that s. 22(2)(f) does not apply to the four excerpts.

#### *Section 22(2)(h)*

[37] The City submits that s. 22(2)(h) applies for both the information about the registered owner(s) of the property where the applicant lives and the complainant(s) because disclosure may unfairly damage their reputations. It states the fact that the property was or is subject to bylaw investigations has the potential to unfairly damage the reputation(s) of the registered owner(s), particularly if that information is openly found to be false or otherwise incriminating. It further submits that disclosure of a bylaw complainant's name or other personal information may unfairly damage that person's reputation, particularly in the context of property-related complaints where the accuser and the accused are neighbours whose relationships will be ongoing after resolution of any investigation or law enforcement proceeding. The applicant states that s. 22(2)(h) does not apply because disclosure will not damage the reputation of the person or people who complained. He does not address the issue of

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<sup>19</sup> Order 01-53, 2001 CanLII 21607 (BC IPC).

damage to the reputation of the registered owner(s) of the property where he lives.

[38] The information withheld under s. 22 identifies both the registered owner(s) of the subject property and who made complaints against the property, and provides a few details about construction on the property. I am not satisfied that disclosure of the identities of the complainant(s) may unfairly damage their reputations, considering the nature and context of the complaints as well as an absence of evidence about harm to the reputation(s) of the actual complainant(s) in this case.<sup>20</sup> I am not satisfied, for example, that identifying the person who called the City to report that the applicant built a retaining wall on City property near a road would unfairly damage the caller's reputation. I am also not satisfied that s. 22(2)(h) is a factor with respect to whether it is an unreasonable invasion of personal privacy to disclose to the applicant the identity of the registered owner(s) of the property or the few construction details related to the property that are at issue, particularly since the applicant and his wife are in possession of the property and it is their use of the property that is the subject of the complaints.

[39] **Other Relevant Factors**—The City is withholding identity information about the registered owner(s) of the property. However, given that the applicant resides at the property and says the home belongs to his wife, it is apparent that the applicant likely knows the identity of registered owner(s) of the property. Further, the identities of the registered owners of property in British Columbia are publically accessible through the Land Title Office. The applicant has already conducted registry searches to determine the identity of the owners of neighbouring properties and he could conduct the same search for the property where he resides, if he has not done so already. The applicant either already knows the identity information about registered owner(s) of the property or he can easily determine this information. The City is also withholding the four excerpts, some of which record the applicant's own statements and all of which are known by the applicant. I find the fact that the applicant already knows the information described in this paragraph is a significant factor weighing in favour of its disclosure not being an unreasonable invasion of the personal privacy of third parties.

#### *Subsection 22(1)*

[40] Subsection 22(1) requires public bodies to refuse to disclose personal information to an applicant if disclosure would be an unreasonable invasion of a third party's personal privacy. The withheld information in this case relates to the identity of one or more complainants who complained to the City about possible bylaw infractions on the property where the applicant resides, identity

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<sup>20</sup> The City argues that disclosing the identities of bylaw complainants in general causes harm to their reputations.

information of the registered owner(s) of the subject property, and four excerpts by the applicant or his wife in relation to bylaw complaints.

[41] Previous orders of this office have consistently determined that public bodies are required to withhold a complainant's name and other identity information under s. 22.<sup>21</sup> For example, in Decision F10-10 an applicant wanted the names of complainants who made complaints against her to BC Housing. In that case, an inquiry was not held because the adjudicator determined that it was plain and obvious that s. 22 applied and there were no arguable issues meriting an inquiry. Adjudicator McEvoy stated in this decision that:

...Past orders have determined the disclosure of the kind of information at issue here would be an unreasonable invasion of third party privacy and therefore a public body must not release it. Order 00-18, for example, found the public body properly withheld, under s. 22(1), the identity of a complainant to the Motor Vehicle Branch that a person was unfit to drive a car. Commissioner Loukidelis found this information was confidentially provided and no other circumstances weighed in favour of its disclosure. Further, Senior Adjudicator Francis concluded in Decision F08-06 it was plain and obvious that s. 22(1) protected information that included the names of complainants in a municipal property use dispute...<sup>22</sup>

[42] In this case, I find that disclosure of the identity information of the complainant(s) would be an unreasonable invasion of their personal privacy. There is a presumption under s. 22(3)(b) that disclosure of the withheld information would be an unreasonable invasion of personal privacy. In addition to this presumption, s. 22(2)(f) also favours withholding the information. There are no factors in favour of disclosing the information that are sufficient to rebut that presumption. In conclusion, I find that the City is required to withhold the information that identifies the complainant(s) under s. 22 of FIPPA.

[43] In regards to the information that identifies the registered owner(s) of the property and the four excerpts, I find that the presumption under s. 22(3)(b) that disclosure to the applicant would be an unreasonable invasion of personal privacy has been rebutted. In my view, the fact that the applicant knows the information contained in the four excerpts – some of which are the applicant's own statements – and that he almost surely knows the identity(ies) the registered owner(s) of the property are significant factors in favour of disclosure. Further, even if he does not know the identity(ies) of the registered owner(s) of the property, he can easily get this information from other sources (*ie.* the Land Title Office or related services) as he has already done for the registered owners of neighbouring properties.

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<sup>21</sup> For example, Order F14-17, 2014 BCIPC 20 (CanLII).

<sup>22</sup> Decision F10-10, 2010 BCIPC 49 (CanLII) at para. 14.

[44] In summary, I find that s. 22 of FIPPA requires the City to withhold the information that identifies the complainant(s), but not the other information withheld under s. 22.

#### *Section 14*

[45] The City is withholding two records on the basis that solicitor client privilege applies under s. 14 of FIPPA.<sup>23</sup> These records are emails between a City lawyer and non-legal staff regarding the preparation of a draft policy to be recommended to City Council<sup>24</sup> and to address another related legal issue.

[46] The City is withholding the records on the basis that legal advice privilege applies, which is a type of solicitor-client privilege. As stated in *B. v. Canada*, the test for legal advice privilege is:

[T]he privilege does not apply to every communication between a solicitor and his client but only to certain ones. In order for the privilege to apply, a further four conditions must be established. Those conditions may be put as follows:

1. there must be a communication, whether oral or written;
2. the communication must be of a confidential character;
3. the communication must be between a client (or his agent) and a legal advisor; and
4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

If these four conditions are satisfied then the communications (and papers relating to it) are privileged.<sup>25</sup>

[47] The City submits that s. 14 applies to the records at issue. The applicant submits that the City has not established that the four criteria from *B. v. Canada* are met, so the information cannot be withheld under s. 14. The applicant states that the second condition is not met because the information is public information in the sense that does not have a confidential character. He also submits that internal communications within the City's office do not meet the test, which I understand to mean that the applicant's position is that the third condition that the communication must be between a client (or his agent) and a legal advisor is not met because the records are internal City correspondence.

[48] I find that the first two conditions for determining legal advice privilege are clearly met. The two records are emails, which satisfies the first condition

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<sup>23</sup> Records 27 and 28.

<sup>24</sup> City's initial submissions at para. 36.

<sup>25</sup> *B. v. Canada*, [1995] 5 W.W.R. 374 (BCSC).

because they are written communications. Further, I find that the emails were of a confidential character due to the content and context of these emails between an in-house lawyer for the City and non-legal staff, recognizing that this second condition relates to the confidential nature of the communication itself, regardless of whether the information – as the applicant believes – ought to be publicly known.

[49] The third condition is that the communication must be between a client and a legal advisor. The records at issue are internal City email communications between an in-house City lawyer and another City employee. To the extent the applicant is submitting that s. 14 does not apply because the emails are internal City emails, I do not accept this submission in light of the Supreme Court of Canada stating in *Pritchard v. Ontario (Human Rights Commission)* that solicitor client privilege may apply when an in-house lawyer is providing legal advice to their employer client.<sup>26</sup> I therefore find that these emails are communications between a client and a legal advisor.

[50] The fourth condition in *B. v. Canada* is that the communication must be directly related to the seeking, formulating, or giving of legal advice. This generally includes factual information requested by and provided to legal counsel for the purpose of obtaining legal advice.<sup>27</sup> I find this to be the case for the information here, and that the information at issue here is directly related to the lawyer acting in a legal capacity. Based on my review of the records at issue, I find that they are directly related to the seeking, formulating, or giving of legal advice.

[51] In summary, I find that the two records at issue are subject to legal advice privilege and that the City is authorized to withhold them under s. 14 of FIPPA.

*Sections 12(3)(a), 13 and 15(1)(d)*

[52] In addition to ss. 14 and 22, the City is withholding the information under ss. 12(3)(a), 13 and/or 15(1)(d). However, since I have determined that the City is authorized or required to withhold all of the information withheld under these sections under ss. 14 or 22, it is not necessary for me to consider these remaining provisions.

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<sup>26</sup> *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para. 19 citing *R. v. Campbell*, [1999] 1 S.C.R. 565, at para. 49.

<sup>27</sup> *Camp Development Corp. v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88.

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**CONCLUSION**

- [53] For the reasons given, under s. 58 of FIPPA, I order that the City is:
- (a) required to refuse to disclose the information at issue it is withholding under s. 22 of FIPPA, subject to (c);
  - (b) authorized to refuse to disclose the information at issue it is withholding under s. 14 of FIPPA; and
  - (c) required to give the applicant access to the information that I have highlighted that will be sent to the City along with this decision by October 30, 2014, pursuant to s. 59 of FIPPA. The City must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

September 17, 2014

**ORIGINAL SIGNED BY**

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Ross Alexander, Adjudicator

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