



Order F25-65

CITY OF RICHMOND

D. Hans Hwang
Adjudicator

August 14, 2025

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Summary: An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Richmond (City) for access to records about multiple City employees. The City disclosed the responsive records but withheld some information under ss. 13(1) (advice or recommendations) and 14 (solicitor-client privilege). The adjudicator found the City was authorized to withhold only some of the information in dispute under s. 13(1) and all of the information in dispute under s. 14. The adjudicator ordered the City to give the applicant access to the information that it was not authorized to withhold under s. 13(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 13(1), 13(2)(a), 13(3) and 14.

INTRODUCTION

[1] An individual (applicant) asked the City of Richmond (City) for access to records about multiple City employees.

[2] The City provided the responsive records to the applicant but withheld some information under ss. 13(1) (advice or recommendation), 14 (solicitor-client privilege) and 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).¹

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision. In his request to the OIPC, the applicant clarified that he is not seeking access to the information withheld under s. 22(1).² Accordingly, the application of s. 22(1) is not at issue in this inquiry.

¹ RSBC 1996 c. 165. From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

² Respondent's submission at para 3.

[4] The OIPC's mediation process did not resolve the issues in dispute and the matter proceeded to inquiry.

ISSUES AND BURDEN OF PROOF

[5] In this inquiry, I must decide whether the City is authorized to refuse to disclose the information in dispute under ss. 13(1) or 14.

[6] Under s. 57(1), the City has the burden of proving that the applicant has no right to access the information in dispute under ss. 13(1) or 14.

DISCUSSION

Background

[7] The applicant was a City employee for several years. During the course of his employment, the applicant had an employment-related dispute with the City (Dispute).

[8] The applicant's access request is for records about multiple City employees involved in the investigation and handling of the Dispute.

Records in dispute

[9] The responsive records consist of 62 pages comprised of email chains, draft letters and a City employee's note about the Dispute. The information in dispute appears on approximately 20 pages of these records.

Section 14 – solicitor-client privilege

[10] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. For the purpose of s. 14, solicitor-client privilege includes legal advice privilege and litigation privilege. The City is withholding one email chain on the basis of legal advice privilege.³

Sufficiency of evidence to substantiate the s. 14 claim

[11] The City did not provide the information withheld under s. 14 for my review. Instead, to support its claims of privilege over the records, it provided affidavit evidence from a lawyer who acted as legal counsel for the City (City Lawyer)⁴ and a manager of records and information (Information Manager).⁵ It

³ Pages 18-19 of the records.

⁴ City lawyer's affidavit #1.

⁵ Information manager's affidavit #1.

also provided a table of records containing a brief description of the information that it withheld under s. 14.

[12] Section 44(1)(b) gives me, as the Commissioner's delegate, the power to order production of records to review them during the 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 fairly decide the issues at issue.⁶

[13] Past court cases and OIPC orders have discussed the evidence required to establish solicitor-client privilege in the absence of the records.⁷ Although there are no steadfast rules and each case depends on its own facts, some general rules have been established, including that:⁸

- a party claiming privilege must list each disputed record separately and provide, without revealing privileged information, a description of the record in sufficient detail to allow one to assess the claim of privilege;
- the description of the record should include the date it was created or sent, the type of communication (e.g., "email") and the names of the author and the recipient(s);
- in addition to a proper description of the disputed records, the party claiming privilege must provide evidence to substantiate the privilege claim;
- ideally, affidavit evidence in support of a privilege claim should avoid hearsay and come from an affiant with direct knowledge of the disputed records; and
- it is helpful, and in some cases even necessary, to have affidavit evidence from a lawyer, who is an officer of the court and has a professional duty to ensure that privilege is properly claimed.

[14] In this case, after conducting a preliminary review of the City's submissions and sworn affidavits, I determined that the City had provided a sufficient evidentiary basis for me to decide whether the records it withheld under s. 14 are subject to solicitor-client privilege.

[15] I am satisfied that both the City Lawyer and Information Manager reviewed all of the records and therefore have direct knowledge of the content and context of the information at issue.⁹ The City Lawyer's sworn affidavit evidence

⁶ Order F19-14, 2019 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.

⁷ *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 [*Minister of Finance*] at paras 76-93 and Order F20-16, 2020 BCIPC 18 at paras 8-10.

⁸ *Minister of Finance* at paras 76-93 and Order F20-16, 2020 BCIPC 18 at paras 8-10.

⁹ Information manager's affidavit #1 at para 4 and City lawyer's affidavit #1 at paras 1 and 5.

establishes that she is a practicing lawyer and an officer of the court with a professional duty to ensure that privilege is properly claimed. In addition, I find that the City's table of records provides the date and description of the information in dispute and the grounds on which privilege is claimed.¹⁰

[16] Based on the above, I conclude that it is not necessary to exercise my discretion under s. 44 to order production of the records.

Legal advice privilege

[17] For information to be protected by legal advice privilege it must be communications that were:

- between a solicitor and client (or their agent);
- made for the purpose of seeking or providing legal advice, opinion or analysis; and
- intended by the solicitor and client to be confidential.¹¹

[18] Not every communication between a solicitor and their client is privileged, but if the conditions above are satisfied, then legal advice privilege applies to the communication.¹²

[19] The courts have established that 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, internal client communications that transmit or comment on privileged communications with their lawyers.¹³ Further, privilege extends beyond the actual requesting or giving of legal advice to the "continuum of communications" between a lawyer and client, which includes the necessary exchange of information for the purpose of providing legal advice.¹⁴

[20] I adopt the above test and principles in making my decision.

Parties' submissions

[21] The City says it was in a solicitor-client relationship with the City Lawyer. It also says that the email chain withheld under s. 14 is comprised of

¹⁰ City's initial submission, Appendix A

¹¹ *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 [*Solosky*] at p. 837.

¹² *Solosky* at p. 829.

¹³ *Solosky* at p. 834.

¹⁴ *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83 and *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 42.

communications between the City Lawyer, a City human resources manager (HR Manager) and a City's disability health and wellness specialist (Specialist) which were exchanged in relation to legal advice the City requested and received about the Dispute.¹⁵ The City says that the communications in question were all intended to be confidential.¹⁶

[22] The applicant says that any factual information (e.g., date, figures or descriptions of events) included in the email chain should not be protected by solicitor-client privilege.¹⁷

[23] In reply, the City says that any factual information incorporated into the privileged communications must also be protected under s. 14.¹⁸

Analysis and findings

[24] The first question is whether the email chain is a communication between solicitor and client. I accept the City Lawyer's evidence that the email chain includes communications between herself, the HR Manager, and the Specialist about the applicant's complaint against the City.

[25] With respect to the second part of the test, the City Lawyer says that in the email chain she provided legal advice as requested by the HR Manager and the Specialist. Based on this evidence, I find there was a solicitor-client relationship between the City and the City Lawyer and the information withheld in the email chain reveals their communications for the purpose of seeking and giving legal advice.

[26] Turning to the last part of the test, the City Lawyer says the communication which reveals her legal advice to the HR manager and the Specialist was intended to be confidential. Based on this explanation, I find the communications between the City and City lawyer were intended to be confidential and, therefore, conclude the third part of the legal test is also met.

[27] In addition, I am not persuaded by the applicant's position that factual information included in the privileged communications should not be withheld. As set out above, legal advice includes information furnished by the client to the lawyer related to the advice sought, including purely factual information. The Court considered that such information was part of the necessary exchange of

¹⁵ City's initial submission at paras 46-47.

¹⁶ City's initial submission at para 48.

¹⁷ Applicant's submission on page 3.

¹⁸ City's reply submission on paras 9-10.

information between solicitor and client for the purpose of providing legal advice.¹⁹

[28] Lastly, I accept the Information Manager's evidence that the City does not intend to waive privilege over the legal advice received from the City Lawyer.

Conclusion, s. 14

[29] In summary, I find that disclosing the information the City withheld under s. 14 would reveal a confidential communication between the City and its lawyer made for the purpose of seeking and giving legal advice. Therefore, I conclude the City is authorized to refuse to disclose the information it withheld under s. 14.²⁰

Section 13(1) – advice or recommendations

[30] Section 13(1) 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.²¹

[31] The test under s. 13(1) has three parts, and I will apply it below under the subheadings that follow.

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

[32] 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.

[33] "Recommendations" involve a "a suggested course of action that will ultimately be accepted or rejected by the person being advised."²²

[34] The term "advice" has a broader meaning than the term "recommendations,"²³ and includes:

¹⁹ *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83 and *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 42.

²⁰ The City also applies s. 13(1) to withhold the information to which the City applied s. 14. Given I found s. 14 applies to the information, it is not necessary for me to consider whether s. 13(1) also applies to the same information.

²¹ *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at para 52.

²² *John Doe v Ontario (Finance)*, 2014 SCC 36 at para 23.

²³ *John Doe v Ontario (Finance)*, 2014 SCC 36 at para 24.

- an opinion that involves exercising judgment and skill to weigh the significance of matters of fact;
- expert opinion on matters of fact on which a public body must make a decision;
- expert opinions that are obtained to provide background explanations or analysis necessary to the deliberative process of a public body;²⁴ 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.²⁵

[35] 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.²⁶

[36] The information the City is withholding under s. 13(1) is contained in the following records:

- Emails between the HR Manager and City employees²⁷ and attached letters;²⁸
- Emails that the applicant sent to a City employee;²⁹
- An email chain between two City employees;³⁰ and
- The HR Manager's notes.³¹

Parties' submissions

[37] The City says that in these records City employees needed to make decisions about the applicant's dispute and exchanged their opinions, identified and assessed potential risks, discussed past steps taken and recommended

²⁴ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at paras 111-113, endorsed in *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 80.

²⁵ *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 94.

²⁶ Order 02-38, 2002 CanLII 42472 (BCIPC), Order F10-15, 2010 BCIPC 24 (CanLII) and Order F21-15, 2021 BCIPC 19 (CanLII).

²⁷ Pages 16, 20, 29-31, 38, 46-47, 50, 51, 53 and 62 of the records

²⁸ Pages 52 and 54 of the records.

²⁹ Pages 21 and 22 of the records.

³⁰ Page 39 of the records.

³¹ Page 36 of the records at issue.

future steps to handle the Dispute.³² The City also says the withheld information includes background facts and information required for the consideration of the advice or recommendations.³³

Analysis and findings

[38] Based on my review of the records at issue, I am satisfied that disclosing some of the withheld information would reveal City employees' internal communications to the City about collecting evidence related to the Dispute, the City's selection of a candidate who submitted an expression of interest (Selection Process), how they assessed candidates and how to articulate words in a response letter to the union president. I find that the opinions and suggestions in the records are clearly a suggested course of action developed by City employees for the City, thus bringing them within the definition of advice or recommendations under s. 13(1).

[39] For example, in an email that the HR Manager sent to a City purchasing manager, he exercised judgment and skill in identifying what type of evidence the City needs to collect to investigate the Dispute and how they could collect that evidence.³⁴ In an email chain between a City director, a City water service manager and the HR Manager, the director provides her opinion and suggestions to the HR Manager about how to respond to the union president and the HR Manager discusses the director's comments and feedback.³⁵

[40] As another example, in emails between several City employees, the HR Manager and the employees discuss their opinions on the Selection Process.³⁶ In addition, in an email that a City water service manager sent to the HR Manager,³⁷ the author gives his opinion on the Selection Process and provides background information that is necessary to explain the opinion. With respect to the HR manager's note, I find the information in the note sets out recommendations and a suggested course of action about the Selection Process which he discussed with a City director.³⁸

[41] However, I find the City has not demonstrated that disclosing some of the disputed information would reveal advice or recommendations developed by or for a public body. It is not apparent and the City does not sufficiently explain how information in some emails that merely state where to find information³⁹ and an

³² City's initial submission at paras 34 and 37.

³³ City's initial submission at para 31.

³⁴ Page 29 of the records.

³⁵ Page 50 of the records.

³⁶ Pages 38, 39, 46, and 47 of the records.

³⁷ Page 62 of the records. An email that service manager sent to HR manager.

³⁸ Page 36 of the records.

³⁹ Page 16 of the records.

author's general impression⁴⁰ would reveal any advice or recommendations for the purposes of s. 13(1). Also, I find the City cannot withhold the sender's name, the recipient's name, and date and subject of an email as it does not reveal any advice or recommendations developed by or for a public body.⁴¹ Further, I am not persuaded by the City's position that highlighted portions of the body of some emails comprise an opinion and assessment.⁴² I do not see, and the City has not sufficiently explained, how disclosing the highlighted portions, which do not include any comments or feedback, would reveal any advice or recommendations.

[42] The City is withholding two versions of letters in their entirety which are attached to an email chain.⁴³ Previous OIPC orders have found that suggestions for editorial comments and changes to the wording of a draft letter may be withheld under s. 13(1).⁴⁴ In this case, except for the dates and an author's signature added in one of the letters, the letters are identical, and none of the information withheld from the letters provides editorial advice, comments and suggestions. It is not apparent and the City does not sufficiently explain how the disclosure of these two letters would reveal advice or recommendations. Instead, it appears that one of the letters is a final signed version that may have already been provided to its intended recipient. Therefore, without more, I am not persuaded the disclosure of these two letters would reveal advice and recommendations. Accordingly, I find the City cannot withhold this information since it does not reveal, nor does it allow any accurate inference about, advice or recommendations.

Sections 13(2)

[43] The next step in the s. 13 analysis is to consider whether s. 13(2) applies to the information that I found above would reveal advice or recommendations. Section 13(2)(a) provides that the head of a public body must not refuse to disclose any "factual material" under s. 13(1).

[44] The term "factual material" in s. 13(2)(a) has a distinct meaning. Factual material means "source materials" or "background facts in isolation" that are not necessary to the advice provided.⁴⁵ However, if the factual information is compiled and selected by the person providing the advice and is an integral component of their advice, then it is not "factual material" under s. 13(2)(a).⁴⁶ Further, the BC Supreme Court has clarified that "factual material" under s.

⁴⁰ Pages 51 and 53 of the records.

⁴¹ Page 20 of the records.

⁴² Pages 20-22 of the records.

⁴³ Pages 52 and 54 of the records.

⁴⁴ See, for example, Order F15-33, 2015 BCIPC 36 at para 23, Order F24-20, 2024 BCIPC 26 at para 118 and Order F23-82, 2023 BCIPC 98 at para 29.

⁴⁵ Order F23-82, 2023 BCIPC 98 at para 36.

⁴⁶ Order F24-01, 2024 BCIPC 1 (CanLII) at para 24.

13(2)(a) does not include facts that are an integral and necessary component of the advice or recommendations, specifically factual material that “is assembled from other sources and becomes integral to the analysis and views expressed in the document that has been created.”⁴⁷

[45] The applicant says that any factual information withheld under s. 13(1) should be disclosed because s. 13(2)(a) applies to the information.⁴⁸ The City says that the factual information was selected and included by City employees using their expertise and skills for the purpose of providing advice and recommendations, and disclosing that information would reveal the advice and recommendations.⁴⁹

[46] I find the information which I found would reveal advice or recommendations includes facts that are intermingled with, and an integral part of, those advice or recommendations. Therefore, I conclude none of the redacted information that I determined was advice or recommendations qualifies as factual material under s. 13(2)(a).

Section 13(3)

[47] Section 13(3) provides that s. 13(1) does not apply to information that has been in existence for 10 or more years. The records at issue here were created in 2022; therefore, they have not been in existence for 10 or more years. As a result, I find s. 13(3) does not apply.

Summary and conclusion on s. 13(1)

[48] To summarize, I found some of the information withheld under s. 13(1) would reveal advice and recommendations developed by or for the City. I also find that ss. 13(2) and 13(3) do not apply to that information. Therefore, I conclude the City is authorized to withhold that information under s. 13(1). I find, however, that the City is not authorized under s. 13(1) to withhold the information that I found would not reveal any advice and recommendations.

CONCLUSION

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

1. I confirm the City’s decision to refuse the applicant access to the information withheld under s. 14.

⁴⁷ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para 52.

⁴⁸ Applicant’s submission at para 4.

⁴⁹ City’s reply submission at paras 2-4.

2. I confirm in part, subject to item 3 below, the City's decision to refuse the applicant access to the information withheld under s. 13(1).
3. The City is required to give the applicant access to the information that I have determined it is not authorized to withhold under s. 13(1). I have highlighted this information in green on pages 16, 20, 21, 22, 51, 52, 53 and 54 of the copy of the records that will be provided to the City with this order.
4. The City must copy the OIPC registrar of inquiries on its cover letter and the unsevered copy of the records that it sends to the applicant in compliance with item 3 above.

[50] Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by September 26, 2025.

August 14, 2025

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F23-95228