

Order F25-52

**CITY OF NORTH VANCOUVER**

Allison J. Shamas  
Adjudicator

June 26, 2025

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**Summary:** An individual (applicant) asked the City of North Vancouver (City) for access to records concerning a project related to road safety in the City. The City provided records responsive to the access request but withheld some information under s. 13(1) (advice or recommendations) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator confirmed the City's decision under s. 13(1) in part and ordered it to disclose the remaining information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 13(1), 13(2)(a), 13(2)(i), and 13(3).

**INTRODUCTION**

[1] An individual (applicant) asked the City of North Vancouver (City) for access to records concerning a City project related to road safety in the City.

[2] The City disclosed responsive records to the applicant, but withheld information from one record under ss.13(1) (advice or recommendations) and 22(1) (third party personal privacy) of the *Freedom of Information and Protection of Privacy Act*<sup>1</sup> (FIPPA).

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the City's decision. In the request, the applicant clarified that they were not seeking access to the information withheld under s. 22(1). Accordingly, the application of s. 22(1) is not at issue in this inquiry.

[4] The OIPC's mediation process did not resolve the s. 13(1) issue, and the matter proceeded to an inquiry.

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<sup>1</sup> RSBC 1996 c. 165.

## PRELIMINARY ISSUES

### *Submissions outside the scope of FIPPA*

[5] Both parties provided extensive background information and documentation explaining their positions about the Project. While I have reviewed all the materials and submissions provided to me by the parties, my jurisdiction is limited to considering the City's application of the FIPPA provisions at issue to the information in dispute. Accordingly, I will only refer to the background information to the extent that it is relevant to the FIPPA matters at issue.

### *Applicant's sur-reply*

[6] After the close of the ordinary submission process, the applicant sent a sur-reply submission to the OIPC. Ordinarily the OIPC does not consider sur-reply submissions that it has not invited. However, in this case, the applicant is unrepresented and, for the most part, their initial submission does not address the FIPPA matters at issue. In the interest of ensuring that the applicant had a full and fair opportunity to be heard on the FIPPA matters at issue, I have considered the applicant's sur-reply submission. However, as with all other submissions, my consideration of the sur-reply submission is limited to what is relevant to the FIPPA issue before me.

### *New issue – s. 6(1)*

[7] The information in dispute is found in a single record. In their inquiry submission, the applicant notes that the record is titled "revised" and requests a copy of the original version.

[8] The City objects to the applicant's request for the original version. It explains that in the access request the applicant requested a "full and final version" <sup>2</sup> of the record, not earlier versions of it. It also submits that the request for the original version is a new issue that the applicant should not be permitted to raise without the OIPC's prior consent.

[9] In sur-reply, the applicant says that they were not aware when they made their access request that there were other versions of the record. The applicant also says that the term "revised" suggests that there was another final version of the record that was revised.

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<sup>2</sup> In the access request, the applicant described the record at issue as follows: "4. In the fall of 2022 staff hired a 3rd party road safety consulting firm to look over the City's design for St. Andrews and offer some recommendations. The November 23rd Post Implementation Update report referred to this consultant during their presentation to Council on December 5th. Staff said they were waiting for the consultant's final report. We request the full and final report be made available to us." See also para1 of the Fact Report for a recitation of the full access request.

[10] The parties' dispute concerns the proper interpretation of the applicant's access request – that is whether or not the applicant's access request covers both the original and the revised versions of the record.

[11] Since the interpretation of an access request determines the scope of a public body's search for records in response to an access request, disputes over whether a public body reasonably interpreted an access request are considered under s. 6(1).<sup>3</sup>

[12] Section 6(1) is not listed in the fact report of the notice of inquiry. It is, therefore, a new issue. The notice of inquiry that the OIPC sent to the parties expressly states, "parties may not add new exceptions or issues without the OIPC's prior consent." The OIPC's *Instructions for Written Inquiries* contains a similar warning.<sup>4</sup>

[13] The applicant did not request the OIPC's consent to add s. 6(1) as an issue or otherwise raise the issue of the revised versus original version of the record prior to submitting their inquiry submission.

[14] Previous OIPC orders have consistently held that new issues raised in a party's inquiry submission without the OIPC's prior authorization will not be considered.<sup>5</sup> There are good reasons for this practice. Most issues that come to the OIPC can be resolved or refined through the OIPC's investigation and mediation processes, without the need for a formal inquiry. When a new issue is added at the inquiry stage, both the parties and the OIPC are denied the benefit of these early resolution procedures. In addition, considering a new issue raised during the inquiry often delays the resolution of that inquiry by requiring additional rounds of submissions.

[15] The applicant's explanation for why they did not request the original version of the record sooner is that they were not aware it existed at the time they made their access request. However, the applicant received a copy of the record, which is titled "revised", during the OIPC's investigation/mediation process - well before the inquiry commenced. The applicant does not explain why they waited until the inquiry to raise the issue or why they did not seek the OIPC's authorization to raise the issue before filing their inquiry submissions. Nor does the applicant identify any exceptional circumstances which would warrant a

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<sup>3</sup> Order F22-36, 2022 BCIPC 40 (CanLII) at paras 56 and 57. Section 6(1) of FIPPA provides that "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."

<sup>4</sup> <https://www.oipc.bc.ca/documents/guidance-documents/1658> at p. 3.

<sup>5</sup> For examples where the OIPC has refused to permit a party to add a s. 6(1) issue without prior permission, see Order F21-23, 2021 BCIPC 28 (CanLII) at para 7, Order F18-11, 2018 BCIPC 14 (CanLII) at para 3, Order F23-31, 2023 BCIPC 37 (CanLII) at para 5, Order F23-101, 2023 BCIPC 117 (CanLII) at para 9; and Order F24-10, 2024 BCIPC 14 (CanLII) at paras 4-10. See also the OIPC's *Instructions for Written Inquiries* at p. 3.

departure from the OIPC's general practice in this case. In the circumstances, I decline to add s. 6(1) as an issue, and I will not consider it further in this inquiry.

### ***New Issue - Section 25(1)***

[16] In their sur-reply submission the applicant suggests that s. 25(1) (disclosure in the public interest) may be applicable to the information in dispute.

[17] Section 25(1) is not listed in the fact report or the notice of inquiry. It is, therefore, a new issue. As with s. 6(1), the applicant does not explain why they did not raise the s. 25(1) issue sooner or identify any exceptional circumstances which would warrant a departure from the OIPC's general practice in this case. The considerations discussed in paragraph 14 above apply equally to the s. 25(1) issue. Further, the OIPC routinely refuses to consider s. 25(1) issues raised in a party's inquiry submission without the OIPC's prior authorization.<sup>6</sup> For these reasons, I decline to add s. 25(1) as an issue in the inquiry, and I will not consider it further.

### **ISSUE IN DISPUTE**

[18] The issue in dispute in this inquiry is whether the City is authorized to refuse to disclose the information at issue under s. 13(1) of FIPPA. Section 57(1) of FIPPA places the burden on the City to prove that the applicant has no right of access to the information withheld under s. 13(1).

### **DISCUSSION**

#### ***Background***

[19] In response to community concerns, the City launched the "St. Andrews Safety Improvement Project" (the Project) in 2021. The stated goal of the project was to provide a safer, more comfortable experience for all road users.

[20] Through 2021 and 2022, the City implemented changes to the road.

[21] In 2022, the City retained an engineering consultant to prepare a report related to the Project (the Report). The engineering consultant describes its relationship with the City and the purpose of the Report as follows:

As part of the ongoing evaluation of the changes to the street, the City retained [the engineering consultant] to support and provide a technical review of the implemented traffic calming measures from the [Project].

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<sup>6</sup> For examples where the OIPC has refused to permit a party to add a s. 6(1) issue without prior permission, see Order F16-30, 2016 BCIPC 33 (CanLII) at paras 12-14; Order F16-34, 2016 BCIPC 38 (CanLII) at paras 8-10; Order F18-07, 2018 BCIPC 9 (CanLII) at para 7; Order F19-47, 2019 BCIPC 53 (CanLII) at paras 7-10; and Order F24-86, 2024 BCIPC 98 (CanLII) at paras 6-9.

As discussed and agreed with City staff [...] City staff will use these study findings for their upcoming Council Meeting.

[22] The Project was completed in December of 2024.

[23] The applicant states that they seek access to the Report so that they can see whether the City implemented the changes recommended by the engineering consultant.

### ***Records in dispute***

[24] The Report is an 18 page document prepared for the City by the engineering consultant titled “Technical Review for St. Andrews Avenue Safety Improvement Project (Revised).” The City disclosed the first 3.5 pages of the Report but withheld the balance.

### ***Section 13(1) – advice or recommendations***

[25] Section 13 allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body. The purpose of s. 13 is to prevent the harm that would occur if a public body’s deliberative process was exposed to public scrutiny.<sup>7</sup>

[26] The test under s. 13 is well-established, and I will apply it below.

### ***Section 13(1) – would disclosure reveal advice or recommendations***

[27] The first step in the s. 13 analysis is to determine whether disclosing the information at issue would reveal advice or recommendations developed by or for a public body.

[28] “Recommendations” involve “a suggested course of action that will ultimately be accepted or rejected by the person being advised.”<sup>8</sup>

[29] The term “advice” has a broader meaning than the term “recommendations,”<sup>9</sup> and includes,

- an opinion that involves exercising judgment and skill to weigh the significance of matters of fact;<sup>10</sup>

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<sup>7</sup> *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at para 52.

<sup>8</sup> *John Doe v Ontario (Finance)*, 2014 SCC 36 [John Doe] at para 24.

<sup>9</sup> *John Doe ibid* at para 23.

<sup>10</sup> *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 113, endorsed in *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [PHSA] at para 80.

- expert opinion on matters of fact on which a public body must make a decision;<sup>11</sup>
- expert opinions that are obtained to provide background explanations or analysis necessary to the deliberative process of a public body;<sup>12</sup> and
- factual information compiled and selected by an expert, using [their] expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.<sup>13</sup>

[30] Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences to be drawn about advice or recommendations.<sup>14</sup>

### *Parties' arguments*

[31] The City says that it withheld two kinds of information from the Report: (1) recommendations developed by the engineering consultant for the City in which the consultant considers and weighs the issues and analysis set out in the previous sections of the Record and sets out a corresponding recommended course of action for each issue in light of these considerations, and (2) the background facts, data, and information required for the informed consideration of those recommendations. The City states that the engineering consultant assembled the facts, data, and information using their skills and expertise. It submits that s. 13(1) applies to all this information.

[32] The applicant does not dispute that the Report contains advice or recommendations the consultant developed for the City. Rather they raise a number of other reasons why, in their view, the City nonetheless should not have applied s. 13 to the withheld information. The applicant asserts that the reason the City withheld the information in dispute but disclosed other information was to hide the fact that the changes the City implemented are not supported by the recommendations in the Report. They also submit that s. 13 is no longer applicable because the Project is now complete. Finally, they submit that the City's position that the advice and recommendations in the Report were designed to support the City's internal processes is inconsistent with the position they understood the City to be taking in a counsel meeting.

[33] In reply, the City submits that the issues raised by the applicant are not relevant to the s. 13(1) analysis.

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<sup>11</sup> *College* ibid at para 113, endorsed in *PHSA* at para 80.

<sup>12</sup> *College* ibid at para 111, endorsed in *PHSA* at para 80.

<sup>13</sup> *PHSA* *supra* note 8 at para 94. See also *College* ibid at para 110.

<sup>14</sup> See for example *John Doe* *supra* note 6 at para 24; Order 02-38, 2002 CanLII 42472 (BCIPC), Order F10-15, 2010 BCIPC 24 (CanLII) and Order F21-15, 2021 BCIPC 19 (CanLII).

*Findings and analysis*

[34] Based on the parties' submissions and the Report itself, it is clear that when the City retained the engineering consultant to prepare the Report, it was engaged in a deliberative process to decide what measures to implement to address certain road safety issues.

[35] While the City disclosed some information in the Report, it withheld the consultant's description of issues, drawings depicting those issues, suggestions about how the City should address those issues, a table summarizing the suggestions, and the headings.

[36] For the reasons that follow, I find that s. 13(1) applies to all the withheld information except the headings.

[37] I find that s. 13(1) applies to the consultant's suggestions<sup>15</sup> about how the City should address issues and the table summarizing those suggestions.<sup>16</sup> The City hired the engineering consultant to advise it about road safety issues related to the Project. Given the nature of their relationship, I find that the suggestions in the Report are clearly a suggested course of action that the City was free to accept or reject, thus bringing them squarely within the definition of recommendations. For its part, the summary table accurately summarizes the suggested courses of actions. I find that disclosing both the consultant's suggestions and summary table would reveal recommendations developed for the City.

[38] I also find that s. 13(1) applies to the engineering consultant's description of issues,<sup>17</sup> and drawings depicting the issues.<sup>18</sup> It is clear on the face of the Report that this information describes and depicts the very issues on which the consultant provided the recommendations discussed above. Given the clear connection between this information and the recommendations, I find that this information was included in the Report in order to provide the necessary background for the City to understand and consider the consultant's recommendations. Consistent with the authorities discussed above, I find that disclosing this information would reveal advice within the meaning of s. 13(1).

[39] However, I find that s. 13(1) does not apply to the headings.<sup>19</sup> The headings provide only a generic description of the topic at issue in each section. The OIPC has repeatedly recognized that s. 13(1) does not apply to headings

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<sup>15</sup> Records pages 9 – 14.

<sup>16</sup> Record pages 15 and 16.

<sup>17</sup> Record pages 3.5-8.

<sup>18</sup> Record pages 11, 12, 13, 14, 17 and 18.

<sup>19</sup> Found throughout the record on pages 4, 6, and 7-15.

that reveal only the topic.<sup>20</sup> The City does not explain why a different approach is appropriate in this case, and I find that these headings would not reveal or allow accurate inferences to be made about advice or recommendations.

[40] As for the applicant's arguments, s. 13(1) is broadly drafted and applies to all information that would reveal advice or recommendations developed by or for a public body. Section 13(1) does not exclude information because the advice or recommendation at issue was not followed;<sup>21</sup> the decision has already been made on the matter to which the advice or recommendations relates;<sup>22</sup> or because the public body suggested publicly that it would disclose the information. I find that the applicant's submissions are not relevant to s. 13(1) analysis. I will revisit them when I address the question of whether the City appropriately exercised its discretion under s. 13.

[41] In conclusion, I find that s. 13(1) applies to the consultant's description of issues, drawing depicting those issues, suggestions about how the City should address the issues, and table summarizing the suggestions, but not to the headings introducing those parts of the Report.

### ***Section 13(2) – exceptions to disclosure***

[42] The next step in the s. 13 analysis is to decide whether the information that I have found is advice or recommendations under s. 13(1), falls into any of the categories in s. 13(2). If s. 13(2) applies, that information cannot be withheld under s. 13(1).

[43] The City asserts that none of the exceptions in s. 13(2) apply and addresses ss. 13(2)(a) and 13(2)(i) specifically. The applicant does not address s. 13(2).

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<sup>20</sup> See for example Order F19-27, 2019 BCIPC 29 (CanLII) at para. 29 in which an adjudicator found that topics, headings and lists of discussion matters for future meetings did not qualify as advice or recommendations; Order F18-41, 2018 BCIPC 44 at para. 15, in which an adjudicator found that the general topics for an upcoming meeting did not qualify as advice or recommendations; Order F17-42, 2017 BCIPC 46 at paras. 75-76 in which another adjudicator found that the topics for a conference call did not qualify as advice or recommendations; Order F18-43, 2018 BCIPC 46 at paras. 65 and 70, in which an adjudicator found that information that identified the topics addressed in a report, Cabinet submissions and presentations did not qualify as advice or recommendations.

<sup>21</sup> As noted above, a recommendation is "a suggested course of action that will ultimately be accepted or rejected by the person being advised." Therefore, s. 13(1) clearly applies to recommendations, whether or not they are accepted or implemented.

<sup>22</sup> The OIPC routinely applies s. 13(1) to information relating to decisions that have already been made. See for example Order F07-17, 2007 CanLII 35478 (BC IPC) at para. 23 and Order F16-30, 2016 BCIPC 33 (CanLII) at para 26.



*Factual material – s. 13(2)(a)*

[44] Section 13(2)(a) provides that a public body must not refuse to disclose “any factual material” under s. 13(1).

[45] The term “factual material” is not defined in FIPPA. However, in distinguishing it from “factual information” which may be withheld under s. 13(1), the courts have interpreted “factual material” to mean “source materials” or “background facts in isolation” that are not necessary to the advice provided.<sup>23</sup> Thus, where facts are an integral component of advice and recommendations, they are not “factual material” within the meaning of s. 13(2)(a).

[46] The suggestions are recommendations in the traditional sense. The s. 13(2)(a) exclusion does not apply to this kind of information.

[47] I have already found that the consultant’s description of issues and drawing depicting those issues relate directly to and were included in the Report so the City could understand and consider the consultant’s recommendations. This information is clearly an integral component of the consultant’s recommendations. As a result, I find that it is not the kind of distinct source material or isolated background facts that courts have found to be “factual material.” I find that s. 13(2)(a) does not apply.

*Feasibility or technical study – s. 13(2)(i)*

[48] Section 13(2)(i) provides that a public body must not refuse to disclose a feasibility or technical study, including a cost estimate, relating to a project or policy of a public body under s. 13(1).

[49] The City says that although the Report is a “Technical Memorandum”, only the released portions of the Report constitute a “technical study” for the purposes of section 13(2)(i). According to the City, the work that the consultant was retained to perform can be broken up into two distinct parts: (1) the technical review of the Project (which the City disclosed) and (2) recommendations for the future (which the City withheld). The City also distinguishes the content of the withheld information from the kind of information to which s. 13(2)(i) typically applies.

[50] Section 13(2)(i) operates to exclude technical and feasibility studies from the application of s. 13(1).

[51] First, I considered whether the information at issue was a “technical study” within the meaning of s. 13(2)(i).

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<sup>23</sup> PHSA *supra* note 8 at para 94.

[52] The OIPC's leading case on the definition of a "technical study" under s. 13(2)(i) is Order F14-37. In that order, the adjudicator endorsed the following definition of a technical study:

[53] A "technical study" is a study involving or concerned with the mechanical arts and applied sciences; of or relating to a particular craft or subject or its techniques [OED]. A technical study can involve an application of some form of specialized knowledge to a subject (e.g., where an engineer studies a plan to build a road on a particular site) and can include a cost estimate.<sup>24</sup>

[54] Adopting this definition, past orders have made clear that to constitute a "technical study" information must be concerned with the application of specialized mechanical or scientific expertise. Thus, in past orders the OIPC has held that s. 13(2)(i) applies to information in reports containing cost estimates designed to inform the public body's plans to maintain and rehabilitate a bridge,<sup>25</sup> but not to records about employee engagement,<sup>26</sup> or to an analysis of the causes of construction delays on the project.<sup>27</sup> I agree with this approach and adopt it here.

[55] While I cannot disclose the information in dispute, I can say that it relates to transportation and traffic safety design. It does not contain any information that could be described as relating to specialized mechanical or scientific expertise. Such content is fundamental to the definition of a technical study. Accordingly, I find that the Report is not a "technical study" as the term has been interpreted by the OIPC.

[56] I also considered whether the report is a "feasibility study" within the meaning of s. 13(2)(i).

[57] "Feasibility" is defined as "the possibility, capability, or likelihood of something being done or accomplished."<sup>28</sup> While the OIPC has not had many opportunities to comment on the meaning of "feasibility study," in Order F19-10, the adjudicator held that a report which set out design and layout options for a potential new entrance at a transit station was a feasibility study because it set out a series of options and assessed how each option met project objectives.<sup>29</sup> I find the above definition helpful in defining the bounds of a "feasibility" study, and I endorse and adopt the approach in Order F19-10.

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<sup>24</sup> 2014 BCIPC 40 (CanLII) at para 63.

<sup>25</sup> Order F14-37, 2014 BCIPC 40 (CanLII) at paras 63 and 64.

<sup>26</sup> Order F22-39, 2022 BCIPC 44 (CanLII) at paras 109-111.

<sup>27</sup> Order F22-15, 2022 BCIPC 17 (CanLII) at para 35.

<sup>28</sup> <https://www.dictionary.com/browse/feasibility>.

<sup>29</sup> 2019 BCIPC 12 (CanLII) at para 21.

[58] As discussed above, the Report identifies traffic safety issues and makes recommendations about how each issue could be addressed. It does not, however, address the possibility, capability, or likelihood of any of these recommendations being accomplished or meeting the City's objectives, or otherwise weigh the recommendations in any way. For this reason, I find that it is not a "feasibility report" within the meaning of s. 13(2)(i).

[59] Having examined the remaining categories in s. 13(2), I find that no others apply.

[60] In conclusion, I find that the exclusions in s. 13(2) do not apply to any of the information I have found is advice or recommendations.

### ***Section 13(3) – information in existence for 10 or more years***

[61] The third step is to consider whether the information has been in existence for more than 10 years under s. 13(3). Information that has been in existence for more than 10 years cannot be withheld under s. 13(1).

[62] The Report relates to the Project which began in 2021, and was commissioned in 2022, and is dated in 2023. I find that the information in it has not been in existence for more than 10 years. Therefore, the exclusion in s. 13(3) does not apply.

### ***Discretion – s. 13***

[63] Section 13 is a discretionary exception to access under FIPPA. Past orders establish that when considering discretionary exceptions to disclosure, a public body must "exercise that discretion in deciding whether to refuse access to information, and upon proper considerations,"<sup>30</sup> and must "establish that [it has] considered, in all the circumstances, whether information should be released even though it is technically covered by the discretionary exception."<sup>31</sup>

[64] If the public body has failed to exercise their discretion, I can require it to do so. I can also order the public body to reconsider the exercise of discretion where its decision to withhold information was made in bad faith or for an improper purpose, the decision took into account irrelevant considerations, or the

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<sup>30</sup> Order 02-50, 2002 CanLII 42486 (BC IPC) at para. 144 and the cases citing it. For recent examples see Order F24-73, 2024 BCIPC 83 (CanLII) at para 187 and Order F24-88, 2024 BCIPC 100 (CanLII) at para 97.

<sup>31</sup> Order No 325-1999, October 12, 1999, [1999] BCIPCD No 38 at page 4 and the cases citing it. For recent examples see Order F24-73, 2024 BCIPC 83 (CanLII) at para 187 and Order F24-88, 2024 BCIPC 100 (CanLII) at para 97.

decision failed to take into account relevant considerations.<sup>32</sup> I cannot, however, substitute my own decision for that of the public body.

### *Parties' submissions*

[65] The City says that it exercised its discretion under s. 13 in good faith and based on relevant considerations, and specifically that the two key considerations that drove its decision making were the importance of confidentiality to its internal review process and the fact that the risk of scrutiny remained even after the end of the Project.

[66] The City explains that it decided to withhold the information in dispute to maintain the integrity of its deliberations without fear of scrutiny. The City explains that it disclosed other records whose purpose was to inform and gather feedback from the public,<sup>33</sup> but withheld parts of the Report because its purpose was to support internal City decision making. In this regard, the City explains that the confidentiality of this internal process is necessary to support open and candid internal deliberations. The City acknowledges that the Project is now complete and explains that it decided to continue to withhold parts of the Report because the risk of external scrutiny continues to exist even after the conclusion of the Project.

[67] The applicant challenges the City's statement that the Report was intended to support the City's internal processes. Relying on a statement made by a City manager of infrastructure during a meeting that when the Report was finalized the City would "bring forward more recommendations"<sup>34</sup> they assert that the City said the Report would be made public. They also argue that the City failed to consider a relevant factor – that the Project is now complete, and that the City exercised its discretion selectively and for the improper purpose of hiding the fact that it did not follow the recommendations in the Report.

### *Findings and analysis*

[68] I begin with the question of whether the City considered all relevant considerations. There are two key disputes that are relevant to this first issue – whether the Report was for the City's internal purposes, and whether the City appropriately considered the fact that the Project had ended.

[69] I accept the City's assertion that the Report relates to an internal review process. The City knows its own processes, and nothing the applicant has said

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<sup>32</sup> Order F23-51, 2023 BCIPC 59 at para 142, citing *John Doe v Ontario (Finance)*, 2014 SCC 36 at para 52 and Order 02-38, 2002 CanLII 42472 (BC IPC) at para 147.

<sup>33</sup> For instance, a record titled "Open Council Workshop for Wednesday, January 17, 2024 - Presentation Material" which it attached to the City's reply submission (Workshop Materials).

<sup>34</sup> Applicant's sur-reply.

persuades me that the City's statement that the Report was intended for its internal use is untrue. In making this finding, I reject the applicant's interpretation of the words they attribute to the City's manager of infrastructure – bringing forward recommendations from a report is not the same as making that report public.

[70] Turning to the applicant's submissions concerning the fact that the Project is complete, I note that this is one relevant factor to the City's exercise of discretion. It does not, as the applicant suggests, require the City to disclose the information in dispute or render s. 13 inapplicable.

[71] I accept that the City adequately considered the fact that the Project was complete in exercising its discretion to withhold the information. The City says that it decided to withhold the information despite the fact that the Project had ended because the risk of scrutiny remained after the end of the Project. The City's assessment in this regard is supported by the applicant's submissions in this inquiry which clearly state that they intend to use the information in the Report to scrutinize the City's decision making in relation to the Project.

[72] The City says that in exercising its discretion under s. 13 it considered all relevant circumstances. In its submissions, it explains the kinds of considerations that it weighed in deciding to withhold the information in dispute. I can also see from some of the records the City disclosed that it did exercise its discretion to disclose information that appears to be advice and recommendations.<sup>35</sup> Finally, nothing the applicant says persuades me that the City failed to consider any relevant considerations. Thus, I accept that in exercising its discretion to withhold the information in dispute, the City considered all relevant considerations.

[73] Turning to the question of whether the City acted in bad faith, for improper purposes, or based on irrelevant considerations, I do not accept the applicant's submission that the City selectively withheld information that would reveal that it did not follow expert recommendations. The submission is purely speculative. While the applicant repeatedly raises this suspicion, they do not point to any persuasive evidence to support their suspicion. Moreover, having compared the information the City disclosed<sup>36</sup> to the information the City withheld from the Report I can see no evidence of the kind of selectivity suggested by the applicant. I am not persuaded by this argument. There is no other information before me to suggest that the City exercised its discretion in bad faith, for an improper purpose, or based on irrelevant considerations.

[74] For these reasons, I am satisfied that the City properly exercised its discretion in this case.

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<sup>35</sup> See for instance the Workshop Materials which are attached to the City's reply submission.

<sup>36</sup> See for instance the Workshop Materials discussed in note 34, above.

**Conclusion**

[75] I found that s. 13(1) applied to the consultant's description of issues, drawing depicting those issues, suggestions about how the City should address those issues, and table summarizing the suggestions, but not to the headings of those parts of the Report. I also found that that the exclusions in s. 13(2) and (3) did not apply and that the City appropriately exercised its discretion when deciding to withhold the advice and recommendations described above. With the exception of the headings, I find that the City is authorized to withhold all the information in dispute. The City is not authorized to withhold the headings.

**CONCLUSION**

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

1. Subject to item 2 below, I confirm the public body's decision to refuse access to the information it withheld under s. 13(1).
2. The public body is required to give the applicant access to the information I have highlighted in the copy of the record provided to the public body with this order. That information is found on pages 4, 6, 7-15 of the record.
3. I require the public body to copy the OIPC registrar of inquiries on the cover letter and records it sends to the applicant, in compliance with item 2 above

Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by August 11, 2025.

June 26, 2025

**ORIGINAL SIGNED BY**

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Allison J. Shamas, Adjudicator

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