Order F22-36

CITY OF VANCOUVER

Erika Syrotuck
Adjudicator

July 20, 2022

CanLII Cite: 2022 BCIPC 40
Quicklaw Cite: [2022] B.C.I.P.C.D. No. 40

Summary: An applicant requested a specific report and related appraisals from the City of Vancouver (City). The City withheld the report under ss. 12(3)(b) (local body confidences) and 14 (solicitor-client privilege) of the *Freedom of Information and Protection of Privacy Act*. The applicant also complained that the City did not conduct an adequate search for records as part of its duty to assist under s. 6(1). The adjudicator found that s. 14 applied to the report but that the City did not fulfil its duty to assist under s. 6(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1), 12(3)(b) and 14.

INTRODUCTION

[1] The RePlan Strata Leaseholders Society (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Vancouver (City) for an "Administrative Report dated November 25, 2009, entitled 'False Creek Residential Leasehold Properties – Prepayment Program' and any related appraisal reports prepared for or by the City of Vancouver."

[2] Two days after it received the request, the City acknowledged receipt and clarified that it understood the applicant was seeking the following two categories of records:

1. Copy of the administrative report "False Creek Residential Leasehold Properties - Prepayment Program" dated November 25, 2009; and

2. Any related appraisal reports prepared by or for the City of Vancouver in support of the said report.

[3] The City provided some records in response to the applicant's request.

[4] The applicant then complained to the City that the records provided were only responsive to the second part of the applicant request (i.e. the appraisal reports).

[5] In response, the City confirmed that the records that had been provided were responsive to the second part of the request only, and that it was withholding records responsive to the first part (i.e. the report) under s. 12(3)(b) (local public body confidences) of FIPPA.

[6] The applicant then requested that the Office of the Information and Privacy Commissioner (OIPC) review the City's decision to withhold the report under s. 12(3)(b). The applicant also complained that the City did not adequately search for records as required by s. 6(1).

[7] The City then advised that it was also relying on s. 14 (solicitor-client privilege) to withhold the report.

[8] Mediation did not resolve the issues and the matter proceeded to inquiry.

ISSUES

[9] At this inquiry, I must decide the following issues:

1. Is the City authorized to refuse to disclose the information in dispute under ss. 12(3)(b) or 14 of FIPPA?

2. Did the City conduct an adequate search for records as part of its duty to respond openly, accurately and completely under s. 6(1) of FIPPA?

[10] Under s. 57(1) the burden of proof is on the City to show that the applicant has no right of access under ss. 12(3)(b) and 14 of FIPPA.

[11] FIPPA does not set out the burden with regards to s. 6(1). Past orders have found that the burden is on the Ministry to show that it has performed its duty under s. 6(1).[1]

DISCUSSION

Background

[12] The False Creek Residential Leasehold Properties (Properties) are residential strata leasehold units, located in False Creek, in the City of

[1] Order F20-13, 2020 BCIPC 15 at para 13, for example.

Vancouver.[2] The units were developed in the 1970s and early 1980s. The City owns the land, but not the buildings.

[13] The Properties include ten market residential projects comprising 435 units that are subject to 60-year leases. The original purchasers of these units were given an option to prepay the leases in full or to select a periodic payment scheme. Fifty-nine purchasers prepaid their leases. For the remaining 376 purchasers who chose a payment scheme (the non-prepaid units), typically the rents they paid the City were set for the first 30 years, and then were to be reviewed at 10-year intervals after that.

[14] In the late 1980s, the lessees of the non-prepaid units began to experience difficulty financing or selling their units. In 1992, City Council approved the concept of modifying the leases to permit prepayment. In 1993, City Council approved a voluntary lease prepayment option for the non-prepaid units. The City commissioned two external appraisal firms to calculate the prepayment option amounts and schedule and consulted with the public. City Council approved the prepayment program and it continued until December 31, 2001. Before the program ended, 157 lessees chose to take advantage of the program, thereby fixing their rent for the remainder of the lease and avoiding any increases that could result from the 10-year rental reviews.[3]

[15] The 10-year rental reviews began in 2006. At this time, the real estate market had significantly increased in value and the rental rates for the next 10 years were expected to be significantly higher. The City then retained another appraisal firm to conduct an independent review to establish the market rental value of the land which could then be apportioned to each unit. The report from this appraiser suggested rents that were 700% higher than the rents set 30 years earlier.

[16] On October 3, 2006, City Council approved new monthly rental rates based on the appraisal and directed staff to report back with another prepayment option to consider. City staff advised the lessees of the new rates and reported the lessees' concerns back to City Council. In July 2007, City Council directed staff to advise lessees that the City would consider counter-proposals for the new monthly rental rates and authorized a time-limited period for negotiations. City Council also directed staff to report back with another optional prepayment plan once the market rentals were settled.

[17] The City says it engaged in good faith discussions with the False Creek Leasehold Steering Committee, a group representing the leaseholders, but was unable to come to a negotiated agreement on the new monthly rates. According to the leases the rates are based on the "market rental value" of the underlying

[2] The information in the background comes from the City's initial submissions at paras 14 – 29.
[3] See page 4 of Exhibit B to the Director of Real Estate Services' affidavit.

land. If the parties do not agree on the "market rental value", the leases set out a process for binding arbitration.

[18] The City says that, on April 7, 2009, it resolved to proceed with arbitration to settle the rental amounts.

Record at issue

[19] The record at issue is a report with the subject line "False Creek Residential Leasehold Properties Prepayment Program" (Report). The Report was considered by the City Council at an *in camera* meeting held on December 1, 2009. The City has disclosed the basic descriptive information in the Report (for example, the "to", "from" and subject line), the *in camera* rationale, the recommended motion, the signature page, a two-page Appendix B, and a diagram attached as an exhibit.

[20] The City has withheld the entire body of the Report which is approximately 18 pages, and the entirety of Appendix A. As I explain below, the City did not provide this information for my review.

Section 14 – solicitor-client privilege

[21] Section 14 allows a public body to refuse to disclose information that is subject to solicitor-client privilege. Section 14 encompasses both legal advice privilege and litigation privilege. Only legal advice privilege is at issue in this inquiry.

[22] Legal advice privilege applies to communications that:

i) are between solicitor and client;
ii) entail the seeking or giving of legal advice; and
iii) are intended to be confidential by the parties.[4]

[23] Legal advice privilege also applies to information that, if disclosed, would reveal or allow an accurate inference to be made about privileged information. For example, legal advice privilege extends to internal client communications that transmit or comment on privileged communications with lawyers.[5]

[24] The City has applied s. 14 to all of the withheld information in the Report, but did not provide this information for my review. Instead, it provided affidavit evidence from the City's former Assistant Director - Development and Real Estate (Assistant Director) in the City's Legal Services Department who, at the

[4] *Solosky v The Queen* 1979 CanLII 9 (SCC) at page 837.
[5] *Ibid* at para 12 citing *Mutual Life Assurance Co. of Canada v Canada (Deputy Attorney General)* [1988] OJ No. 1090 (Ont. SCJ).

relevant time, was a practicing lawyer.[6] Due to the importance of solicitor-client privilege, it is open to the public body to provide only affidavit evidence, in which case the OIPC would only seek to review the records when needed to fairly decide the issue. I have determined that the Assistant Director's evidence is sufficient for me to decide whether privilege applies.

[25] I turn now to the parties' evidence and arguments about whether the Report is subject to solicitor-client privilege.

The City's initial submissions

[26] The City's overall position is that disclosing the withheld information in the Report would present a real risk that privilege may be eroded as the legal advice is so intertwined with the remainder of the Report that it cannot be separated.[7] By way of background, the Assistant Director says she was the lead solicitor providing advice on the Properties, having taken over the file from another retiring lawyer. The Assistant Director says that another City lawyer (litigator) was representing the City in regards to the rental review arbitration.[8]

[27] The Assistant Director says she was consulted in drafting the Report on behalf of the Director of Legal Services.[9] Specifically, she says she communicated with the then Director of Real Estate Services, who is the listed author of the Report.[10] The Assistant Director says that those communications were confidential and part of a well-established solicitor-client relationship.[11] The Assistant Director says that the advice she provided to the Director of Real Estate Services was provided in her capacity as legal advisor and this advice is reflected throughout the Report.[12]

[28] The Assistant Director submits that the Report was particularly sensitive from a legal perspective and describes some of the recommendations and legal issues in the Report.[13] These descriptions have been accepted by the OIPC *in camera* so I cannot provide further detail.

[29] The Assistant Director says that she believes disclosing the Report would pose a significant risk of revealing legal advice that she and other City lawyers, including the litigator, provided to the City or by allowing a third party to ascertain the content of that advice.[14]

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[6] Affidavit of the Assistant Director, para 4.
[7] City's initial submissions, para 73.
[8] Affidavit of the Assistant Director, para 5. I note that the Assistant Director provides the name and title of the litigator.
[9] Affidavit of the Assistant Director, para 8.
[10] Affidavit of the Assistant Director, paras 6 and 9.
[11] Affidavit of the Assistant Director, para 9.
[12] Affidavit of the Assistant Director, para 9.
[13] Affidavit of the Assistant Director, para 13.
[14] Affidavit of the Assistant Director, para 12.

The applicant's response submissions

[30] The applicant says that the City is trying to establish privilege where none exists by inference or by implication that if a lawyer is involved in any way, that it establishes privilege.[15] More specifically, the applicant says that some of the City's submissions (for example, that the Report was "sensitive" and that there was a recommendation that the Report be withheld indefinitely) indicates that the City does not want to release the Report, not that it is privileged.[16] It further says that the fact that the City lawyers consulted on the Report is standard procedure and is not evidence of privilege for any portion of the record.[17] The applicant further alleges that various phrases used by the City indicate that it is "sidestepping" the issue of actual privilege, and suggests that the City has only provided "inference" and not "facts" to support its claim of privilege.[18]

[31] The applicant also challenges the extent of the City's claim of privilege. The applicant takes issue with the fact that the City applied s. 14 to the entire body of the Report.[19] The applicant says it does not seek access to any legal advice about the Report, rather it seeks the information about prepayment information for leaseholders that was put before City Council.[20] It questions whether the whole body of the Report should be withheld.

The City's reply submissions

[32] The City reiterates that the legal advice contained in the Report is so intertwined with the remainder of the Report that it cannot be separated.[21] For this reason, the City submits that severance is not appropriate.[22]

[33] With regards to the applicant's concern about the recommendation that the Report be withheld indefinitely, the City says that it was the litigator – a lawyer directly involved in providing advice in relation to matters contained in the Report – who recommended it be withheld indefinitely.[23] The City also says that the fact that the Director of Legal Services was listed as a consulting author on the Report indicates a higher level of involvement and was not standard procedure.[24]

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[15] Applicant's response submissions, paras 7 and 10.
[16] Applicant's response submissions, para 7.
[17] Applicant's response submissions, para 9.
[18] Applicant's response submissions, para 24.
[19] Applicant's response submissions, para 10.
[20] Applicant's response submissions, para 25.
[21] City's reply submissions, para 7.
[22] City's reply submissions, para 8.
[23] City's reply submissions, para 4.
[24] City's reply submissions, para 4.

[34] Finally, the City says that the applicant misapprehends the nature of the OIPC's review and advocates for a standard of evidence that is not supported by relevant case law.[25]

Analysis and finding on solicitor-client privilege

[35] For the reasons that follow, I find that the City's evidence establishes that legal advice privilege applies to the withheld information in the Report.

[36] Based on her evidence, I am satisfied that the Assistant Director gave confidential legal advice to the then Director of Real Estate Services as part of a solicitor-client relationship and that this advice is reflected in the Report. In my opinion, the *in camera* descriptions of the recommendations and legal issues addressed in the Report support the Assistant Director's evidence that the advice given was legal advice and that the advice was intended to be confidential.

[37] None of the applicant's arguments persuade me that the City's claim of privilege is unfounded. Whether the City thinks the Report contains sensitive information has no bearing on whether that information is also privileged. Similarly, just because a legal review is standard practice – and I note the City indicates the review in this case was more involved – does not mean that the resulting legal advice is not privileged.

[38] In addition, what the applicant says about the wording used by the City in its submissions in no way indicates to me that the City is "sidestepping" the issue of privilege. The City has provided direct evidence from a lawyer who gave the relevant legal advice and I have found that this is sufficient to decide privilege.

[39] As mentioned above, the applicant has challenged the extent of the City's claim of privilege. This puts in issue whether any information can be severed. Courts have repeatedly cautioned against severing due to the risk of revealing privileged information. For example, the BC Court of Appeal in *British Colombia* (*Attorney General) v Lee* said that "severance should only be considered when it can be accomplished without any risk that the privileged legal advice will be revealed or capable of ascertainment."[26]

[40] In this case, I am not satisfied that information at issue can be severed without any risk of revealing privileged legal advice, either directly or by inference. The Assistant Director deposes that legal advice is reflected throughout the withheld portion of the Report and that disclosure would pose a significant risk of revealing that advice or would allow a third party to ascertain that advice. Based on this evidence and the cautious approach to severing

[25] City's reply submissions, para 5.
[26] 2017 BCCA 219 at para 40.

advocated by the Courts, I find that it would be inappropriate to order the City to disclose additional information in the Report.

[41] For the reasons above, I find that all of the information withheld from the Report would reveal, directly or by inference, information that is subject to solicitor-client privilege.

Did the City waive privilege?

[42] The applicant has argued that the City has already disclosed some information in the Report, which puts in issue whether privilege has been waived over part or all of it.

[43] It is well-established that waiver can occur in either of the two following scenarios:

1. The possessor of the privilege knows of the privilege and voluntarily demonstrates an intention to waive it (i.e. express waiver); or

2. In the absence of an intention to waive the privilege, fairness and consistency require disclosure (i.e. implied waiver).[27]

[44] Due to the overall importance of solicitor-client privilege to the functioning of the legal system, waiver, whether express or implied, must be clear and unambiguous.[28] The party asserting waiver bears the burden of showing that there has been a waiver.[29]

The parties' submissions on waiver

[45] The applicant asserts that information in the Report has already been disclosed by the City.[30] First, the applicant says that at least some information in the Report has already been disclosed publicly in a prior report (2006 Report). Specifically, it says that the rent prepayment amounts, including schedules of annual and monthly rents for the same properties and the same lease period were disclosed publicly in the 2006 Report. It says that the City offered no explanation for why it has withheld that same information in the Report. Also, the applicant says that the City sent letters to non-prepaid lease holders in January 2010 which disclosed some of the content of the Report. It says that the second paragraph of the letter discusses legal issues relating to the leases and that the

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[27] *S. & K. Processors Ltd. v. Campbell Ave. Herring Producers Ltd*., 1983 CanLII 407 (BC SC) at para 6.
[28] *Maximum Ventures Inc. v. de Graaf et al,* 2007 BCSC 1215 at para 40.
[29] *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.,* 2007 BCSC 1420 at para 22 citing *SNC-Lavalin Engineers & Constructors Inc. v. Citadel General Assurance Co*., 2003 CanLII 64289 (ON SC) at para 54.
[30] The submissions in this paragraph are from the applicant's submissions at para 25.

third paragraph entitled "Lease Expiry Provisions" describes instructions that the City Council gave to the City's legal department.

[46] In reply, the City says it has not waived privilege over any part of the Report.[31] The City says that the 2006 Report was considered in a public meeting and drafted for that purpose, and that the Report differs from the 2006 Report because the former contains legal advice. It also says that "the April 21, 2011 letter referenced by the applicant" does not refer to the Report or information directly from the Report and as such cannot amount to a full or partial waiver of the Report. Accordingly, the City submits that the applicant has not met its onus of showing that the City has waived privilege over any part of the Report.

[47] I wrote to the parties because it was unclear if the January 2010 letter the applicant mentioned was the same as the April 21, 2011 letter the City referenced. Each party confirmed that the dates in their submissions was correct and the applicant said it never relied on a letter dated April 21, 2011. I concluded from this that the City and the applicant were relying on two separate letters.

[48] The applicant provided a copy of a letter dated January 15, 2010 it says demonstrates a waiver of privilege. While the City objected, I accepted the January 15, 2010 letter into evidence and allowed the City to make further submissions on whether any information in this letter reveals any information in the Report.

[49] In its further submissions on this issue, the City says that the January 15, 2010 letter provided by the applicant does not disclose any privileged information.[32] It says that the purpose of the January 15, 2010 letter was to provide an update on the rent review process for the residential leaseholds. The City says that the topics addressed in the letter have legal dimensions but the letter did not discuss any specific legal advice provided about these issues. More specifically, the City says that the letter provides some details on the prepayment offer but does not expressly reference the Report.

Analysis and finding

[50] For the reasons that follow, I am not satisfied that the City waived solicitor-client privilege over any part of the Report.

[51] First, nothing in the January 15, 2010 letter itself indicates to me that it discloses privileged legal advice. For example, the part of the letter that the applicants say discusses legal issues relating to the leases appears to me to be the City acknowledging concerns of leaseholders. While the concerns at least

[31] The submissions in this paragraph are from the City's reply submissions at paras 15 and 18.
[32] The information from this paragraph is from the City's additional reply submissions, dated June 20, 2022.

partially relate to the City's legal obligations, I do not see how restating the concerns of the leaseholders amounts to a waiver of any privileged information.

[52] In addition, I do not think that the information in the January 15, 2010 letter under the heading "Lease Expiry Provisions" indicates that the City implicitly waived privilege over the contents of the Report. This part of the letter says that "City Council instructed City Legal Services to work with the Province to review concerns raised by the leaseholders about the rights and obligations of the City as landlord at the lease expiry date pursuant to the Strata Property Act." This is a very general statement and I do not find that it amounts to a waiver of any part of the Report.

[53] For these reasons, I am not persuaded that anything in the January 15, 2010 letter indicates that the City waived privilege over all or part of the withheld information in the Report.

[54] In addition, I am not satisfied that the 2006 Report discloses any of the same information that I have found is privileged in the Report. The City provided a copy of the 2006 Report[33] and nothing in it indicates to me that it overlaps with the information in the Report or in any way discloses privileged legal advice. Therefore, I do not find that the 2006 Report establishes that the City waived privilege over the Report.

[55] In conclusion, I find that disclosure of the withheld portions of the Report would reveal information that is subject to legal advice privilege and that this privilege has not been waived.[34]

Section 6(1) – adequate search

[56] Section 6 (1) of FIPPA says:

> The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

[57] Section 6(1) sets out the manner in which public bodies are required to interact with applicants. It imposes a number of obligations on a public body, including the duty to conduct an adequate search for records. Since the interpretation of an access request determines the scope of the search, whether a public body reasonably interpreted the request is relevant to s. 6(1). Public

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[33] The City has provided this report as Exhibit B to the Affidavit of the Director of Real Estate Services and the applicant confirmed that this is the report it is relying on at paragraph 25 of its response submissions.

[34] As I have found that s. 14 applies to portions of the Report in dispute, I do not need to also address whether s. 12(3)(b) applies.

bodies should interpret access requests in a "manner that a fair and rational person would consider appropriate in the circumstances."[35] Specifically, public bodies should avoid overly literal or narrow interpretations of access requests.[36] The duty to assist under s. 6(1) may also require a public body to ensure it clearly understands what information an applicant seeks by clarifying the request.[37]

[58] When deciding which records to treat as responsive, a public body should be guided by the records' "plain content or function" rather than the names or titles of the records.[38]

[59] The crux of the applicant's complaint in this case is that the City failed to provide the relevant appraisals it asked for in part two of its access request. The applicant says that the appraisals provided by the City were not responsive to this request, and as I detail below, that there is a record that should have been provided.

[60] The content and chronology of the communications between the City and the applicant is relevant and so I will set out the relevant communications below.[39]

[61] On July 20, 2019 the applicant made a request for the following records (initial request):

> The Administrative Report dated November 25, 2009, entitled "False Creek Residential Leasehold Properties – Prepayment Program" and any related appraisal reports prepared for or by the City of Vancouver.

[62] On July 22, 2019, the City clarified the request. In doing so, it recharacterized the second part of the request as "Any related appraisal reports prepared for or by the City of Vancouver *in support of the said report*". [emphasis added].

[63] On December 17, 2019 the City provided some records which it called "appraisal reports" to the applicant.

[64] On January 17, 2020 the applicant complained to the OIPC (complaint). In part, the complaint said:

> "We do not believe that the City conducted an adequate search for the records we requested; at least one appraisal report must have been

[35] *Investigation Report F08-01*, 2008 CanLII 1648 at para 18.
[36] *Ibid.*
[37] Order 00-33, 2000 CanLII 14398 (BCIPC) at 3.2.
[38] *Ibid.*
[39] This chronology is in the investigators Fact Report and the City's initial submissions.

> prepared (either by City staff or a consultant) to determine the prepayment calculation methodology and the prepayment amounts recommended by City staff in the November 25, 2009 report […] yet none was provided in response to our FOI request."

[65] The City says that it has conducted an adequate search but that the records sought do not exist.[40] It provided evidence from the City's Director of Real Estate Services (Director). The Director says that the premise of the applicant's complaint is incorrect because the City did not commission any new appraisal reports in support of the Report.[41] Rather, City staff calculated the prepayment amounts "by taking the amounts previously offered in 2001 and adjusting these amounts based on information available from the BC Assessment Authority."[42] I will refer to this information as the Calculations.

[66] The applicant says that the Calculations constitute "an appraisal report" and therefore should have been provided in response to the access request. More specifically, the applicant says that "the meaning of "appraisal" is a determination of value, and the meaning of "report" is an account or description of something."[43] The applicant says that for this reason, the City's search is incomplete.

[67] In reply, the City says that the interpretation suggested by the applicant is not supported by the wording of the access request.[44] More specifically, the City says that an "appraisal" is a term of art and is defined in the Canadian Uniform Standards of Professional Appraisal Practice as a "formal opinion expressed in written or oral form that is prepared as a result of a retainer or an agreement and is intended to be relied upon by identified parties; and for which the Member assumes responsibility." The City submits that a fair and reasonable person would interpret the words "appraisal report" to refer to formal reports; however, it says that even the broadest interpretation would not include all records relating to the Calculations, as the applicant suggests.

[68] For the reasons below, I find that the City failed to meet its duty to assist under s. 6(1).

[69] First, the definition that the City has put forth for "appraisal" is inappropriate in this context. I can accept that for the purpose of a setting out an industry standard an "appraisal" is a term of art and requires a clear and precise definition. I appreciate what the City says about how the term "appraisal report" implies a degree of formality and that the Calculations may not have been the

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[40] I note that the City also described its search in detail but I do not find it relevant to the applicant's complaint.
[41] Affidavit of the Director, paras 31 and 28(c) (in open evidence).
[42] Affidavit of the Director, para 31.
[43] Applicant's response submissions, para 22.
[44] All of the information in this paragraph is from the City's reply submissions, para 14.

kind of formal, discrete records that are usually classified by professional appraisers as an "appraisal report". However, I find that the way the City interprets the meaning of "appraisal report" in the applicant's access request is not appropriate given the context has nothing to do with professional appraisal standards. This is the kind of overly narrow interpretation that leads to an unreasonable search.

[70] Further, I find it relevant that the complaint made it very clear that the applicant was seeking information detailing how the prepayment amounts were calculated. I find that the duty to assist under s. 6(1) required the City to at least consider the complaint as it relates to the access request.[45] In this case, the complaint offered a clarification, rather than an expansion of the access request, and made it obvious that the applicant was seeking the kind of information contained in the Calculations. In my opinion, it was unreasonable for the City not to have considered the Calculations to be responsive at the time it received a copy of the complaint.

[71] I also note that the City has repeatedly said that it did not commission "any new" appraisal reports in support of the Report.[46] I gather that this is meant to bolster the City's argument that there were no records that responded to the second part of the request. However, the second part of the initial request was for "any related appraisal reports" and it was the City who "clarified" the request by adding the words "in support of the said report." I find that the second part of the applicant's request was not only for "new" appraisal reports. In my opinion, the language the City added unjustifiably narrowed the scope of the access request to records that were "new" thereby excluding the Calculations because they were based on prior work. In my view, this was inappropriate.[47]

[72] For these reasons, I find that the City did not meet its duty to respond openly, accurately and completely under s. 6(1). I find that the Calculations are a responsive record and order the City to respond to the applicant in accordance with Part 2 of FIPPA.

CONCLUSION

[73] For the reasons given above, I make the following order under s. 58 of FIPPA:

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[45] This approach is consistent with Order F21-41, 2021 BCIPC 49 where the adjudicator considered the whole back and forth between the public body and the applicant, including the clarifications of the request, the complaint to the public body and the complaint to the OIPC.
[46] City's initial submissions, para 56; Affidavit of the Director, para 28(c) in open evidence.
[47] Alternatively, it would have been reasonable for the City seek further clarification from the applicant regarding the scope of its request.

1. I confirm that the City is authorized to refuse to disclose the Report under s. 14.

2. I order the City to perform its duty to assist under s. 6(1) by treating the Calculations as a record responsive to the applicant's access request and responding in accordance with Part 2 of FIPPA.

3. The public body must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of its response to the applicant regarding item 2 above.

[74] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **September 1, 2022**.

July 20, 2022

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F20-81677 & F20-81818