Order F25-85

BOARD OF EDUCATION OF SCHOOL DISTRICT 39 (VANCOUVER)

Jay Fedorak
Adjudicator

October 29, 2025

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Summary: An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Board of Education of School District 39 Vancouver (Board) for access to records. The Board refused to disclose the records under ss. 12(3)(b) (local public body confidences), 13(1) (advice and recommendations) and 17(1) (harm to the economic interests of the public body). The applicant also raised the application of s. 25(1)(b) (disclosure in the public interest). The adjudicator found that s. 25(1)(b) did not apply. He found that ss. 12(3)(b), 13(1) and 17(1) applied to some but not all of the information in the records. The adjudicator ordered the Board to disclose the information to which ss. 12(3)(b), 13(1) and 17(1) did not apply.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 12(3)(b), 13(1), 17(1)(c), 17(1)(d), 17(1)(e), and 17(1)(f); *School Act*, RSBC 1996, c.412, s. 69.

INTRODUCTION

[1] An individual (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Board of Education of School District 39 (Board) for copies of all land surveys conducted on real property owned by the Board from 2016 and copies of any subdivision documents relating to those properties having land surveys.

[2] The Board responded by providing records to the applicant. The record package contained 19 pages, and the Board withheld some information under ss. 22(1) of FIPPA (unreasonable invasion of privacy). The Board subsequently informed the applicant that it had overlooked additional responsive records and provided 15 more pages of records, withholding some information under s. 22(1). Later, the Board again responded to the applicant with more responsive records. This consisted of 111 pages, and the Board withheld some information under ss. 12(3)(b) (local public body confidences), 13(1) (advice and

recommendations), 14 (solicitor-client privilege), 15(1)(l) (harm to the security of system), 17(1) (harm to the economic interests of the public body) and 22(1) (unreasonable invasion of privacy).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the decision of the Board. The applicant also asserted that s. 25(1)(b) (disclosure in the public interest) applied to the records.

[4] The applicant also complained that the Board had failed to conduct an adequate search for records in accordance with s. 6(1) of FIPPA. The OIPC resolved the adequate search complaint under a separate file, which is not at issue in this inquiry. However, the resolution of the adequate search complaint resulted in the Board disclosing a further 217 pages of responsive records, and the severing of those records is at issue in this inquiry.

[5] Mediation did not resolve the dispute about the severing of the records or the application of s. 25(1)(b), and the applicant requested that they proceed to an inquiry. The applicant agreed to exclude from the scope of the inquiry information that the Board was withholding under ss. 14, 15(1)(l) and 22(1).

[6] The Investigator's Fact Report indicated that all 362 pages of records were at issue in the inquiry, comprising the four disclosures by the Board.

[7] After the exchange of inquiry submissions was complete, the Board realized that it had neglected to provide the OIPC with the 217 pages of the fourth release package or to make any submissions on the exceptions to disclosure that it had applied to the information it had withheld on those pages. The Board admitted that this was an oversight and applied to the OIPC to make further submissions to cover these records. The OIPC granted the Board permission to do so. The Board made a further submission. The applicant made a further response submission, and the Board made a further reply submission.

ISSUES

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

1. Does s. 25(1)(b) of FIPPA require the public body to disclose the records on the grounds that they are in the public interest?
2. Is the Board authorized to refuse to disclose the information at issue under s. 12(3)(b) of FIPPA?
3. Is the Board authorized to refuse to disclose the information at issue under s. 13(1) of FIPPA?
4. Is the Board authorized to refuse to disclose the information at issue under s. 17(1) of FIPPA?

[9] Section 57(1) places the burden of proof on the Board to demonstrate that the applicant has no right of access to the record or part of the record under ss. 12(3)(b), 13(1) and 17(1). FIPPA is silent about whether there is a burden on either party to prove or disprove that s. 25(1) applies. Past orders have said that it is in the best interest of both parties to provide whatever evidence and arguments they have, but that it is ultimately up to the Commissioner to determine whether s. 25(1) applies.[1] I agree and will adopt this approach.

Preliminary Matter – Further Submissions

[10] In submitting the responsive records to the inquiry, the Board neglected to provide clear page numbers and, in some cases, did not clearly mark the FIPPA exceptions next to the passages of information it had severed. Consequently, the OIPC instructed the Board to provide another copy of the records correctly paginated and with severing clearly marked.

[11] When the Board provided the new copy of the records, it added s. 13(1) to passages of information to which it had not previously applied this exception, but to which it had applied other exceptions. These passages are on pages 67-69, 71-73, 75, 76, 78, 81, 82, 84-86, 88-95, 98-107, 109 and 311 of the records. It also inserted a note on page 67 to provide reasons for the new application of this section to the new passages. It provided this information long after the close of submissions and without providing the applicant an opportunity to respond.

[12] This has raised the issue as to whether, at this point, I should permit the Board to expand the issues in this inquiry to add the application of s. 13(1) to information it has already severed under other exceptions.

[13] I have decided to decline to permit the Board to expand the issues in that way at this late stage. First, the Board's decision to apply s. 13(1) to this information is far beyond the timeline s. 7 of FIPPA mandates for making a decision about an access request. Second, the Board already requested and received permission to make further submissions to this inquiry, as a result of its failure to include 217 pages of records in its initial submission. It did not ask permission to make changes to reinforce its efforts to protect information from disclosure by adding s. 13(1) to information it had already severed under other exceptions. I find it would prejudice the interests of the applicant, who has already waited through a second round of submissions, to accept what is, in effect, a third round of submissions. The Board had ample opportunity to present its case during the first two rounds of submissions. Third, it has presented no explanation as to why it could not have provided this additional s. 13(1) severing and explanatory note earlier in the process.

[1] Order 02-38, 2002 BCIPC 38 (CanLII), para 39; Order 03-02, 2003 BCIPC 2 (CanLII), para 16; Order F22-64, 2022 BCIPC 72 (CanLII), para 6; Order F25-28, 2025 BCIPC 34 (CanLII), paras 23-24; Order F25-46, 2025 BCIPC 54 (CanLII), para 19.

[14] Therefore, I will not expand the issues in this inquiry to include whether s. 13(1) authorizes the Board to refuse access to the information in dispute on pages 67-69, 71-73, 75, 76, 78, 81, 82, 84-86, 88-95, 98-107, 109 and 311 of the records. I will also not consider the note on page 67 about the application of s. 13(1) to the records.

DISCUSSION

[15] **Background –** The Board is constituted under the British Columbia *School Act*, R.S.B.C. 1996, c. 412 with responsibility for the design, administration and delivery of public education services to students. It owns and operates 89 elementary and 18 secondary schools in the City of Vancouver and provides educational services to approximately 48,500 students. In accordance with the *School Act*,[2] The Board has responsibility for making decisions regarding the acquisition and disposal of its lands and properties.

[16] The applicant is a parent of three children, who attend different public schools in Vancouver. Since 2016, the applicant has been involved in various roles in the Parent Advisory Council (PAC) of one school and has been actively involved with the District Parent Advisory Council (DPAC). At the time of the inquiry, the applicant is the Vice Chair of the school PAC and the Chair of the DPAC.

[17] **Record at issue –** The records at issue comprise internal and external communications and documentation regarding the Board's parcels of real property identified as surplus. As the 34 pages of the first two release packages are no longer in dispute because the Board has disclosed them in their entirety, there remains 328 pages of which 198 pages have been severed in whole or in part. There are some passages that the applicant is not disputing. Therefore, there are 173 pages of records in dispute.

Public interest disclosure – section 25

[18] Section 25 requires a public body to disclose information in certain circumstances without delay despite any other provision of FIPPA. This section overrides all FIPPA's discretionary and mandatory exceptions to disclosure. The applicant submits that s. 25(1)(b) applies, so the parts of s. 25 that are relevant in this case state:

> **25**(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
>
> …

[2] RSBC 1996, c.412.

> (b) the disclosure of which is, for any other reason, clearly in the public interest.
>
> (2) Subsection (1) applies despite any other provision of this Act.

[19] Because s. 25 overrides all other provisions in FIPPA, previous orders have found that it applies in only the clearest and most serious situations. Section 25 sets a high threshold, intended to apply only in significant circumstances.

[20] **Section 25(1)(b) (clearly in the public interest) –** The application of s. 25(1)(b) requires that the disclosure of the information at issue be clearly in the public interest. Former Commissioner Denham outlined the proper approach to applying s. 25(1)(b) in Investigation Report F16-02 as follows:

> Analyzing the application of s. 25(1)(b) in a specific situation begins by considering whether the information at issue concerns a subject, circumstance, matter or event justifying mandatory disclosure. The list of these things cannot be exhaustively enumerated. However, the following factors should be considered in determining whether they meet the test for further consideration under s. 25(1)(b):
>
> - is the matter the subject of widespread debate in the media, the Legislature, or by other Officers of the Legislature or oversight bodies; or
>
> - does the matter relate to a systemic problem rather than to an isolated situation?
>
> In addition, would its disclosure:
>
> - contribute to educating the public about the matter;
>
> - contribute in a substantive way to the body of information that is already available about the matter;
>
> - enable or facilitate the expression of public opinion or enable the public to make informed political decisions; or
>
> - contribute in a meaningful way to holding a public body accountable for its actions or decisions?
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> This is not to say that in order for information to be disclosed under s. 25(1)(b) it must be the subject of public debate; there may well be situations where there is a clear public interest in disclosure of information about a topic that is not currently the object of public concern or is not known to the public.

> Once it is determined that the information is about a matter that may engage s. 25(1)(b), a public body should consider the nature of the information itself to determine whether it meets the threshold for disclosure. However, this threshold is not static. In any given set of circumstances there may be competing public interests, weighing for and against disclosure, and the threshold will vary according to those interests.[3]

[21] Previous orders have determined that the duty to disclose under s. 25(1)(b) "only exists in the clearest and most serious of situations where the disclosure is *clearly* (i.e., unmistakably) in the public interest."[4]

[22] For disclosure of information to be in the "public interest" means more than just that the public would find the information interesting. The term "public interest" in s. 25(1)(b) cannot be so broad as to encompass anything that the public may be interested in learning. The term is not defined by the various levels of public curiosity.[5]

[23] Furthermore, the public's interest in scrutinizing the work of public bodies, while important, does not, in and of itself, trigger the application of s. 25. As former Commissioner Loukidelis stated, s. 25(1)(b) "is not an investigative tool for those who seek to look into the affairs of a public body. It is an imperative requirement for disclosure which is triggered by specific information the disclosure of which is clearly in the public interest."[6]

[24] The first step in my analysis is to determine whether the matter may engage s. 25(1)(b). If I find that it does, I will then proceed to examine the nature of the information itself to determine whether it meets the threshold for disclosure.

[25] The applicant's case for the application of s. 25(1)(b) is that the subdivision and potential disposition of publicly owned school lands is an issue that is clearly in the public interest. She submits that the decision to sell or change the purpose of school lands has significant implications for students, families and the community. She argues that, as Vancouver has a growing population, there is a need to ensure there are sufficient school spaces for students.[7]

[26] The applicant asserts that there is a need for transparency and accountability for the decision of public bodies that affect the community, and this includes providing the public with comprehensive and timely information. She submits that the Board's current approach to public consultation is to withhold

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[3] Investigation Report IR16-02 2016 BCIPC 36 (CanLII), pp. 26-27.
[4] Order 02-38, 2002 BCIPC 8 (CanLII), paras. 45-46, citing Order No. 165-1997, 1997 BCIPC 22 (CanLII), p. 3. See also Order F18-26, 2018 BCIPC 29 (CanLII), para. 14.
[5] *Clubb v. Saanich (Corporation of The District)*, 1996 CanLII 8417 (BCSC), para. 33.
[6] Order 00-16, 2000 BCIPC 16 (CanLII), p. 14
[7] Applicant's response submission, paras. 10.5-10.6.

information long enough to render consultation with parents to be "effectively meaningless". She asserts that the Board makes its decisions at private session meetings prior to consulting with parents.[8]

[27] In summary, she submits:

> By the time public consultation occurs, significant time and resources have already been invested by the [Board] in its pre-made plan, making it difficult to reverse course or incorporate input from school communities. The substantial opportunity cost further pressures the Board to proceed with the plan, effectively predetermining the outcome.[9]

[28] Disclosure of the information in this case, according to the applicant, is necessary to enable parents to "fulfill their legislated role in shaping educational decisions".[10]

[29] The Board replies that s. 25(1)(b) does not apply in this case. It submits that it has supplied the applicant and other members of the public with sufficient information about "confirmed and planned" land use decisions. It asserts that the need for transparency does not "extend to prematurely disclosing information about confidential and pending possible transactions that have not reached the threshold for public discussion".[11]

[30] The information at issue in this case, according to the Board, is about proposals that the Board has not approved and may never approve. In the event that the Board decides in future to proceed with the proposals, it affirms it will engage in consultations with stakeholders.[12] The Board argues that far from serving the public interest, the premature disclosure of information, without context, might:

> fuel speculation and erroneous beliefs about [the Board]'s actions, intentions and plans. Far from furthering public discussion and informing the public (as intended by section 25), this would only generate misinformation, confusion and force [the Board] to divert resources away from its mandated public work ….[13]

[31] The Board submits that previous orders had established that the threshold for the requirement in s. 25(1)(b) to disclose information, which overrides all other

[8] Applicant's response submission, paras. 10.11-10.13.
[9] Applicant's response submission, para. 10.19.
[10] Applicant's response submission, para. 10.15.
[11] The Board's reply submission, para. 85.
[12] The Board's reply submission, para. 88.
[13] The Board's reply submission, para. 90.

provisions in FIPPA, is very high. These orders have found that it exists only in the "clearest and most serious of situations".[14]

Analysis

[32] I agree that the standard threshold to trigger the application of s. 25(1)(b) is that disclosure must be clearly and unmistakably in the public interest. The applicant has made allegations about lack of transparency in land use decisions by the Board. Regardless of whether these allegations are fair or accurate, I see no evidence to suggest that the land use decisions at issue are the subject of recent public debate. There is no evidence before me, for example, of any discussions in the media or the legislature. The applicant has only established that she and the organizations she represents are interested.

[33] The other key point here is that the responsive records show that the only decision that the Board has made regarding land disposition is one not to proceed with even considering these land use proposals. It is a decision to do nothing for the present time.

[34] The applicant believes that it is in the public interest for her community to be aware of all land use proposals, even ones that the Board has declined to consider. She takes this position, even though the Board has established that it always publishes information about any land use decision that it has decided to actively consider. I find that these issues are not compelling enough to meet the standard that disclosure is clearly and unmistakably in the public interest.

[35] Therefore, I find that disclosure of the information at issue is not clearly in the public interest and s. 25(1)(b) does not apply.

Section 12(3)(b) – Local Public Body Confidences

[36] Section 12(3)(b) allows a public body to refuse to disclose information that would reveal the substance of deliberations of a meeting of its elected officials or a governing body, if an Act or a regulation under FIPPA authorized holding the meeting in the absence of the public. The Board applied s. 12(3)(b) to passages in some of the records in dispute. It asserts that these passages would reveal the substance of the Board's deliberations during a series of meetings it held in the absence of the public.

[14] The Board's initial submission, para. 20, p. 17; Order F23-34, 2023 BCIPC 28 (CanLII), para. 21; Order F24-88, 2024 BCIPC 100 (CanLII), para. 111; Order F20-47, 2020 BCIPC 56 (CanLII), para. 20. The initial submission of the Board contains unconventional paragraph numbering that has resulted in para 48 being followed by a second para. 2 and continuing with duplicate numbers up to para. 29. Therefore, to avoid confusion over the duplication in the numbering, I have added the submission page numbers after the paragraph number.

[37] Previous orders have held that three conditions must be met in order for a public body to withhold information under s. 12(3)(b);

1. The public body has statutory authority to meet in the absence of the public;
2. a meeting was actually held in the absence of the public; and
3. the information would, if disclosed, reveal the substance of deliberations of the meeting.[15]

Was the Board authorized to hold the meetings in the absence of the public?

[38] The *School Act* stipulates the following:

> **1(1)** "board" or "board of education" means a board of school trustees constituted under this Act or a former Act;
>
> **69** (1) Subject to subsection (2), the meetings of the board are open to the public.
> (2) If, in the opinion of the board, the public interest so requires, persons other than trustees may be excluded from a meeting.

[39] The Board submits that s. 69(2) of the *School Act* provides statutory authority for a board of education of a school district to meet in the absence of the public.

[40] The Board also submits that previous orders have confirmed that s. 69(2) provide this authority.[16]

[41] The applicant does not make any submissions about whether s. 69(2) authorizes the Board to meet in the absence of the public.

[42] I find that it is plain and obvious that s. 69(2) of the *School Act* provides a statutory authority for a board of education to meet in the absence of the public, in accordance with s. 12(3)(b).The previous orders that the Board cited have found that this provision permits the boards of school districts to meet in the absence of the public. Therefore, I find that the first part of the test is met.

Did the Board hold the meetings in the absence of the public?

[43] The Board submits that it had meetings on June 29, 2020, August 31, 2020, September 9, 2020, September 21, 2020 and September 28, 2020. It provides an affidavit of its director of enterprise risk management and privacy

[15] For example, Order F13-10, 2013 BCIPC 11 (CanLII), para. 8.
[16] The Board's initial submission, paras. 12-13, p. 16; Order F24-26, 2024 BCIPC 33 (CanLII); Order 04-04, 2004 BCIPC 4 (CanLII), para. 80; Order F10-19, 2010 BCIPC 30 (CanLII), paras. 9-11.

compliance (director) who attests to there having been meetings in the absence of the public on these dates.[17] The director admits that he was not present at any of the meetings. He affirms that he has reviewed the agenda and the minutes of these meetings. He indicates the minutes list all of the attendees at the meetings, and only the names of members of the board and school district staff appear. The director also affirms that he was able to listen to recordings of the August 31 and September 28, 2020 meetings and what he heard supports his conclusion that those meetings were held in the absence of the public.

[44] The director also attests that decisions of the Board to meet in the absence of the public are governed under a formal policy: "Policy 7 – Board Operations". He affirms Policy 7 indicates that it is appropriate for the Board to meet in the absence of the public to discuss matters relating to legal, property, personnel and privacy.[18]

[45] The applicant does not make any submissions on the question as to whether the Board held a meeting in the absence of the public.

[46] I have reviewed the meeting minutes in question, all of which are included in the responsive records. I have also reviewed Policy 7 – Board Operations which is appended to the September 8, 2020 meeting agenda. I find that the Board has demonstrated that it has a policy governing meetings that it holds in the absence of the public. It is clear from the evidence of the director, which I accept, and the meeting minutes that the meetings at issue involved discussions of topics that Policy 7 permits to be discussed in the absence of the public. I also find that what the director submits about what he learned when he listened to recordings of the meetings of August 31 and September 28, 2020, to be persuasive evidence that those meetings were held in the absence of the public.

[47] I note that the text of the minutes identifies the meetings as "Private Sessions" and there are no attendees identified other than trustees and staff of the school district. Therefore, I find that, on the balance of probabilities, these meetings occurred in the absence of the public, and the second part of the test is met.

Would disclosure of the information in dispute reveal the substance of deliberations at the meetings?

[48] For s. 12(3)(b) to apply, the information at issue must reveal the substance of deliberations. The substance of deliberations is distinct from the mere subject matter under discussion at the meeting. The substance of the deliberations includes what members thought, said or decided at the meeting. Past orders

[17] The Board's initial submission, para. 14, p. 16; Affidavit #1 of the director, para. 27; The Board's further submission, Affidavit #2 of the director, paras. 27-32.
[18] The Board's supplemental submission, Affidavit #2 of the director, para. 21.

have elaborated on the meaning of the phrase "substance of deliberations." Former Commissioner Loukidelis found:

> The first question is what is meant by the words "substance" and "deliberations" in s. 12(3)(b). In my view, "substance" is not the same as the subject, or basis, of deliberations. As *Black's Law Dictionary*, 8th ed., puts it, 'substance' is the essential or material part of something, in this case, of the deliberations themselves. See, also, Order No. 48-1995 and Order No. 113-1996.
>
> Without necessarily being exhaustive of the meaning of the word 'deliberations', I consider that term to cover discussions conducted with a view to making a decision or following a course of action.[19]

[49] In Order 326-1999, former Commissioner Loukidelis found that s. 12(3)(b) can also apply to records that would permit the drawing of accurate inferences with respect to the substance of *in camera* deliberations.[20] Other orders have found that disclosing the wording of a specific motion would reveal the substance of deliberations.[21]

[50] In Order F11-04, Former Commissioner Denham found that "substance of deliberations" does not include the material which stimulated the discussion or the outcomes of deliberations in the form of written decisions.[22] Accordingly, in Order F12-11, the adjudicator found that, while s. 12(3)(b) applied to some of the information in dispute, other information did not reveal the substance of deliberations because no one could reasonably conclude from the material what council members thought, said or decided regarding the material being considered.[23]

[51] The Board submits that the information at issue, consisting of passages in agendas, memoranda, and minutes, would reveal the substance of its deliberations. This is because, according to the Board, they would reveal the matters discussed, the views expressed and how the trustees voted. The director affirms that the recordings of the meetings of August 31 and September 28, 2020 confirm that the memoranda of August 31 and September 28, 2020 were presented to the Board trustees at the respective meetings of those dates for their consideration, direction and decision. He also testifies that trustees

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[19] Order 00-11 2000, BCIPC 11 (CanLII).
[20] Order 326-1999, 1999 CanLII 4353 (BC IPC), 3.1. Other more recent orders have followed suit, for instance: Order F12-11, 2012 BCIPC 15 (CanLII), para 23; Order F19-18, 2019 BCIPC 20 (CanLII), para 53; Order F23-57, 2023 BCIPC 67 (CanLII), para 50.
[21] See, for example, Order 03-09, 2003 BCIPC 09 (CanLII), para. 23; Order F16-03, 2016 BCIPC 3, para. 13.
[22] Order F11-04, 2011 BCIPC 4 (CanLII), paras 29 and 35.
[23] Order F12-11, 2012 BCIPC 15 (CanLII), para. 14.

discussed and deliberated on them, as well as formed amendments and motions on them.[24]

[52] The applicant submits that s. 12(3)(b) does not apply to "bare topics or agenda items". She adds that it also does not apply to background information, if that information does not reveal what was thought, said or decided. She notes that the burden of proof is on the Board to "distinguish between background materials and the substance of deliberations."[25]

[53] The Board has applied s. 12(3)(b) to passages in a series of different types of records. The documents and brief descriptions of the relevant passages are as follows (with page numbers in parentheses):

1. **Board Meeting Agendas**

    a. September 9, 2020: update on one issue; report of Board decision on another (291).
    b. September 28, 2020: motions and updates (307-8).

2. **Interoffice Memoranda August 31 and September 28, 2020** addressed to "Private Board" providing updates on certain subjects (293-304 and 321-322).

3. **Board Meetings Minutes**

    a. June 29, 2020: update, discussion and motions (310-314).
    b. August 31, 2020: attendees, update, discussion and motions (315-316).
    c. September 9, 2020: update on certain issues and description of discussion; movements of trustees and the fact a vote was taken (305-306).
    d. September 21, 2020: names and position titles of school district staff attending the meeting (319-320).
    e. September 28, 2020: motions, decisions, updates, requests for decisions (323-328).

4. **Minutes of the Board's Land Asset Strategy Implementation Steering Committee meeting of April 26, 2022**: options to be presented to the Board (280); indication of Board direction (282).

5. **Emails**
    a. Two emails disclosing the results of votes at the Board's September

[24] The Board's supplemental submission, Affidavit #2 of the director, paras. 22-32.
[25] Applicant's response submission, paras. 9.3-9.5.

28, 2020 meeting (67, 89-90).
b. One email containing information about the Board's September 28, 2020 meeting (86).

[54] I will analyze each of these categories of records in turn to determine which information would reveal the substance of the deliberations of the Board.

1. Board Meeting Agendas

[55] **September 9, 2020 –** The Board has withheld an agenda item that refers to an update on a particular subject and a motion related to that subject. I find the description of the agenda item to be merely the "subject" of deliberations, as it does not reveal what the trustees thought, said or decided and there is no evidence that it would assist anyone to infer what the trustees thought, said or decided. Therefore, s. 12(3)(b) does not apply to the description of the agenda item.

[56] However, I find that disclosing the content of the specific motion at issue here would reveal the substance of the deliberations, and thus 12(3)(b) applies to the content.

[57] **September 28, 2020 –** The Board has withheld several agenda items and motions. As with the agenda of the meeting of September 9, 2020, I find that the descriptions of the agenda items merely consist of the "subjects" of deliberations and not the substance, as they do not reveal what the trustees thought, said or decided and there is no evidence that it would assist anyone to infer what the trustees thought, said or decided. Therefore, s. 12(3)(b) does not apply to them.

[58] However, I find that the disclosing the content of the motions would reveal the substance of the deliberations and s. 12(3)(b) applies to the content of the motions.

[59] In summary, with respect to the two agendas, I find s. 12(3)(b) applies to some of the information in dispute in the agendas but not the information on pages 291 and 307.

2. Interoffice Memoranda

[60] **August 31, 2020 –** The Board has withheld almost the entire memorandum, including the subject title, background and analysis. It has also withheld half of the recommendations. The director's affidavit evidence and the minutes of the meeting confirm that trustees discussed the document, formed opinions and made decisions on it. Therefore, I find that analysis section of the report and the recommendations would reveal the substance of the deliberations and s. 12(3)(b) applies. On the other hand, the subject title and the background

section do not reveal the substance of deliberations. The background merely recounts the origins and history of a document. While it refers to decisions at previous Board meetings, the Board provided no arguments or evidence to suggest that these meetings were held in the absence of the public. Therefore, s. 12(3) does not apply to the subject title and background section on page 293, but it applies to the remaining pages of the document.

[61] **September 28, 2020 –** The Board has withheld most of this memorandum, including the subject title, background and analysis. It has disclosed the introduction, which states that memorandum is provided to the "Private Board" for information purposes only and it does not contain any recommendations. The director affirms that the trustees discussed the memorandum, and this is confirmed in the minutes. Nevertheless, I see nothing to suggest that disclosing the details of the memorandum would reveal what the trustees thought, said or decided.

[62] In Order F24-26, the adjudicator found that memoranda provided to another board of education would reveal the substance of deliberations for the following reasons:

> In combination with the testimony of the Superintendent, I am satisfied that the memos provide detailed background and interpretation of the matters at issue and were a guide for discussion at the Board meetings. The Board made certain decisions at these meetings. The purpose of the memos was clearly to inform those deliberations and guide the Board's decisions and discussions. Therefore, I find that the third part of the test has been met.[26]

[63] In the present case, on the contrary, the memorandum of September 28, 2020 was provided to the Board merely for information and made no recommendations as to future action. There is no evidence before me that the purpose of the memorandum was to inform deliberations and guide decisions and discussions. The minutes indicate that the trustees made no decisions and passed no motions based on this memorandum. Nor do the minutes reveal the nature of any discussions about the memorandum.

[64] Therefore, I find that this memorandum was provided merely for the information of trustees and disclosure would not reveal the substance of their deliberations. Consequently, I find that s. 12(3)(b) does not apply to this memorandum which is at pages 321 and 322.

3. Board Meeting Minutes

[65] All five sets of minutes show the specific motions voted on by the Board and how the trustees voted. Consistent with previous orders, I find that disclosing

[26] Order F24-26, 2024, BCIPC 33 (CanLII), para. 23.

the content of the specific motions and how the trustees voted would reveal the substance of deliberations.

[66] However, some of the information that precedes or follows a motion does not reveal the substance of deliberations because it is either a subject heading, an update to trustees or factual statements describing the issues before Board. These passages do not reveal what the trustees said or thought about the issues before them. The Board has also withheld information about attendees and notes about trustees leaving and re-entering the meetings.

[67] I find that such information does not reveal the substance of the deliberations of the Board. If disclosure of this information could enable an informed reader to infer information about the substance of the deliberations, the Board has made no submissions to that effect, and it is not evident from the face of the records. Therefore, s. 12(3)(b) does not apply to this information. This finding is consistent with that of the adjudicator in Order F19-18, who found that s. 12(3)(b) did not apply to subject headings, updates, factual statements, or information about who attended and their movements during the meetings of a municipal council.[27]

[68] In summary, I find that s. 12(3) does not apply to any information on pages 310, 311, or 319. I find it applies to some, but not all of the information on pages 305-307, 312, 315-318, 325-327.

4. Land Asset Strategy Implementation Steering Committee meeting Minutes, April 26, 2022

[69] This document contains one passage that records the substance of a discussion about information that members recommended should be provided to the Board at a future meeting for the purpose of informing its deliberations and making a decision. I find that s. 12(3)(b) applies to this information.

5. Emails

[70] The Board has not made specific reference in its submissions to the three emails to which it applied s. 12(3)(b). The emails of November 19, 2020 and March 14, 2022 refer to motions that the Board had approved at its meeting of September 28, 2020 in the absence of the public. This information reveals the substance of those motions, which appears in the minutes of that meeting. I find that s. 12(3)(b) applies to this information in the emails as well.

[71] The Board also applied s. 12(3)(b) to an email of March 1, 2022. The information at issue relates to questions about requests for updates on action

[27] Order F19-18, 2019 BCIPC 20 (CanLII), paras. 33 and 35.

items relating to meeting motions regarding the Long Range Facilities Plan. Therefore, I find that s. 12(3)(b) applies to the information in this email.

Summary of s. 12(3)(b) findings

[72] I find that s. 12(3)(b) applies to some but not all of the information in dispute. For clarity, in a copy of the records provided to the Board with this order, I have highlighted in orange the information that the Board is not authorized to refuse to disclose under s. 12(3)(b).

Section 13(1) – advice or recommendations

[73] Section 13(1) allows a public body to refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister to protect its deliberative processes.[28] The parts of the provision that are relevant in this case read as follows:

> **13** (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[74] The first step in the analysis is to determine whether disclosing the information at issue would reveal advice or recommendations under s. 13(1). If it would, the next step is to decide whether the information falls into any of the provisions in s. 13(2) or whether it has been in existence for more than 10 years in accordance with s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, it cannot be withheld under s. 13(1).

Advice or Recommendations

[75] The term "advice" is broader than "recommendations" and includes "an opinion that involves exercising judgment and skill to weigh the significance of matters of fact" and "expert opinion on matters of fact on which a public body must make a decision for future action".[29] "Recommendations" include suggested courses of action that will ultimately be accepted or rejected by the person being advised.[30] Section 13(1) would also apply when disclosure would allow an individual to make accurate inferences about any advice or recommendations.

[76] There are passages on page 63 of the records that the Board characterizes as "The Consultant Advice". The Board submits that this

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[28] *Insurance Corporation of British Columbia v. Automotive Retailers Association* 2013 BCSC 2025, para 52.
[29] *John Doe v Ontario (Finance)* 2014 SCC 36 [John Doe], para 24. *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665, para. 113.
[30] John Doe, para 23.

information consists of advice and recommendations concerning options, valuation and marketing of a particular property. The Board describes the advice contained in these passages as

> a. identification and opinions about market conditions that the [the Board] should consider;
> b. recommended and ideal uses of the property for development;
> c. advice and opinion about the expected value, revenue, and profits for the property and recommendations concerning pricing;
> d. advice and recommendations concerning marketing of the property.[31]

[77] The Board also identifies other passages as recommendations that the Board developed for the City of Vancouver regarding the timing and processing of a development application.[32]

[78] The Board submits that one document is a draft of a "Site Disclosure Statement" that includes recommendations concerning editorial changes and proposed land use.[33]

[79] The Board has applied s. 13(1) to passages in a document entitled "The Land Asset Strategy Report" (LAS Report). It characterizes this document as a strategic report that a third party expert consultant provided. The Board describes the LAS Report as providing a "lengthy analysis of [the Board's] land holdings, identification of Potential Surplus Sites, and advice and opinion on the means through which the Board could potentially generate additional capital funds and return on investment".[34] The Board also applied s. 13(1) to information in the Board minutes, agendas and memoranda. It describes the withheld information as:

> a) analysis and advice prepared for [the Board] regarding sequencing competing priorities and long range facilities planning, budgetary, and capital asset management matters;
> b) analysis and recommendations regarding matters raised in the LAS Report and the assessed merits of different strategies;
> c) analysis and presentation of options to the Board and related assessment, advice, and opinion about the relative merits of those options; and
> d) other advice, recommendations, opinions and analysis pertaining to matters
> e) unrelated to the subject matter of the Access Request.[35]

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[31] The Board's initial submission, para. 3, p. 14.
[32] The Board's initial submission, para. 4, p. 14.
[33] The Board's initial submission, para. 5, p. 14.
[34] The Board's supplemental submission, para. 96.
[35] The Board's supplemental submission, para. 99.

[80] The Board identifies the following types of information as being subject to s. 13(1):

a) advice and opinion on what parcels of land were Potential Surplus Sites or should be considered as such;
b) advice and opinion on relevant market considerations and options for consideration by the School District;
c) recommendations and opinion on the value and prospective return on investment, recommended and ideal uses of properties, revenue, and the merits and challenges of prospective dispositions; and
d) advice and recommendations regarding priority sequences and triaging of potential disposition initiatives.[36]

[81] It explains that some of the information withheld from the Board materials summarizes or refers to passages in the LAS Report that would permit a reader to infer some of the advice contained therein.[37]

[82] The Board has also applied s. 13(1) to records that it does not identify specifically in its submissions. These include the minutes of the Land Asset Strategy Implementation Steering Committee meeting Minutes, April 26, 2022.

[83] The applicant points out that the Board's submissions do not include any analysis as to whether any of the provisions of s. 13(2) apply to any of the information. She notes that if any of these provisions apply, the Board cannot withhold the information under s. 13(1).[38]

[84] She also submits that, if the advice contains factual information or merely reiterates existing policy, it does not constitute advice. She contests the Board's assertion that making editorial changes to a document constitutes providing advice or recommendations.[39] She also asserts that, as recommendations that the Board provided to the City of Vancouver do not "fall within the scope of protecting [the Board]'s internal decision-making process", they are not subject to s. 13(1).[40]

[85] She asserts that the Board failed to properly exercise its discretion in applying s. 13(1) when it withheld information regarding a land use decision that she asserts prevented stakeholders from providing feedback.[41]

[36] The Board's supplemental submission, paras. 96-97.
[37] The Board's supplemental submission, para. 100.
[38] Applicant's response submission, paras. 8.5-8.6.
[39] Applicant's response submission, para. 8.13.
[40] Applicant's response submission, para. 8.10
[41] Applicant's response submission, para. 8.18

Analysis

[86] **The Consultant Advice –** I have reviewed the relevant passages in this report and can confirm that the Board has described them accurately. They represent expert opinions of the consultant on matters of fact, consistent with the findings of the case law noted above. Therefore, I find that s. 13(1) applies to the relevant passages in this report.

[87] **Recommendations to the City of Vancouver –** I have reviewed the passages in the communications from the Board to the City of Vancouver. They clearly consist of options that staff at the school district recommended to staff at the City of Vancouver to inform future decisions that the latter would be taking. These are recommendations within the meaning of s. 13(1). Therefore, I find that s. 13(1) applies to the relevant passages in the correspondence from the Board to the City of Vancouver.

[88] **Draft Site Disclosure Statement –** This document was attached to an email from the Board to a third party. The Board has withheld information in the email as well as parts of this document. The information in the email consists of a question and a statement that indicates that the writer is uncertain about something. It is possible that this is intended as a request for advice, but the Board has not indicated that this is the case. Moreover, I cannot infer the substance of any advice from this information, as there is no record as to what advice or recommendations, if any, the third party provided. Nor is there any indication as to why the Board contacted this third party, what role they played in the land use process or why the Board would be seeking their advice. Therefore, I find that s. 13(1) does not apply to the two sentences in the email on page 107.

[89] The attachment is a partially completed form. The Board has applied s. 13(1) to two passages that it describes as "editorial changes". The first passage has a line drawn through it. The second passage consists of two words. I am not persuaded that this draft statement reveals advice or recommendations about any changes to the wording of the document. In fact, I cannot say that the draft statement even reveals communication from one person to another, let alone advice or recommendations. The Board has not provided evidence to show how the draft statement discloses one person's advice and recommendations to another person about the wording or editing of the statement. The Board has the burden of proof to demonstrate that the information at issue consists of advice or recommendations. It has not met this burden, and it is not evident from the face of the record that disclosing this information would reveal advice or recommendations.

[90] Therefore, I find that s. 13(1) does not apply to the passages in the draft Site Disclosure Statement on pages 108 and 109.

[91] **LAS Report –** I have reviewed the relevant passages in this report. The Board has correctly characterized most of the information at issue as advice or recommendations. It is clear that the purpose of this report was to provide the Board with expert advice to inform its decision-making. This includes explicit recommendations and expert opinions on matters of fact for the Board to consider the Board when making decisions about its land assets.

[92] I note, however, that the Board has applied s. 13(1) inconsistently to a small amount of information on page 131. The Board has elsewhere disclosed this information in the table of contents and in the body of the report. The Board has not explained why it has treated this information differently on different pages.

[93] Therefore, I find that s. 13(1) applies to the information at issue in the LAS Report, except for certain information on page 131.

[94] **Board agenda, minutes and memoranda –** The Board applied s. 13(1) to passages in these documents to which it also applied s. 12(3)(b). In the cases where I found that s. 12(3)(b) applied, I do not need to consider the application of s. 13(1).

[95] The Board applied s. 13(1) to page 291, which is the agenda for the Board meeting of September 9, 2020. I found that s. 12(3)(b) did not apply to the description of an agenda item that consisted merely of an update. I find that this agenda item does not reveal any advice or recommendations either. Therefore, s. 13(1) does not apply.

[96] The Board applied s. 13(1) to page 293, which is the first page of the Board memorandum of August 31, 2020. I found that s. 12(3)(b) did not apply to this page, as it consists of subject matter and background. I find that the information does not reveal any advice or recommendations either. Therefore, s. 13(1) does not apply.

[97] **Land Asset Strategy Implementation Steering Committee meeting Minutes, April 26, 2022 –** The Board has applied s. 13(1) relating to advice and recommendations of the Committee that would be communicated to the Board. This is clearly advice within the meaning of s. 13(1). I find that s. 13(1) applies to this information.

Section 13(2) and 13(3)

[98] The applicant is correct to point out that if any of the provisions of s. 13(2) apply to any of this information that reveals advice or recommendations, the Board cannot withhold it under s. 13(1) and that there is no evidence to suggest the Board considered the application of s. 13(2). Nevertheless, I have considered all of the factors in s. 13(2) and find that none apply.

[99] It is clear from the face of the records that they have not been in existence for more than 10 years. Therefore, s. 13(3) does not apply.

[100] In summary, I find that the Board has correctly applied s. 13(1) except for the information on pages 67-69, 71-73, 75, 76, 78, 81, 82, 84-86, 88-95, 98-110 and 293, as well as part of the information on pages 131 and 291. I have highlighted that information in orange on a copy of those pages provided to the Board with this order.

Section 17(1) – harm to the financial interests of a public body

[101] The relevant provision of s. 17(1) is as follows:

> **17** (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
>
> …
>
> (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
>
> (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
>
> (e) information about negotiations carried on by or for a public body or the government of British Columbia;
>
> (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[102] As set out in past orders, ss. 17(1)(a) through (f) provide examples of the kinds of information that, if disclosed, could reasonably be expected to harm the financial or economic interests of a public body. Past orders have also established that it is not enough for a public body to show that one of the circumstances in (a) through (f) apply; a public body must also demonstrate that disclosure could reasonably be expected to result in financial or economic harm in accordance with the opening words of s. 17(1).[42]

[103] In this case, the Board must establish that disclosure of the information can reasonably be expected to cause the harms in s. 17(1). The "reasonable

[42] Order F21-56, 2021 BCIPC 65 (CanLII), paras 21 and 23.

expectation of harm" standard is "a middle ground between that which is probable and that which is merely possible."[43] There is no need to show on a balance of probabilities that the harm will occur if the information is disclosed, but a public body must show that the risk of harm is well beyond the merely possible or speculative.[44]

[104] It is not sufficient for the Board merely to claim that s. 17(1) applies. It must demonstrate how the exception applies to the specific information at issue. It has to establish a direct connection between the disclosure of that information and the harm it envisages. The Board must provide sufficient explanation and evidence to demonstrate that the risk of harm does indeed meet the required standard.

[105] The Board makes general arguments about the harms it believes would result from disclosure of the information at issue and then applies those arguments to the specific provisions in s. 17(1).

[106] Its primary concern is "premature publicity" about specific properties that have been identified as possible subjects of future land use decisions. As I understand its argument, this concern only arises where it has made no decision to formally initiate the surplus property disposition process with respect to those properties. The Board expresses no concerns about the disclosure once it has made a decision to formally explore the disposition of surplus lands. The issue is that the Board anticipates that public reaction to the identification of particular properties as possible candidates for future disposition would present it with operational and financial challenges.

[107] The Board submits that its past experience suggests that some members of the local school communities and greater public would "become unnecessarily anxious or concerned" if they learn about sites that might be considered for future disposition. They might also engage in pre-emptive public opposition that could compromise the ability of the Board to make land use decisions with fulsome deliberation and based on the right considerations.[45]

[108] The Board submits that this, in turn, would mean it would need "to divert resources to allaying public fears, responding to media inquiries, correcting inaccurate speculation about its plans, and addressing other opposition, such as political and legal challenges". It asserts that this would cause it to incur "tangible costs" although it does not identify the possible scale of these costs.[46] It identifies these costs as:

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[43] *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3, para. 201.
[44] *Ibid*, para. 206. See also *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, paras. 52-54.
[45] The Board's initial submission, paras. 29a-b.
[46] The Board's initial submission, para. 29b.

a. sunk costs that have already been expended on the Prospective Initiative and related planning process, as reflected in the Disputed Records;
b. future costs incurred in responding to premature and unwarranted public opposition;
c. the loss of future capital revenues if the Prospective Initiative is not pursued due to public opposition; and
d. negative impacts on the number or volume of purchase or lease offers that may be received from prospective vendors, due to pre-emptive public disclosure and opposition before the [Board] planning processes are completed.[47]

[109] The Board's other main concern is that premature disclosure could damage its future negotiating position, in the event that a decision is made eventually to proceed with a certain property. It fears premature disclosure may compromise its bargaining position with future property purchasers or otherwise reduce the monetary value of the property. The Board explains:

> Public opposition based on incomplete information may skew market conditions and result in fewer or no bids being made for a sale or long term lease of Surplus Lands. It may also cause potential purchasers to make lower offers based on assumptions about potential land use and value or ongoing public opposition. There is also potential for prospective purchasers to use premature disclosure to gain an advantage over other prospective purchasers in a competitive bidding process or to seek to manipulate market conditions in order to secure a lower price.[48]

[110] **Section 17(1)(c) Plans that relate to administration of a public body –** The Board submits that the disputed information comprises or relates to "plans" exploring the feasibility of potential land use decisions "such as seeking preliminary approvals from the City for Subdivision and surveys and other documentation that sets out the plans for the partition and potential disposition of the identified Surplus Lands". The Board admits that, although the records themselves do not constitute a comprehensive "plan", their disclosure would reveal the basic elements of a plan for subdivision and partition of a particular property. The Board also submits that these plans clearly have not been made public.[49]

[111] The applicant submits that the Board has already made public the "Short Term Opportunities Plan". Therefore, s. 17(1)(c) would not apply to any information in that plan.[50]

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[47] The Board's initial submission, para. 30.
[48] The Board's initial submission, para. 29c.
[49] The Board's initial submission, para. 34.
[50] Applicant's response submission, para. 7.24-7.26.

Analysis

[112] Previous OIPC orders have interpreted the term "plan" as a proposal that sets out detailed methods and action required to implement a policy, design, scheme or thing to be done,[51] but excludes a "report containing recommendations that would form the basis for the development of a 'plan'."[52] I agree with that approach.

[113] For the Board to establish the application of s. 17(1)(c) it must clearly demonstrate the existence of a formal plan. It must also demonstrate that this plan relates to the administration of the Board.

[114] I have reviewed the responsive records. I find that there is nothing that would constitute a plan for the purposes of s. 17(1)(c). I note that the Board goes to great lengths to demonstrate that it currently has no intention of disposing of the properties at issue. However, it then submits that the disclosure of some of the information at issue would reveal the details of a plan to dispose of those properties. Thus, its submissions appear to be contradictory.

[115] I accept the Board's arguments that it has made no decisions regarding the disposition of these properties, other than to postpone indefinitely any consideration of these properties for disposition. Therefore, logically, it cannot have a plan to dispose of these properties.

[116] It appears that it has taken some of the steps required to obtain information that it would need, in the event it decides to revisit the properties for possible disposition. Nevertheless, I see nothing in the responsive records even remotely resembling a formal plan to do anything. Nor do the submissions of the Board explain which of the relevant passages contain the components of a "plan" or what the basic elements of that plan are.

[117] Moreover, the Board has not demonstrated that plans regarding the disposition of surplus properties, if they existed, would constitute plans relating to the "administration of the public body" in accordance with s. 17(1)(c).

[118] Therefore, as I have found that the Board has failed to establish that it has developed a plan to dispose of the properties, the responsive records would not reveal any plans that relate to the administration of a public body. Consequently, s. 17(1)(c) does not apply.

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[51] Order F21-56, 2021 BCIPC 65 (CanLII), para. 42; Order F17-03, 2017 BCIPC 3 (CanLII), para. 13. Order No. 326-1999, October 29, 1999, p. 6.
[52] Order F21-56, para. 42; Order No. 326-1999, p. 6; Order F11-35, 2011 BCIPC 44 (CanLII), paras. 9-10.

[119] **Section 17(1)(e) negotiations carried on by a public body –** The Board cites the application of s. 17(1)(e) in its further submission.[53] Nevertheless, it does not directly address the application of this provision to the records at issue. It makes no submissions specifically about any information in the records that might relate to any ongoing negotiations.

[120] I have reviewed the records at issue and can see no evidence of any information about any current negotiations that the Board or any other public body is carrying on.

[121] Therefore, I find that s. 17(1)(e) does not apply to any information in dispute.

[122] **Section 17(1)(d) and (f) undue financial loss or gain and harm to negotiations –** The Board has combined its submissions relating to ss. 17(1)(d) and (f). Section 17(1)(d) applies to information the disclosure of which could prematurely reveal a project or plan or otherwise result in undue loss or gain for any party. Section 17(1)(f) applies to information the disclosure of which would harm the negotiating position of a public body.

[123] The Board submits that disclosure of some of the information at issue would result in the premature disclosure of a project or plan that would harm its negotiation position and result in it suffering undue harm. It also submits that disclosure could permit a future purchaser or "counter-party" to realize undue gains.[54]

[124] It explains as follows:

> Specifically, there is a reasonable basis to conclude that premature disclosure and anticipated public opposition may deter potential bidders from making offers (or reasonable offers) on property, may lead to market manipulation, may undermine the competitive bidding process, and may contribute to false assumptions about the property's highest and best use, which in turn could lead to artificially low bids, difficult or entrenched positions in negotiations or unnecessarily complicate matters for potential proponents. This also could result in prospective proponents not undertaking their own independent analysis of valuation – which could be higher than [the Board]'s figures – depriving [the Board] of a possible financial benefit. Similarly proponents may erroneously believe the contemplated redevelopment is the only option, or [the Board]'s preferred option, and may rely on this in crafting bids. This might deprive [the Board] of the benefit of creative or alternative proposals based on independent analysis which may be financially favourable to [the Board].[55]

[53] The Board's further submission, para. 107.
[54] The Board's further submission, para. 134.
[55] The Board's further submission, para. 136.

[125] The Board submits that the responsive records also contain the advice of consultants that provide insights into the Board's approach, considerations and strategies regarding the marketing of surplus properties to potential purchasers. It suggests that this information would be valuable to these purchasers in the event they engaged in negotiations to purchase the properties.[56]

[126] The Board identifies similar information in the LAS Report. This includes details of potential sites, their rating as short, medium, or long term prospects, their valuation, and priority recommendations. It states further:

> The LAS Report contains sensitive analysis of options, preliminary site review and development assessments, assessment of cost considerations and risks associated with prospective disposition for each of the sites identified as a potential prospect.[57]

[127] The applicant submits that the Board's submissions on the harms it envisions in accordance with s. 17(1)(d) and (f) are speculative. She asserts that the Board has failed to establish a direct link between the disclosure of the information at issue and actual harm, as it has not provided specific examples of these harms have occurred in the past as the result of the premature disclosure of similar information.[58]

Analysis

[128] There are two categories of information at issue with respect to s. 17(1). One is merely the site name of the properties that have been identified as an option for future disposition decisions, but where no decisions have been made. The other is financial information about different properties, such as assessed value and other considerations about the properties that could affect possible revenues from the sale of the properties.

[129] I find that most of the Board's arguments about the harm of disclosing just the name of the site are speculative. For example, it has failed to explain why the timing of when the public becomes aware that a certain might be the subject of a land disposition decision would affect potential revenues from that property. The Board submits that in the past when it chose to disclose the identity of sites (i.e., not "premature" disclosure) this led to various degrees of public opposition. It has not explained how this public opposition influenced the price it was able to negotiate or how the variable timing of such opposition, if any, who have a variable impact.

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[56] The Board's initial submission, para. 40.
[57] The Board's further submission, para. 116.
[58] Applicant's response submission, paras. 7.1-7.7.

[130] I also find it speculative to assume that premature disclosure of the identity of a property would lead to members of the public becoming unnecessarily anxious or concerned. Given the absence of any factual evidence to corroborate this assertion, it is difficult to establish whether the Board's concern in this regard is valid.

[131] The Board appears to be suggesting that there are members of the public who are unable to distinguish the difference between cases where the Board has commenced the formal land use decision consultation process from other cases where the Board has merely named a property that it might, or might not, consider for a land use decision in the future. The Board has not provided any objective verification of this assertion about the alleged inability of some members of the public to distinguish between two clearly distinct sets of circumstances. Consequently, I find this argument to be unconvincing.

[132] Even were I to accept these arguments about "premature disclosure", which I do not, the Board submissions about the costs it would incur are vague and speculative. It asserts that it would have to divert resources to correct "inaccurate speculation about its plans". It would have to deal with media inquiries, as well the attempts of opponents to use political of legal challenges, presumably to prevent the disposition of certain lands. Nevertheless, the Board has not identified any concrete expenditures that it would incur. For example, it has not suggested that its current complement of employees would be insufficient to deal with this workload. It has not stated that it would have to authorize employees to work overtime or to hire new temporary employees. It states only that it would have to divert resources. It does not explain what this would entail or what its approximate additional expenditures, if any, might be.

[133] The Board submits that the public opposition on learning that a property might in the future be considered for a land use decision would dissuade potential purchasers in the event the Board eventually decided to sell the property. It suggests that this could harm its negotiating position with these potential bidders and prevent it from obtaining the best possible price for the property. It has not explained how such advance disclosure, in contrast to disclosure when the Board judges it to be the right time, would have this effect. It seems reasonable to assume that, if there is to be public opposition to a decision to dispose of a certain property, this will inevitably occur well in advance of the ultimate decision of the Board to put the property up for sale. This is because the Board must publicly disclose the possibility of such a sale during the formal consultation process. The Board has not provided a convincing explanation as to why the timing of the emergence of such opposition would influence the behaviour of potential purchasers.

[134] Moreover, the Board suggests that, even if there is no immediate public opposition arising from a disclosure, potential bidders may change their

behaviour based on "anticipated" public opposition. This, it submits, could lead some bidders to offer lower prices than they would if the disclosure occurred after the Board had decided to announce a decision to sell the properties. The Board asserts that this could lead to "market manipulation", though it does not explain what this would entail or how it would occur. It states that premature disclosure could also undermine the competitive bidding process but does not explain how this could occur, what the consequences would be or why the timing or the disclosure would make a difference.

[135] It submits that premature disclosure could also lead to potential bidders "not undertaking their own independent analysis of valuation". Nevertheless, it does not explain why the timing of the disclosure would lead a potential purchaser to neglect to conduct standard due diligence. The Board also submits that premature disclosure could lead to potential purchasers coming to erroneous conclusions about the Board's negotiating position and digging in to entrench positions in any negotiations.

[136] These claims about possible reactions of potential bidders are speculative and lack objective evidence. In essence, the Board is asking me to find it reasonable to conclude that the disclosure of the identity of properties for possible future land dispositions at a certain time would lead members of the public and potential purchasers of large properties to act irrationally. I do not find it reasonable to conclude that there is a real prospect of this occurring.

[137] The Board has not established that advance disclosure of the identity of the property would reveal to potential bidders any information about its negotiating position or otherwise constrain its ability to accept or reject any potential offers. Moreover, it has not demonstrated that this disclosure could reasonably be expected to lead to it suffering any financial loss or a potential bidder enjoying any gain, or why such loss or gain would be undue.

[138] The Board submits that premature opposition to the potential disposition of a property could result in political pressure on the Board to decline to dispose of a property, leading to loss of sunk costs and future revenue. Again, it has failed to establish how the timing of the disclosure would affect the ability of the Board to resist such pressure. Given that there is always a public consultation process on a proposed disposition prior to the final decision, it is reasonable to conclude that there will always be time for public opposition to build and political pressure to be applied. The only difference in these two scenarios is timing, and the Board has not demonstrated how the difference in timing would be determinative of different outcomes. In addition, with respect to what it describes as resources that it has already expended in identifying potential properties as options for disposition, it has not identified whether they involved additional expenditures and how extensive they were.

[139] The Board has the burden of proof to establish that the information at issue meets the standard test for s. 17(1) to apply. It has not met this burden with respect to the single fact of the identity of particular properties as candidates for future land use decisions.

[140] I now turn to the more detailed financial information about different properties, such as assessed value and other considerations about the properties that could affect possible revenues from the sale of the properties.

[141] The records at issue here are two reports from consultants, the LAS Report and the Grover Elliot Appraisal, as well as the Consultant Advice. These documents provide strategic advice concerning the valuation and marketing of properties. There is similar information contained in the minutes of the Land Asset Strategy Implementation Steering Committee meeting of April 26, 2022. It is reasonable to conclude that the information at issue here would inform the negotiating position of the Board for the sale of the properties at issue. I am satisfied that this is information that would be valuable to potential purchasers, and it is reasonable to conclude that disclosure would harm the negotiating position of the Board, in a way that would compromise its ability to obtain the best price for these properties.

[142] Therefore, I find that s. 17(1)(f) applies to all of this information in the LAS Report, the Grover Elliot Appraisal, the Consultant's Advice. There is similar information contained in the minutes of the Land Asset Strategy Implementation Steering Committee meeting of April 26, 2022 and s. 17(1)(f) applies to this information as well. I also find that disclosure of this information would cause the Board financial harm in accordance with s. 17(1).

[143] In summary, I find that s. 17(1) applies only to the information on pages 63, 112-215, 216-279 and 280-283. I find that s. 17(1) does not apply to any other information.

CONCLUSION

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

1. Subject to item 2 below, I confirm the decision of the Board to withhold information under s. 12(3)(b).

2. I require the Board to give the applicant access to the information that I found it is not authorized to refuse to disclose under s. 12(3)(b). It must disclose all information on pages 293, 310, 311, 319, and 321-322. I also found that it is not authorized to refuse to disclose some of the information on pages 291, 305-307, 312, 315-318, 325-327. I have highlighted that

information in orange on a copy of those pages provided to the Board with this order.

3. Subject to item 4 below, I confirm the decision of the Board to withhold information under s. 13(1).

4. I require the Board to give the applicant access to the information that I found it is not authorized to refuse to disclose under s. 13(1). It must disclose all information on pages 67-69, 71-73, 75-76, 78, 81-82, 84-86, 88-95, 98-110 and 293 that it withheld under s. 13(1). I also found that it is not authorized to refuse to disclose some of the information on pages 131 and 291. I have highlighted that information in orange on a copy of pages 131 and 291 provided to the Board with this order.

5. Subject to item 6 below, I confirm the decision of the Board to withhold information under s. 17(1) on pages 63, and 112-283.

6. I require the Board to give the applicant access to the information that I found it is not authorized to refuse to disclose under s. 17(1). It must disclose all information it withheld under s. 17(1) that I have not described in item 5 above.

7. The public body is required to give the applicant access to the information I have identified in items 2, 4 and 6 above.

8. The public body must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the pages described at items 2, 4 and 6 above.

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

October 29, 2025

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

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