Order F25-20

CITY OF KAMLOOPS

D. Hans Hwang
Adjudicator

March 13, 2025

CanLII Cite: 2025 BCIPC 24
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 24

Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested access from the City of Kamloops (City) to communications between the City's mayor and the City's councillors. The City provided records to the applicant but withheld some information from those records under several FIPPA exceptions. The adjudicator found that the City was authorized to withhold all the information it refused to disclose under s. 14 (solicitor client privilege), some of the information it refused to disclose under s. 13 (advice and recommendations) and none of the information it withheld under s. 16(1)(b) (disclosure harmful to intergovernmental relations). In addition, it was only required to withhold some of the information in dispute under s. 22(1) (unreasonable invasion of a third party's personal privacy). The City was ordered to give the applicant access to the information it was not authorized or required to refuse to disclose.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 13(1), 14, 16(1)(b), 22(1), 22(3)(d), 22(3)(g), 22(4), 25(1)(b) and Schedule 1 (Definitions).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a journalist (applicant) made two requests[1] to the City of Kamloops (City) for access to communications between the City's mayor (Mayor) and members of the City Council, which took place in March 2023.

[2] The City provided the applicant with records but withheld some information from those records under ss. 12 (cabinet and local public body confidences), 13(1) (advice or recommendations), 14 (solicitor-client privilege),

[1] Request 0215-1132 dated March 20, 2023 (Request 1) and Request 0215-1142 dated April 4, 2023 (Request 2).

16(1) (disclosure harmful to intergovernmental relations), 17(1) (disclosure harmful to financial or economic interests) and 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA.[2]

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision to withhold information. Mediation by the OIPC did not resolve the matter and the applicant requested that it proceed to this inquiry.[3] Both parties provided written inquiry submissions.

[4] In its submissions, the City indicates that it is no longer relying on s. 12 to withhold any of the information in dispute.[4] Therefore, I will not consider this section further in this order.

Preliminary Issue – Public Interest, s. 25

[5] In the applicant's submission, he submits that I should consider the public interest in disclosing the information in dispute because events related to the substance of their access request have been subject to extensive media coverage.[5] Based on this, it seems the applicant is arguing that s. 25(1)(b) (disclosure clearly in the public interest) applies to the information in dispute.

[6] Section 25 is not listed as an issue in the investigator's fact report or the notice of inquiry. The notice of inquiry, which was provided to both parties at the start of this inquiry, also states that parties may not add new issues to the inquiry without the OIPC's prior consent. Past OIPC orders have consistently held that parties may only introduce new issues at the inquiry stage if they request and receive prior permission from the OIPC to do so.[6] The applicant did not request to add s. 25 into the inquiry or explain why he is raising it at such a late stage in the inquiry process.

[7] I can see nothing in the circumstances of this case, that suggest it would be appropriate or fair to add s. 25 to the inquiry at this late stage. Therefore, I will not consider whether s. 25 applies to the information in dispute.[7]

---

[2] From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified. In its initial submission on s. 16, the City clarifies it relies on s. 16(1)(b).
[3] The City's responses to both Request 1 and Request 2 are in issue in the inquiry.
[4] City's initial submission at para 4. As the City has applied ss. 13(1) and 14 to withhold the same information to which it is no longer applying s. 12, I will determine if ss. 13(1) and/or 14 applies to that information that is located at pages 1 and 2 of the Request 1 records.
[5] Applicant's response submission at page 10.
[6] See, for example, Order F16-34, 2016 BCIPC 38 at para 9.
[7] For similar reasoning, see Order F15-15, 2015 BCIPC 16 at para 10; Decision F08-02, 2008 CanLII 1647 (BC IPC) at paras 28-30.

ISSUES AND BURDEN OF PROOF

[8] The issues I must decide in this inquiry are:

1. Is the City authorized to refuse to disclose the information in dispute under ss. 13(1), 14, 16(1)(b) or 17(1)?

2. Is the City required to refuse to disclose the information in dispute under s. 22(1)?

[9] Under s. 57(1), the City has the burden of proving that the applicant does not have a right of access to the information the City has withheld under ss. 13(1), 14, 16(1)(b) and 17(1).

[10] With respect to s. 22(1), s. 57(2) says that the burden is on the applicant to prove that disclosure of any third party personal information in dispute would not be an unreasonable invasion of third party personal privacy. However, the City has the initial burden of proving the information at issue qualifies as third party personal information.[8]

BACKGROUND

[11] In March 2023, the Mayor announced changes to the City's standing committee appointments (Committee Changes).

[12] The Committee Changes included changing who sits on the City's Community Relations and Reconciliation Committee, which is responsible for fostering a positive relationship between the City and the governing bodies of nearby First Nations.

[13] Eight members of the City Council held a press conference and read a statement criticizing the Committee Changes.

RECORDS AND INFORMATION AT ISSUE

[14] The responsive records consist of 79 pages with the information in dispute appearing on 51 of those pages. From my review of the records, I can see that they consist of emails, some with attachments, and text messages.[9]

---

[8] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

[9] The responsive records for Request 1 total 64 pages of email chains and document attachments with 40 pages containing the information in dispute. The responsive records for Request 2 total 15 pages of text messages with 11 pages containing the information in dispute.

SOLICITOR-CLIENT PRIVILEGE, s. 14

[15] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. For purposes of s. 14, solicitor-client privilege includes legal advice privilege and litigation privilege. Only legal advice privilege is at issue in this inquiry.

Evidentiary basis for solicitor-client privilege

[16] The City did not provide me with the information it withheld under s. 14. Instead, it provided affidavit evidence from its corporate officer (Corporate Officer).[10] The affidavit provides a brief description of each record, including the number of pages and the people involved in the communications reproduced in the record.

[17] Section 44(1)(b) gives me, as the Commissioner's delegate, the power to order production of records to review them during an inquiry. However, given the importance of solicitor-client privilege, and in order to minimally infringe on that privilege, I would only order production of records being withheld under s. 14 when it is absolutely necessary to decide the issues in dispute.[11]

[18] After a preliminary review of the City's submissions and affidavit evidence, I determined that the City had not provided a sufficient evidentiary basis for me to determine whether the records the City has withheld under s. 14 are subject to solicitor-client privilege. Therefore, I provided the City with an opportunity to submit additional evidence in support of its privilege claim.[12] In response to my request, the City provided further submissions on this issue and a second affidavit from the Corporate Officer.[13]

[19] As an administrative tribunal, the OIPC is not bound by the strict rules of evidence and it is open to me to accept sworn evidence based on opinion and belief as opposed to first-hand knowledge in some cases.[14] I find that the Corporate Officer was not personally included in all of the communications which

---

[10] Affidavit #1 of Corporate Officer.
[11] Order F14-19, 2014 BCIPC 16 at para 10; *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para 17; *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 at para 68.
[12] OIPC's January 9, 2025 letter.
[13] City's January 21, 2025 letter and Affidavit #2 of Corporate Officer. After reviewing the City's supplementary submissions and affidavits, I found it unnecessary to provide the applicant with the opportunity to reply further. The applicant already had the opportunity to provide evidence relevant to s. 14 based on the record in this inquiry. The supplementary submissions and evidence merely provided the clarification of that record, and no further response was required.
[14] Order F21-15, 2021 BCIPC 19 at para 65, citing Order F20-16, 2020 BCIPC 18 at para 10; Order P07-01, 2007 CanLII 44884 (BC IPC) at para 59 citing *Cambie Hotel (Nanaimo) Ltd. (c.o.b. Cambie Hotel) v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119.

the City submits are privileged but was personally included in some of them. The Corporate Officer explains that she has reviewed the records at issue, was aware of what was transpiring at the time the communications took place and highlights why those communications would meet the test for privilege. I accept the Corporate Officer's evidence that she has personal knowledge of the matters and reviewed the records at issue. After reviewing the additional submissions and affidavit evidence, I find I now have sufficient evidence to decide whether s. 14 applies.[15]

Legal advice privilege

[20] Legal advice privilege serves to promote full and frank communications between solicitor and client, thereby facilitating effective legal advice, personal autonomy, access to justice and the efficacy of the adversarial process.[16]

[21] Not all communications between a client and their lawyer are protected by legal advice privilege, but the privilege will apply to communications that:

1. are between solicitor and client;
2. entail the seeking or giving of legal advice; and
3. are intended by the parties to be confidential.[17]

[22] Furthermore, it is not only the direct communication of advice between solicitor and client that may be privileged. The "continuum of communications" related to the advice, that would reveal the substance of the advice, attracts the privilege.[18] The "continuum of communications" includes the necessary exchange of information between solicitor and client for the purpose of obtaining legal advice, such as when a client furnishes information to assist their solicitor in providing legal advice.[19] It also includes communications at the other end of the continuum, such as internal client communications about legal advice and its implications.[20]

---

[15] See for similar reasoning *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para 78; Order F22-23, 2022 BCIPC 25 (CanLII) at paras 17-19.
[16] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 30.
[17] *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at 837.
[18] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24. See also *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at paras 32-33.
[19] *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority,* 2011 BCSC 88 at para 40.
[20] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24.

[23] Considering the attachments to emails, solicitor-client privilege does not necessarily apply to all attachments.[21] However, depending on their content, attachments may be privileged on their own, independent of being attached to an email which is itself privileged. Further, an attachment may be privileged if it constitutes an integral part of the communication to which it is attached and disclosure of the attachment would reveal, or allow accurate inferences to be drawn about, privileged information contained in that communication.[22] The party claiming privilege over an attachment must provide evidence supporting their claim.[23]

Parties' submissions

[24] The City says that disclosing the records in dispute would reveal communications between the City and its officials and staff wherein those parties sought and received legal advice from a lawyer for the City (Lawyer) and discussed that legal advice and its implications.[24] Based on this, the City submits that disclosing the information it withheld under s. 14 would reveal confidential legal advice the Lawyer provided to the City in the context of an ongoing solicitor-client relationship.[25]

[25] The applicant opposes the City's claim of solicitor-client privilege. The applicant suggests that the Lawyer has publicly spoken about the City's legal matters, and that this led to a waiver of any privilege the City may have had regarding the information in dispute.[26]

[26] The City says that any legal matters which were the subject of the Lawyer's public comment were unrelated to the information in dispute. The City also says it has never waived solicitor-client privilege over the disputed information.[27]

Analysis and findings

[27] From my review of the submissions and evidence before me, I find that the City has withheld information under s. 14 from:

---

[21] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner*, 2021 BCSC 266 at para 110.
[22] Order F20-08, 2020 BCIPC 9 at para 27 and Order F18-19, 2018 BCIPC 22 at paras 36-40.
[23] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner*, 2021 BCSC 266 at para 111.
[24] City's initial submission at paras 43 and 49.
[25] City's initial submission at para 44.
[26] Applicant's response submission at page 4.
[27] City's reply submission at paras 12 and 14.

- Emails the Corporate Officer sent to City councillors, the City's chief administrative officer (Chief Administrative Officer) and other City staff;[28]
- An Email the Lawyer sent to the City enclosing a legal brief;[29]
- Emails the Chief Administrative Officer sent to City councillors and City staff;[30] and
- Text messages between City councillors.[31]

Between solicitor and client

[28] The first step in the legal advice privilege test looks at whether the communications in issue are between a solicitor and their client. For the reasons that follow, I find this first step is met in this case.

[29] The Corporate Officer explains that her work involves ensuring accurate minutes are prepared for Council meeting, and maintaining the minutes, bylaws and other records of the City. The Corporate Officer attests that the Lawyer provided legal advice to the City about statutory committees and processes for implementing different legal options available to the City Council regarding changes to those committees, and the records withheld under s. 14 relate to these matters.[32] I find that the Corporate Officer has first-hand knowledge regarding the ongoing relationship between the City and the Lawyer. Therefore, based on the Corporate Officer's evidence, which I accept, I find that the City and City staff were in a solicitor-client relationship with the Lawyer at all relevant times.

Seeking or giving of legal advice

[30] I will now consider whether the communications containing the information in dispute entailed the seeking or giving of legal advice.

[31] I find the Corporate Officer's affidavit evidence establishes that releasing the disputed information would reveal the substance of communications between the Lawyer and the Chief Administration Officer which were sent and received for the purpose of seeking and giving legal advice. The Corporate Officer attests that these communications referred to and commented on legal advice the Lawyer provided to the City. I am satisfied that this affidavit evidence establishes the withheld information is directly concerned with legal advice and its implications.[33]

---

[28] Page 1 of the Request 1 records.
[29] Page 2 of the Request 1 records.
[30] Pages 1, 11 and 13 of the Request 1 records.
[31] Page 1 of the Request 2 records.
[32] Affidavit #2 of Corporate Officer at para 4(a).
[33] For similar reasoning, *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24.

[32] The applicant asserts that the City had withheld an excessive amount of information because some of the information has been withheld from the subject line of emails and some of the information is only one line.[34] I disagree with the applicant's argument in this regard. Legal advice privilege applies to any information that would allow persons to accurately infer legal advice sought and received, it is the substance, not the amount, of information in issue that is the relevant factor.[35]

[33] Considering these circumstances, I find the emails and text messages at issue represent communications which were made for the purpose of seeking or giving legal advice and some of these communications (i.e., internal communications between the City staff and City councillors) fall within the continuum of communications related to the legal advice because they are discussions and comments about the Lawyer's legal advice. Therefore, the second step of the test is met.

Intended to be confidential

[34] The Corporate Officer's evidence, which I accept, is that other than the people involved in the withheld communications, the disputed information has never been publicly disclosed and the City intended to keep the information confidential. I can also see some of the information at issue is contained in an email that is explicitly marked privileged.[36]

[35] The applicant asserts that the Lawyer spoke publicly about the City's legal matters and that was a waiver of legal advice privilege.[37] However, the applicant's submissions on waiver do not provide evidence that demonstrates the City expressly or implicitly waived privilege over the specific information in dispute in this inquiry. The fact that Lawyer spoke publicly about the City's legal matter does not demonstrate the content of the Lawyer's public announcement concerned the information in dispute here, nor does it demonstrate the City waived privilege over the information in dispute.[38]

[36] Having considered all of this together, I conclude that the information in dispute was intended to be kept confidential.

Conclusion, s. 14

[37] For the reasons given above, I find that the City has shown that disclosing any of the records in dispute under s. 14 would reveal information that is

---

[34] Applicant's response submission at page 3.
[35] For similar reasoning, Order F20-48, 2020 BCIPC 57 at paras 64-65.
[36] Information withheld from page 1 of the Request 1 records.
[37] Applicant's response submission at page 4.
[38] For similar reasoning, Order 24-12, 2024 BCIPC 16 at paras 53-54.

protected by legal advice privilege. Therefore, the City is authorized to withhold the disputed information under s. 14.

ADVICE OR RECOMMENDATIONS, s. 13(1)

[38] Section 13(1) provides that the head of a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister. The purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative process were exposed to public scrutiny,[39] and to protect the free and frank flow of advice and recommendations that occurs when a public body is considering a given issue.[40]

[39] Previous orders and court cases have considered the following to be relevant interpretive principles for applying s. 13(1) and I adopt those principle here:

- Section 13(1) applies to information that would reveal advice or recommendations and not only to information that is advice or recommendations.[41]
- The terms "advice" and "recommendations" are distinct, so they must have distinct meanings.[42]
- "Recommendations" relate to a suggested course of action that will ultimately be accepted or rejected by the person being advised.[43]
- "Advice" has a broader meaning than "recommendations". It includes setting out relevant considerations and options, and providing analysis and opinions, including expert opinions on matters of fact.[44] "Advice" can be an opinion about an existing set of circumstances and does not have to be a communication about future action.[45]
- "Advice" also includes factual information "compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body."[46] This is because the compilation of factual information and weighing of significance of matters of fact is an integral component of an expert's advice and informs the decision-making process.

---

[39] *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para 52.
[40] Order 01-15, 2001 CanLII 21569 (BC IPC) at para 22.
[41] Order 02-38, 2002 CanLII 42472 (BC IPC) at para 135.
[42] *John Doe v. Ontario (Finance)*, 2014 SCC 36 [*John Doe]* at para 24.
[43] *John Doe* at paras 23-24.
[44] *John Doe* at paras 26-27 and 46-47. *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2001 BCSC 726 [*College*] at paras 103 and 113.
[45] *College* at para 103.
[46] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 84.

[40] The first step in the s. 13 analysis is to determine whether the information in dispute would reveal advice or recommendations if disclosed. If it would, the next step is to determine whether ss. 13(2) or 13(3) applies. Section 13(2) lists classes of records and information that cannot be withheld under s. 13(1) and s. 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for more than 10 years.

Parties' submissions

[41] The City says that the information it is withholding under s. 13(1) reveals City councillors exercising their judgement and skill to select factual information and weigh the significance of matters of fact.[47]

[42] The applicant submits that the information consists of comments or suggestions, not advice and recommendations. He also says that communications between City councillors and City Staff cannot be construed as policy advice or recommendations.[48]

Analysis and findings

[43] For the reasons that follow, I find that s. 13(1) applies to most, but not all, of the information the City has withheld under that section.

[44] The City is refusing to disclose under s. 13(1) information contained in:

- emails that a City councillor sent to other members of City Council;[49]
- two slightly different versions of a public statement city councillors made about the Committee Changes;[50] and
- text messages between three members of City Council about the Committee Changes[51]

---

[47] City's initial submission at para 29. The City has applied s. 13(1) to withhold some of the information to which I found s. 14 applies. As I found this information is subject to legal advice privilege, it is not necessary to consider whether s. 13(1) also applies to the same information and I decline to do so. Therefore, I will only consider whether s. 13(1) applies to information which the City did not submit was exempted from disclosure under s. 14.
[48] Applicant's response submission at pages 1-2.
[49] Pages 29 (duplicate on page 58), 30 (duplicate on pages 31 and 55), 32 (duplicate on pages 51 and 54), 33 (duplicate on page 50), 34 (duplicate on page 47), 35 (duplicate on page 45), 36 (duplicate on page 42), 39 (duplicate on page 61), 44, 48, 49, 53 of the Request 1 records.
[50] Pages 38-39 and 60-61 of the Request 1 records. The withheld information is on pages 39 and 61.
[51] Pages 1, 11 and 13 of the Request 2 records.

[45] I find that most of the information withheld from the emails and text messages is the City councillors' advice for the City about the Committee Changes. This information includes relevant considerations and opinions on a course of future action identified by City councillors about the Committee Changes.

[46] I also find that the information withheld from the two versions of the public statement reveal city councillors' recommendations to each other about what they should say publicly about the Committee Changes. Only a few lines of the statement have not been disclosed to the applicant. The emails that accompany the statement show that the councillors were discussing the most appropriate wording to convey their message to the public. A councillor prepared the first version of the statement which contained the wording she recommended, and another councillor recommended removing some wording which was crossed-out in the second statement. I find that disclosure of the information withheld from the two versions of the public statement reveal the city councillors' recommendation to each other about how best to communicate their views regarding the Committee Changes.

[47] However, I find that disclosing the remaining information in dispute under s. 13(1) would not reveal advice or recommendations developed by or for the City. For example, a severed portion of one email sets out a City councillor's general thoughts which I find do not relate to any specific decision about future action. In my view, this information consists strictly of the councillor's personal impressions of what he would do if he were in someone else's shoes.[52] Also, I find a councillor's text message that only asks why they are not taking a certain action at that point does not provide any advice or recommendations.[53]

Sections 13(2) and 13(3)

[48] The next step in the s. 13(1) analysis is to consider whether any of the circumstances under ss. 13(2) and 13(3) apply to the information that I found would reveal advice or recommendations. Subsections 13(2) and 13(3) identify certain types of records and information that a public body may not withhold under s. 13(1).

[49] The City submits that none of subsections of ss. 13(2) and 13(3) apply. The applicant does not address ss. 13(2) and 13(3).

[50] Section 13(2)(a) states that a public body must not refuse to disclose "any factual material" under s. 13(1). Factual "material" is distinct from factual

[52] Pages 29 (duplicate on page 58) and 32 (duplicate on page 54) of the Request 1 records at issue.
[53] Page 5 of the Request 2 records at issue.

"information".[54] The difference is whether the facts are a necessary and integrated part of the advice or recommendations. If they are not, then the information is "factual material" and s. 13(2)(a) applies and the City may not withhold that information under s. 13(1). I find that some of the information I found above is advice or recommendations is "factual" in nature. Specifically, information about how the Committee Changes were affecting City staff.[55] I find, however, that the factual information is a necessary and integrated part of the advice or recommendations actually received by the City. Therefore, s. 13(2)(a) does not apply in this case.

[51] Finally, I find that all the records that reveal advice or recommendations were created more recently than 10 years ago. Therefore, s. 13(3) is not applicable in this case.

Conclusion

[52] I conclude that s. 13(1) authorizes the City to withhold most of the information in dispute under that section. There is only a small amount of information that I find the City is not authorized to refuse to disclose under s. 13(1).[56]

DISCLOSURE HARMFUL TO INTERGOVERNMENTAL RELATIONS, s. 16(1)

[53] The City is relying on s. 16(1) to refuse access to a small amount of the information to which s. 13(1) applies.[57] As I find that the City is authorized to withhold this information under s. 13(1), it is not necessary to consider whether s. 16(1) also applies and I decline to do so. The information I am considering under s. 16(1)(b) is in two text messages between City councillors.[58]

[54] Section 16(1) authorizes public bodies to refuse access to information if disclosure would be harmful to intergovernmental relations. The City relies on s. 16(1)(b) specifically,[59] so the parts of s. 16(1) relevant to this inquiry read as follows:

> 16 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

[54] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 91.
[55] Page 10 of the Request 2 records at issue.
[56] Pages 29 (duplicate on page 58) and 32 (duplicate on page 54) of the Request 1 records; and page 5 of the Request 2 records.
[57] Page 36 of the Request 1 records.
[58] Pages 4 and 5 of the Request 2 records.
[59] City's initial submission at para 97.

> (a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
>
> (i) the government of Canada or a province of Canada;
>
> (ii) the council of a municipality or the board of a regional district;
>
> (iii) an Indigenous governing entity;
>
> (iv) the government of a foreign state;
>
> (v) an international organization of states,
>
> (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies ….

Received in confidence, 16(1)(b)

[55] The City is withholding information from two text messages between City councillors under s. 16(1)(b).[60]

[56] To withhold information under s.16(1)(b), the City must establish that:

- Disclosure would reveal information it received from a government, council or organization listed in s. 16(1)(a) or one of their agencies; and
- The information was received in confidence.[61]

[57] The City submits that disclosure of the information would reveal information the City says it received in confidence from an Indigenous governing entity, namely the Tk'emlúps te Secwépemc (TteS).[62]

Did the City receive the information from a government?

[58] As mentioned, the information I am considering under s. 16(1)(b) is in two text messages between City councillors. In one, a City councillor (Councillor A) says what she hopes TteS will do.[63] That is clearly not information Councillor A "received" from anyone (let alone received from TteS), so I find s. 16(1)(b) does not apply to it for that reason. That means the only information left to consider under s. 16(1)(b) is in a text message where a different City councillor

---

[61] Order F17-30, 2017 BCIPC 32 (Can LII), para 35 citing Order 02-19, 2002 CanLII 42444 (BC IPC), para 18 and Order No. 331-1999, 1999 CanLII 4253 (BCIPC) at pp.6-9.
[62] City's initial submission at para 97.
[63] Page 5 of the Request 2 records.

(Councillor B) says what TteS is feeling and ready to do.[64] For ease of reference, I will call this Councillor B's text.

[59] Given what the information in dispute in Councillor B's text actually says, I am satisfied Councillor B could only have received that information from TteS.

[60] The next question is whether TteS is a "Indigenous governing entity" within the meaning of s. 16(1)(a)(iii). Schedule 1 of FIPPA defines "Indigenous governing entity" as an Indigenous entity that exercises governmental functions, including but not limited to, an Indigenous governing body as defined in the *Declaration on the Rights of Indigenous Peoples Act*. Previous orders have also found that before FIPPA was amended,[65] an "aboriginal government" included, at the very least, a "band" under the federal *Indian Act*[66] but was not strictly limited to bands or groups that have concluded self-government agreements or treaties.[67]

[61] The City's submissions do not address how TteS meets the definition of "Indigenous governing entity" in Schedule 1 of FIPPA. The City, however, provides affidavit evidence from Councillor B who explains that he was the former chair of the City's Community Relations and Reconciliation Committee and that "TteS is a nearby First Nations government with which the City works closely."[68]

[62] The applicant does not dispute that TteS is an Indigenous governing entity.

[63] I find that TteS is previously known as the Kamloops Indian Band and the courts have recognized and considered the Kamloops Indian Band as an Indigenous governing entity.[69]

[64] Having considered these circumstances, I am satisfied that TteS is an Indigenous governing entity within the meaning of s. 16(1)(a)(iii).

---

[64] Pages 4 of the Request 2 records.
[65] The amendments replace the term "aboriginal government" with "Indigenous governing entity" in s. 16(1)(a)(iii).
[66] *Indian Act*, RSC 1985 c.1-5.
[67] Order 01-14, 2001 CanLII 21567 (BCIPC) at para 14; Order F20-48, 2020 BCIPC 57 at para 190; Order F21-45, 2021 BCIPC 53 at para 74; Order F22-34, 2022 BCIPC 38.
[68] City's initial submission at para 52; Affidavit #1 of the City councillor at para 10.
[69] For example, *James v. Kamloops Indian Band (KIB)*, 2015 BCSC 1893 and *Kamloops Indian Band v. 314162 Ltd. et al, 2000* BCSC 1187 (CanLII). Also, in *R. v. Dumont,* 2002 BCPC 453, the Provincial Court has recognized that the *Indian Act* applies to the Kamloops Indian Band and they have an authority to pass bylaw for the direct taxation of tobacco products purchased on reserve.

Did the City receive the information "in confidence"?

[65] In order for information to be received "in confidence," there must be an implicit or explicit agreement or understanding of confidentiality between the parties who supplied and received the information.[70] This analysis looks at the intentions of both parties, in all the circumstances, to determine if the information was received "in confidence."[71]

[66] Past orders have identified several non-exhaustive factors to consider when determining whether information was received in confidence. These factors include:

- The nature of the information;
- Explicit statements of confidentiality;
- Evidence of an agreement or understanding of confidentiality;
- Objective evidence of an expectation of (or concern for) confidentiality; and[72]
- The subjective intentions of both parties.[73]

[67] The City submits that members of TteS Council provided information to the City in confidence regarding their opinion on the Committee Changes.[74] In his affidavit, Councillor B says that disclosing the disputed information would reveal the confidential information from TteS and harm the trust and relationship between the City and TteS.[75]

[68] The applicant submits that unless the information was plainly expressed as confidential (e.g. marked as "private and confidential") it cannot be assumed the contents were confidential.[76]

[69] For the reasons that follow, I am not satisfied that there was an expectation of or concern for confidentiality regarding the information in dispute in Councillor B's text.

[70] I note that Councillor B asserts he discussed confidential information provided by TteS to the City".[77] However, he does not explain what factors led him to conclude the specific information severed from his text was confidential.

---

[70] Order No. 331-1999, 1999 CanLII 4253 (BC IPC), at page 7.
[71] Order F23-07, 2023 BCIPC 8 (CanLII) at para 76 citing Order No. 331-1999, 1999 CanLII 4253 (BC IPC) at p. 8.
[72] Order No. 331-1999, 1999 CanLII 4253 (BC IPC), at pages 8-9; Order F19-38, 2019 BCIPC 43 (CanLII) at para 117; Order F23-07, 2023 BCIPC 8 (CanLII) at para 76.
[73] Order F23-07, 2023 BCIPC 8 (CanLII) at para 76.
[74] City's initial submission at para 53; Councillor B's Affidavit #1 at para 14.
[75] Councillor B's Affidavit #1 at para 15.
[76] Applicant's response submission at page 5.
[77] Councillor B's Affidavit #1at para 14(a).

He also does not say whether TteS and the City had a mutual understanding or intention for the information in Councillor' B's text to be kept confidential. While the City says TteS and the City work together closely,[78] that is not sufficient to establish the information in in Councillor B's text was received in confidence.

[71] Further, the City offered no corroborating evidence to bolster its assertion regarding confidentiality. In previous OIPC orders where a public body successfully established information was received in confidence, there was some form of corroborating evidence to support the public body's assertion such as an explicit statement of confidentiality.[79] That is not the case here. There is nothing in Councillor B's text or the surrounding texts that mentions the concept of confidentiality. As a result, I am not satisfied that Councillor B and TteS mutually understood, let alone agreed, that the information in Councillor B's text was confidential.

[72] Finally, there is nothing inherently sensitive or confidential about the information in Councillor B's text, so I am also unable to conclude that a reasonable person would regard the information as confidential in nature.[80]

[73] Considering all of this together, I conclude that the City has not established that the information severed from Councillor B's text was received by the City "in confidence" from TteS. Therefore, the City is not authorized to refuse the applicant access to that information under s. 16(1)(b).

HARM TO FINANCIAL OR ECONOMIC INTEREST OF PUBLIC BODY, s. 17

[74] The City has applied s. 17 to a small amount of the information to which s. 13(1) applies.[81] As I find that the City is authorized to withhold this information under s. 13(1), it is not necessary to consider whether s. 17 also applies to the same information and I decline to do so.

UNREASONABLE INVASION OF THIRD PARTY PEROSNAL PRIVACY, s. 22

[75] The City is withholding some of the disputed information under s. 22(1).[82]

---

[78] City's initial submission at para 52; Councillor B's Affidavit #1 of at para 10.
[79] See, for example Order 19-38, 2019 BCIPC 43 (CanLII) at para 123 and Order F17-28, 2017 BCIPC 30 (CanLII) at para 41.
[80] For similar findings, Order F19-38, 2019 BCIPC 43 (CanLII) at para 121 relying on *Chesal v. Attorney General of Nova Scotia*, 2003 NSCA 124 at para 67 and Order F17-28, 2017 BCIPC 30 (CanLII) at para 35. Also, for this reason, I do not believe that I must invite TteS to this inquiry as a third party.
[81] Page 10, line 3 (duplicate on page 11, line 1) of the Request 2 records.
[82] The City has applied s. 22(1) to withhold some of the information to which I found s. 13(1) applies. Therefore, it is not necessary to consider whether s. 22(1) also applies to the same information that is located on pages 9 and 11 of the Request 2 records.

[76] Section 22(1) requires public bodies to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[77] The analytical approach to s. 22(1) is well established and I apply that approach below.[83]

Personal Information

[78] Section 22(1) only applies to personal information, so the first step in the s. 22(1) analysis is to determine whether the information in dispute is personal information.

[79] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.[84] Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.[85]

[80] Contact information is defined in FIPPA 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.[86]

[81] The City submits that the information in dispute under s. 22(1) is personal information because it consists of personal telephone numbers, information about individuals' employment history and opinions about an individual.[87]

[82] The City withheld some information from an email[88] and several text messages under s. 22(1).[89] The information consists of messages about two City councillors (Councillors C and D), City Staff, an applicant for a position with the City (Job Applicant), and the Mayor. In each case, I find the relevant third parties are identified by name.

[83] Further, I find that none of the information is contact information. Although one page contains the personal telephone number of a third City councillor (Councillor E),[90] I find this telephone number is not contact information. That is

[83] See for example Order F15-03, 2015 BCIPC 3 at para 58.
[84] Schedule 1 of FIPPA.
[85] Order F19-42, 2019 BCIPC 47 at para 15.
[86] Schedule 1 of FIPPA.
[87] City's initial submission at para 116.
[88] Page 33 of the Request 1 records.
[89] Pages 6, 7 and 13 of the Request 2 records.
[90] Page 6 of the Request 2 records.

because, taken in its context, it was not provided to the City to allow Councillor E to be contacted at a place of business.

[84] Having considered all of this together, I find that all of the information the City has withheld under s. 22(1) is "personal information" for the purposes of FIPPA.

[85] In his submission, the applicant says he is not seeking information related to City councillors' personal matters.[91] Therefore, I will not consider the City's application of s. 22 to the information about Councillors C and D because it is clearly about their personal lives. I also find Councillor E's personal telephone number is information about this individual's private life so I will not consider whether s. 22 applies to this information.[92]

Not an unreasonable invasion of privacy, s. 22(4)

[86] Having found that all of the information in dispute under s. 22(1) qualifies as personal information, the next step is to consider s. 22(4), which sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy.

[87] The City says that s. 22(4) does not apply in this case.[93] The applicant does not address s. 22(4).

[88] I have reviewed the circumstances set out in s. 22(4), and I conclude that none of them apply to the personal information in dispute.

Presumed unreasonable invasion of privacy, s. 22(3)

[89] The third step in the s. 22(1) analysis is to consider whether any of the presumptions in s. 22(3) apply to the personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

Employment or occupation history, s. 22(3)(d)

[91] Applicant's response submission at page 6. I find the applicant is not seeking release of the following information: Councillor C's personal information at page 33, line 2 and DB's personal information at page 44 and line 1 of the Request 1 records; Councillor D's personal information at page 13, lines 3-4 of the Request 2 records.

[92] In addition, a past OIPC order has said the disclosure of a personal telephone number without consent is a general intrusion into the personal life of an individual. Order F22-20, 2022 BCIPC 22 (CanLII) at para 56.

[93] City's initial submission at para 118.

[90] The City says that s. 23(3)(d) applies to the information about the Job Applicant.[94] The applicant does not address s. 22(3)(d).

[91] Section 22(3)(d) provides that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the third party's employment, occupational or educational history.

[92] Past orders have found that the term "employment history" includes certain contents of a personnel file, the details of disciplinary action taken against employees, performance appraisals of employees, and materials relating to investigations into workplace behaviour.[95] Additionally, it is well-established that s. 22(3)(d) typically applies to personal information in a resume because that information, in most cases, directly relates to an individual's employment and educational history.[96]

[93] I find that s. 23(3)(d) applies to the personal information of the Job Applicant.[97] I am satisfied that this information plainly relates to the employment history of the Job Applicant because it relates to the status of their job application with the City. The information also explains a decision the City made regarding the Job Applicant's job interview. I am satisfied that disclosure of this information is presumed to be an unreasonable invasion of the Job Applicant's personal privacy under s. 22(3)(d).

Personal evaluation, s. 22(3)(g)

[94] Section 22(3)(g) applies to personal information that consists of personal recommendations or evaluations, character references or personnel evaluations about a third party. Previous orders have stated this section can apply to an investigator's evaluative statements of a third party's performance in the workplace.[98]

[95] The City says s. 22(3)(g) applies to information contained in a text message between three City councillors.[99] The applicant submits that the City

---

[94] City's initial submission at para 123. Page 13, lines 5-7 of the Request 2 records.
[95] Order F12-12, 2012 BCIPC 17 (CanLII), at para 31; Order F14-41, 2014 BCIPC 44 (CanLII), at paras 45-46.
[96] Order F09-24, 2009 CanLII 66956 (BC IPC), at para 9; Order 01-18, [2001] BCIPCD No. 19, at para 15; Order F14-22, 2014 BCIPC 25 (CanLII), at para 63.
[97] Page 13, lines 5-7 of the Request 2 records at issue.
[98] Order 01-07, 2001 CanLII 21561 at para 21; Order F05-30, 2005 CanLII 32547 (BC IPC) at paras 41-42; Order F14-10, 2014 BCIPC 12 (CanLII) at para 19; Order F16-12, 2016 BCIPC 14 at para 28.
[99] Page 7 of the Request 2 records.

has already disclosed similar text messages and the information in dispute ought to be disclosed as well on that basis.[100]

[96] I can see that the information the City submits comes within s. 22(3)(g) contains a City councillor's personal opinion about the Mayor. However, I find that none of this information is a personal evaluation or recommendation about the Mayor in the context of his job performance. As a result, I find s. 22(3)(g) does not apply to the comment about the Mayor or to any of the other personal information in dispute.

Relevant circumstances, s. 22(2)

[97] The final step in a s. 22 analysis is to consider the impact of disclosing the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step, after considering all relevant circumstances, that the applicant may rebut the presumption created under s. 22(3)(d).

[98] The City says that none of the s. 22(2) factors weigh in favour of disclosing the personal information in dispute.[101] The applicant has not identified any circumstances that might weigh in favour of disclosure.

[99] I have considered all of the relevant circumstances, including those listed in s. 22(2), and I find none are relevant here.

Summary and conclusion on s. 22(1)

[100] I have found above that all of the information in dispute under s. 22(1) is third party personal information.

[101] I have further found none of the circumstances set out in s. 22(4) apply to the personal information in dispute. I have also found that s. 22(3)(d) applies to the personal information of the Job Applicant[102] and neither ss. 22(3)(d) nor (g) apply to any of the other personal information in dispute.

[102] I have found no relevant circumstances under s. 22(2) favouring disclosure of the withheld personal information.

[103] As a result, I find the City is required to withhold the personal information about the Job Applicant. The City may not withhold the remaining personal information in dispute under s. 22(1).

---

[100] Applicant's response submission at pages 6-7.
[101] City's initial submission at para 126.
[102] Page 13, lines 5-7 of the Request 2 records.

CONCLUSION

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

1. Subject to item 5 below, I confirm the City's decision to refuse to disclose the information withheld under s. 13(1) of FIPPA.

2. I confirm the City's decision to refuse to disclose the information withheld under s. 14 of FIPPA.

3. The City is not authorized to refused to disclose the information withheld under s. 16(1)(b) of FIPPA.

4. Subject to item 5 below, I confirm the City's decision to refuse to disclose the information withheld under s. 22 of FIPPA.

5. In a copy of the records that will be provided to the City with this order, I have highlighted the information in dispute that the City is not authorized or required to refuse to disclose under ss. 13(1), 16(1)(b), or 22. The City is required to give the applicant access to the information that I have highlighted.

6. The City must provide the OIPC registrar of inquires with a copy of its cover letter and the records it provides to the applicant in compliance with item 4 above.

Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **April 28, 2025**.

March 13, 2025

ORIGINAL SIGNED BY

D. Hans Hwang. Adjudicator

OIPC File No.: F23-93853