



Order F26-04

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

David S. Adams
Adjudicator

January 19, 2026

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Summary: An applicant asked the BC Housing Management Commission (BC Housing) for access to several financial reports about third parties, under the *Freedom of Information and Protection of Privacy Act* (FIPPA). BC Housing withheld three reports in their entirety under ss. 13(1) (advice or recommendations) and 14 (solicitor-client privilege) of FIPPA. BC Housing did not provide the reports to the adjudicator to review during the inquiry. The adjudicator found that s. 14 did not apply to the three reports and ordered BC Housing, pursuant to s. 44(1)(b), to produce them so the adjudicator could decide whether s. 13(1) applied.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 14, 44(1)(b), and 44(2.1).

INTRODUCTION

[1] An access applicant requested records from the BC Housing Management Commission (BC Housing) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant asked for all financial reviews of third-party organizations commissioned by BC Housing from January 1, 2015 to the date of the request.

[2] In response, BC Housing provided access to some of the reports resulting from these reviews, but withheld some information in them under various sections of FIPPA. It withheld other reports in their entirety. The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review BC Housing's decision to withhold information from these records. During mediation by the OIPC, BC Housing disclosed some additional information to the applicant. However, mediation did not resolve all the issues, and the matter proceeded to inquiry.

[3] Both parties provided submissions in this inquiry. BC Housing also provided affidavit evidence.

PRELIMINARY MATTER

Case splitting and BC Housing's reply evidence

[4] The parties made the following submissions in this inquiry:

1. BC Housing's initial submission, together with one affidavit;
2. The applicant's response submission;
3. BC Housing's reply submission, together with two affidavits;
4. The applicant's sur-reply; and
5. BC Housing's reply to the applicant's sur-reply.

[5] The applicant says the two affidavits BC Housing provided with its reply submission are not proper reply evidence because they do not contradict or qualify new facts raised by the applicant in his response. He says BC Housing may only adduce evidence which responds to a new matter or defence raised by the applicant which BC Housing could not reasonably have anticipated. He says this amounts to BC Housing splitting its case. As a result, he says, these affidavits should not be admitted in this inquiry.¹

[6] BC Housing does not claim that its reply evidence responds to a new matter which it could not reasonably have anticipated. However, it says I should still admit that evidence because I have granted the applicant the opportunity to make a sur-reply, thereby mitigating any unfairness arising from the admission of BC Housing's reply evidence.²

[7] Generally, parties must exhaust their evidence in the first instance and are not permitted to split their case.³ I agree with the applicant that BC Housing should have made its full case in its initial submission. However, the OIPC, as an administrative tribunal, is not bound by the strict rules that govern judicial proceedings. As the Commissioner's delegate, I have the authority and discretion to admit evidence that I consider relevant or appropriate for the purposes of deciding the matters at issue in an inquiry, whether or not that evidence would be accepted in a court of law.⁴ Moreover, in this case the applicant has had a full opportunity to challenge BC Housing's reply evidence, and has made a detailed submission doing so. I agree with BC Housing that this mitigates the unfairness

¹ Applicant's sur-reply at para 2.

² BC Housing's reply to applicant's sur-reply at paras 1-5.

³ Order F13-09, 2013 BCIPC 10 (CanLII) at para 33; Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 4th ed (Markham, ON: LexisNexis Canada, 2014) at 1190.

⁴ Order F25-64, 2025 BCIPC 74 (CanLII) at para 15 and the cases cited therein.

that could otherwise have arisen from the admission of its reply evidence. I will therefore admit and consider BC Housing's reply evidence.

ISSUES AND BURDEN OF PROOF

[8] In this inquiry, I must decide whether BC Housing is authorized to refuse to disclose the information in dispute under ss. 13(1) and 14.

[9] BC Housing, as the public body, has the burden of proving that the applicant has no right of access to the information it withheld under ss. 13(1) and 14.⁵

DISCUSSION

Background⁶

[10] BC Housing is a Crown agency whose mandate includes developing, managing, and administering provincial and federal-provincial housing. As part of this mandate, it assists in making affordable housing available to people with low incomes or other disadvantages by administering and funding a range of programs. These programs are delivered by third parties in the non-profit sector, with which BC Housing has long-term operating agreements.

[11] During the period covered by the access request, BC Housing hired a law firm (the Law Firm) to retain audit firms on BC Housing's behalf. The audit firms produced reports on their financial reviews of BC Housing's third-party non-profit partners. Two of these reports are at issue in this inquiry.

[12] The Law Firm was also hired by the Aboriginal Housing Management Association (AHMA) to retain an audit firm to perform a financial review of one of BC Housing's non-profit partners, the results of which were to be shared with BC Housing. AHMA is a non-profit association that works with BC Housing to manage and operate Indigenous housing projects. One of the financial reports produced for AHMA is in BC Housing's custody and is at issue in this inquiry.

Records at issue

[13] BC Housing has withheld the following three reports in their entirety under ss. 13(1) and 14:

⁵ FIPPA, s. 57(1).

⁶ The information in this section is drawn from BC Housing's submissions and evidence.

1. A report dated October 6, 2017, commissioned by AHMA, authored by KPMG LLP (KPMG), and reporting on the Vancouver Native Housing Society (VNHS) (the VNHS Report);
2. A report dated December 15, 2015, commissioned by BC Housing, authored by Deloitte LLP (Deloitte), and reporting on the HFBC Housing Foundation and HFBC Housing Foundation (1993) (the HFBC Report); and
3. A report dated March 10, 2020, commissioned by BC Housing, authored by KPMG, and reporting on the Lu'ma Native Housing Society (the Lu'ma Report).

These are the only records at issue in this inquiry.⁷

Solicitor-client privilege – s. 14

[14] Section 14 of FIPPA allows a public body to refuse to disclose information that is subject to solicitor-client privilege. The term “solicitor-client privilege” in s. 14 has been held to encompass both legal advice privilege and litigation privilege.⁸

[15] While some of its submissions and evidence appear to relate to the elements of litigation privilege and solicitor’s brief privilege (or solicitor’s work product privilege), BC Housing does not expressly rely on any head of privilege other than legal advice privilege to withhold the three reports at issue.⁹ Nevertheless, for completeness, I will discuss the possible application of those other heads of privilege below.

Evidentiary basis for solicitor-client privilege

[16] BC Housing did not provide me with the three reports it says are privileged. Instead, it provided affidavits from its privacy and access program manager (the Privacy Manager) and a lawyer who works for the Law Firm (the Lawyer) to support its privilege claim. The Lawyer deposes that he has personally reviewed the three reports and the letters the audit firms sent to the

⁷ BC Housing provided redacted versions of other reports, withholding some information in them under various sections of FIPPA. However, the applicant says he is not seeking unredacted copies of those reports: Applicant’s response submission at para 2. I have therefore not considered them in this order.

⁸ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 26.

⁹ BC Housing’s initial submission at paras 41 and 69-70; BC Housing’s reply submission at para 1; BC Housing’s reply to applicant’s sur-reply at para 44.

Law Firm when their services were sought (the engagement letters).¹⁰ The Privacy Manager deposes that she has a “comprehensive understanding of the three reports that were withheld under section 14”,¹¹ and that she has reviewed the engagement letters and email correspondence related to the reports.¹²

[17] Sections 44(1)(b) and 44(2.1) of FIPPA, read together, allow me to order the production of records over which a public body has claimed solicitor-client privilege. However, in light of the importance of solicitor-client privilege to the functioning of the legal system, and in order to minimally infringe on that privilege, I would order production of records over which privilege is claimed only when it is absolutely necessary to fairly decide the issues in dispute.¹³

[18] The parties do not appear to take positions about whether I can decide on the application of privilege to the three reports without seeing them. BC Housing appears to imply that this is not necessary: it says it has provided evidence that the three reports are privileged.¹⁴ The applicant says BC Housing’s evidence is insufficient to establish its claim of privilege, but does not expressly say it is necessary for me to see the three reports themselves in order to decide whether privilege applies.¹⁵

[19] BC Housing has provided evidence from two affiants who have reviewed the three reports and have provided descriptions of them, including their date, the identity of the sender and recipient, and their nature. In addition, the Lawyer is a practicing lawyer who has a duty to ensure that privilege is properly claimed. I am required to give some weight to the judgment of a practicing lawyer when adjudicating claims of privilege.¹⁶ For these reasons, I find I can make my decision about whether the three reports are privileged based on the parties’ submissions and evidence. I therefore do not find it necessary in this case to order production under s. 44(1) to decide on the application of solicitor-client privilege.

Legal advice privilege

[20] Legal advice privilege applies to communications between a solicitor and their client that entail the seeking or giving of legal advice, and that are intended

¹⁰ Affidavit of Lawyer at para 2.

¹¹ Affidavit #1 of Privacy Manager at para 2.

¹² Affidavit #2 of Privacy Manager at para 2.

¹³ *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.

¹⁴ BC Housing’s reply submission at para 2.

¹⁵ Applicant’s response submission at paras 3-17; Applicant’s sur-reply at paras 13-19.

¹⁶ *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII) at para 86.

by the parties to be confidential.¹⁷ The purpose of legal advice privilege is to “promote full and frank communications between solicitor and client, thereby facilitating effective legal advice, personal autonomy (the individual’s ability to control access to personal information and retain confidences), access to justice and the efficacy of the adversarial process”.¹⁸

[21] Legal advice privilege also extends to the “continuum of communications” related to the seeking and giving of legal advice, including factual information furnished by the client to the lawyer that is related to the advice sought, and including internal client memoranda related to the legal advice received and its implications. Communications with third parties may fall within the continuum of communications that are covered by legal advice privilege if the third party is essential or integral to the solicitor-client relationship.¹⁹

Communications between a solicitor and a client

[22] BC Housing does not take the position that the three reports are communications between a solicitor and a client. Instead, BC Housing’s evidence is that the reports are communications between the third-party audit firms and the Law Firm.²⁰ The Privacy Manager states that BC Housing and some of the third-party non-profit entities are “interconnected”.²¹ However, I do not understand BC Housing to be arguing that they are the same entity or are joint clients of the Law Firm.

[23] I find, based on BC Housing’s evidence, that the reports are not communications between a client (BC Housing or AHMA, as applicable) and the Law Firm, and instead are communications between third-party audit firms and the Law Firm. The question is whether these communications come within one or more of the exceptions to the rule that legal advice privilege applies only to a communication between a solicitor and a client.

Communications between a solicitor and a third party

[24] Communications between a lawyer and a third party are not protected by legal advice privilege merely because they assist the solicitor in formulating legal advice to the client. This includes situations in which a third party is simply authorized to gather information from outside sources and pass it to the solicitor so that the solicitor might advise the client. However, such communications may be protected by legal advice privilege if the third party serves as a line of

¹⁷ *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at 837.

¹⁸ *College*, *supra* note 8 at para 30.

¹⁹ *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83 and the cases cited therein.

²⁰ Affidavit #1 of Privacy Manager at paras 24, 35, and 41; Affidavit of Lawyer at paras 4-8, 14, and 19-20.

²¹ Affidavit #2 of Privacy Manager at para 23.

communication between the solicitor and client or where the function of the third party is “essential to” or “integral to” the solicitor-client relationship.²²

A line of communication between solicitor and client

[25] A third party may be a “line of communication between the solicitor and client” either by simply carrying information between solicitor and client or by providing the expertise required to interpret information provided by the client so that the solicitor can understand it.²³

[26] In an affidavit attached to BC Housing’s reply submission, the Lawyer says that for each of the three reports, the audit firm was retained by the Law Firm on behalf of a client (BC Housing or AMHA, as applicable), and was retained for the purpose of using the auditor’s expertise to interpret information provided by the client “and others” for the Firm to understand it, in order to facilitate the Law Firm’s provision of legal advice.²⁴

[27] The applicant says there is no evidence about the nature of the information provided by the clients to the audit firms, about what legal issues the information pertained to, or about who the “others” who also provided information were. He also points to the affidavit evidence of the Privacy Manager, attached to BC Housing’s initial submission, which states that the purpose of the reports was to inform the clients about the outcomes of the reviews of the third-party non-profits and does not say anything about the interpretation of information provided by the clients.²⁵

[28] In reply, BC Housing says the Lawyer’s assertions about the audit firms’ interpretation of client information are statements on matters of fact supported by the factual particulars and details set out in excerpts of the reports and engagement letters.²⁶ BC Housing denies that there is a contradiction between the Lawyer’s assertion that the purpose of the reports was to have the audit firms use their expertise to interpret client information and the Privacy Manager’s earlier assertion that the reports are about the non-profit partners.²⁷

²² *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 532 [*Bilfinger Berger*] at para 27, citing *General Accident Insurance Co. v. Chrusz*, 1999 CanLII 7320 (ON CA) [*Chrusz*]; *College*, *supra* note 8; *Bank of Montreal v. Tortora*, 2010 BCSC 1430; and *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [*Camp*].

²³ *Bilfinger Berger*, *supra* note 22 at para 27.

²⁴ Affidavit of Lawyer at paras 9, 16, and 21.

²⁵ Applicant’s sur-reply at paras 17-19.

²⁶ BC Housing’s reply to applicant’s sur-reply at paras 24-27.

²⁷ *Ibid* at paras 28-38.

[29] While I owe some deference to the Lawyer’s judgment, it is still incumbent on me to evaluate whether the evidence establishes a claim of privilege.²⁸ A bald assertion or “very general allegation” in an affidavit, on its own, is insufficient to meet a party’s burden of establishing privilege.²⁹ It is open to a decision maker to refuse to accept a lawyer’s opinion, when unsupported by evidence, on a matter in dispute in the inquiry.³⁰ In Order F19-14, the adjudicator rejected a lawyer’s opinion about whether a communication met the criteria for legal advice privilege because the lawyer did not explain what factors led her to form that opinion.³¹

[30] In this case, I find that the Lawyer’s assertions about the audit firms’ interpretation of client information for the Law Firm’s understanding and provision of advice are not supported by other factual particulars in the evidence before me. The Lawyer does not explain the basis on which he grounds his conclusion that the audit firms were retained for the purpose of using their expertise to interpret information provided by the clients. He does not say, even in a broad and general way, what kind of client information the Law Firm needed the third-party audit firms to interpret in order for the Law Firm to understand it. Nothing about the surrounding circumstances as set out in BC Housing’s submissions and evidence, including the excerpts quoted from the various engagement letters, appears to me to support the conclusion that the third parties were acting as a line of communication between the clients and the Law Firm.

[31] Instead, I find that the surrounding circumstances, including BC Housing’s own submissions, support the conclusion that the audit firms were “essentially retained as” experts to provide expert reports to the Law Firm.³² In other words, I find on a balance of probabilities that the audit firms were not using their expertise to interpret information provided by the clients and, instead, were interpreting information provided by the non-profit partners in order to assist the Law Firm in providing legal advice to the clients. Legal advice privilege does not attach to these kinds of communications between a solicitor and a third party.³³

²⁸ *British Columbia (Minister of Public Safety) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 345 [Minister of Public Safety] at paras 24-25.

²⁹ See, e.g., *Burns v. Hall*, 2018 BCSC 968 at paras 35 and 38. See also Order F25-91, 2025 BCIPC 107 (CanLII) at para 49 and the cases cited therein.

³⁰ *Nanaimo Shipyard Ltd. v. Keith et al*, 2007 BCSC 9 at para 29.

³¹ Order F19-14, 2019 BCIPC 16 (CanLII) at para 38.

³² BC Housing’s initial submission at paras 53, 60, and 68.

³³ *Bilfinger Berger*, *supra* note 22 at para 27. For a similar finding, see Order F21-61, 2021 BCIPC 70 (CanLII) at paras 28-30, in which a public body made a claim of privilege over a forensic investigation report prepared by KPMG. The adjudicator found that KPMG was a “source of expert information”, and that KPMG’s analysis assisted the public body’s lawyers in providing legal advice to the public body. However, the adjudicator was not persuaded that the public body needed KPMG to communicate with its lawyers and instead found that KPMG’s role was “to provide expert forensic investigation analysis to the [public body] as a consulting expert or a potential expert witness”.

[32] For these reasons, I cannot find that this is a situation in which the audit firms were acting as a line of communication between solicitor and client.

A function integral to the solicitor-client relationship

[33] A third party's function can be "essential to" or "integral to" the solicitor-client relationship, if, for example, the third party is authorized by the client to seek legal advice from the solicitor on behalf of the client.³⁴

[34] BC Housing submits that the audit firms were performing a function integral to the functioning of the solicitor-client relationship. It says the Law Firm needed the audit firms' services to explain information about the third-party non-profits who were the subjects of the three reports so that it could provide legal advice to its clients.³⁵ The applicant says the fact that a lawyer retains a third-party expert to assist the lawyer in formulating legal advice to the client is not enough for privilege to attach to those third-party communications.³⁶

[35] Courts have found that reports from experts providing expert analysis to solicitors were not protected by legal advice privilege because the experts were incidental and not integral to the solicitor-client relationship.³⁷ Similarly, in Order F21-61, the adjudicator analyzed the role of a third-party audit firm, finding that it was not materially different from cases in which third-party experts had been found not to be performing functions integral to the solicitor-client relationship.³⁸

[36] In this case, there is no evidence that the audit firms stood in the shoes of the clients with respect to the Law Firm.³⁹ BC Housing does not say the audit firms were empowered to direct the lawyers in the Law Firm to act, or to seek their advice. There is also no evidence or argument, beyond mere assertion, that the audit firms were otherwise functionally essential or integral to the solicitor-client relationship. I therefore cannot find that they were. On the basis of the materials before me, I find that their role was that of experts providing analysis of information about third parties to the Law Firm, which, in turn, the Law Firm used to provide advice to its clients. This is not enough, on its own, to make the audit firms' role essential or integral to the solicitor-client relationship.

³⁴ *Bilfinger Berger*, *supra* note 22 at para 27.

³⁵ BC Housing's initial submission at paras 52, 59, and 67.

³⁶ Applicant's response submission at para 10.

³⁷ *Potash Corporation of Saskatchewan Inc v. Mosaic Potash Esterhazy Limited Partnership*, 2010 SKQB 460 at paras 17-27; *Dhaliwal v. Sims*, 2018 ONSC 6388 at paras 20-21; *College*, *supra* note 8 at para 51. See also Order F21-61, *supra* note 33 at paras 32-33.

³⁸ Order F21-61, *supra* note 33 at para 36.

³⁹ See, e.g., Order F20-24, 2020 BCIPC 28 (CanLII) at para 41.

Conclusion on legal advice privilege

[37] To summarize, I do not find that the three reports are communications between a solicitor and a client, or that they fall into one of the recognized circumstances in which privilege will attach to third-party communications. The third-party audit firms were neither acting as a line of communication between solicitor and client, nor performing a function integral to the solicitor-client relationship. It follows that legal advice privilege does not apply to them. In light of this finding, I do not need to consider whether the other elements of legal advice privilege are made out.

Litigation privilege over VNHS Report and HFBC Report

[38] While BC Housing expressly relies only on legal advice privilege, in its reply it points to some of the elements of litigation privilege with respect to the VNHS Report and the HFBC Report. It submits that “both the VNHS Report and the [HFBC] Report were expressly created in relation to anticipated litigation”.⁴⁰ The Lawyer and the Privacy Manager quote from parts of the engagement letters relevant to the two reports that discuss contemplated or anticipated litigation.⁴¹

[39] Litigation privilege is intended to create a “zone of privacy” around documents prepared for pending or apprehended litigation, in order to ensure the efficacy of the adversarial process. It can apply to a communication between a solicitor and a third party.⁴² Litigation privilege comes to an end on the termination of the litigation that gave rise to the privilege, unless there are ongoing closely-related proceedings.⁴³ Two elements must be made out in order to establish a claim of litigation privilege:

1. Litigation must have been ongoing, or reasonably contemplated, at the time the document was created; and
2. The dominant purpose of creating the document must have been to obtain legal advice or to prepare for that litigation.⁴⁴

[40] The applicant says there is no evidence about what the contemplated litigation was, nor about whether that litigation is still ongoing.⁴⁵ BC Housing appears to concede this point in its reply to the applicant’s sur-reply, in which it says that legal advice privilege, in contrast to litigation privilege, does not end

⁴⁰ BC Housing’s reply submission at para 36.

⁴¹ Affidavit of Lawyer at paras 8-9, and 15-16; Affidavit #2 of Privacy Manager at paras 6 and 20.

⁴² *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 [Blank] at paras 27 and 34.

⁴³ *Blank*, *ibid* at paras 35-37.

⁴⁴ *Raj v. Khosravi*, 2015 BCCA 49 at paras 7-20.

⁴⁵ Applicant’s sur-reply at paras 15-16.

with the litigation. It says that the three reports “are subject to legal advice privilege, which is distinct from litigation privilege”.⁴⁶

[41] On the basis of these statements, it is my view that BC Housing did not intend to rely on litigation privilege to withhold the VNHS Report and the HFBC Report. Nevertheless, even if it did so intend, I cannot find that litigation privilege applies to them. Litigation privilege expires with the litigation that gave rise to it. There is no evidence before me about what litigation was contemplated when these reports were created. There is likewise no evidence about whether any such litigation is ongoing. I therefore find that, if BC Housing intended to claim litigation privilege over the VNHS Report and the HFBC Report, it has not met its burden of establishing that litigation privilege applies to either of them.

Solicitor’s brief privilege over HFBC Report

[42] BC Housing’s reply submission and evidence suggest that it may also be relying on what it calls “solicitor work-product privilege” with respect to the HFBC Report. The Privacy Manager quotes from the engagement letter relating to that report:

The Deloitte Engagement Letter confirms that Deloitte was engaged by [the Law Firm] on behalf of BC Housing to provide forensic services, and explicitly notes that Deloitte understands “that it is Counsel’s intention and the position of Counsel that our work for it will be covered by the solicitor work-product privilege and other applicable privileges.”⁴⁷

[43] As far as I can tell, BC Housing does not say anything else about this type of privilege or why it might apply to the HFBC Report, nor does it cite any authorities explaining the character of the privilege. In the absence of any explanation from BC Housing about solicitor’s brief privilege or how it applies to the HFBC Report, I cannot find that it does.

Waiver and the common interest exception – VNHS Report

[44] BC Housing says that it had “an interest in the subject” of the VNHS Report and that this report “was provided by [the Law Firm] to BC Housing further to BC Housing and AHMA’s common interest privilege”.⁴⁸ I understand BC Housing to be saying that AHMA’s disclosure of the VNHS Report to BC Housing did not amount to a waiver of privilege since BC Housing and AHMA (the client for whose benefit that report was commissioned) had a common interest in some

⁴⁶ BC Housing’s reply to applicant’s sur-reply at paras 39-44.

⁴⁷ BC Housing’s reply submission at para 24; Affidavit #2 of Privacy Manager at para 19.

⁴⁸ BC Housing’s initial submission at paras 47-49; Affidavit #1 of Privacy Manager at paras 30-31; BC Housing’s reply submission at para 16; Affidavit of Lawyer at para 10.

piece of litigation, or in the successful completion of a commercial transaction or negotiation.

[45] The applicant says that if AHMA had any privilege over the VHNS Report, it waived that privilege by disclosing it (or consenting to its disclosure) to BC Housing.⁴⁹

[46] The common interest exception to waiver operates where a privileged document is disclosed by the holder of privilege to a party with whom the holder shares a common interest.⁵⁰ Since I have found that BC Housing has not established that the VNHS Report is subject to legal advice privilege, litigation privilege, or any other privilege under s. 14, it is not necessary to address the question of whether AHMA waived its privilege over it.

Conclusion on s. 14

[47] In conclusion, BC Housing has not established that the three reports at issue are communications between a solicitor and client, or that they fall within any of the recognized exceptions for third-party communications. As a result, I find that BC Housing has not met its burden of establishing that any of the three reports are protected by solicitor-client privilege.

[48] In the course of reaching this decision, I considered whether to give BC Housing another opportunity to submit evidence or provide an explanation to buttress its claim of privilege over the three reports. In *British Columbia (Minister of Public Safety) v. British Columbia (Information and Privacy Commissioner)*, the BC Supreme Court examined an order of the OIPC in which the adjudicator found that s. 14 did not apply to certain documents over which the public body had claimed privilege.⁵¹ During the course of the judicial review, the public body took the position that the adjudicator should have offered it a further opportunity to provide evidence to support its privilege claim. Justice Gomery rejected this argument, holding that the circumstances of the case were not “so exceptional as to require that the [public body] be given another opportunity to substantiate its claim” of privilege.⁵² Justice Gomery also noted that

[t]he Province and other public bodies subject to FIPPA are invariably well advised and professionally represented. The process by which requests for access to information are adjudicated is already prolonged. The legal principles governing solicitor-client privilege are well established...public bodies have the means and ample opportunity to assert claims of privilege

⁴⁹ Applicant's response submission at paras 11-12.

⁵⁰ See, e.g., Order F15-61, 2015 BCIPC 67 (CanLII) at paras 59-64.

⁵¹ Order F23-42, 2023 BCIPC 50 (CanLII) at paras 36-46.

⁵² *Minister of Public Safety, supra* note 28 at paras 20-21 and 28-38.

to which they are entitled, and they should be expected to put forward all of the relevant evidence correctly and at the first available opportunity.⁵³

[49] BC Housing was represented in this inquiry by legal counsel and had several opportunities to support its claim of privilege. The applicant made his access request in 2023 and has been waiting over two years for a resolution of this dispute. I find it would be unfair to the applicant to delay this inquiry further by seeking even more submissions from BC Housing about its claim of privilege. In addition, the weaknesses in BC Housing's evidence were identified by the applicant in his sur-reply. Since I allowed BC Housing to reply to this sur-reply, in my view, BC Housing has had a reasonable opportunity to reply to the applicant's criticism of its position and to provide further explanation. Public bodies are expected to provide their best evidence and arguments at the first available opportunity. They should not expect the OIPC to solicit further submissions and evidence to allow them to bolster their claims.⁵⁴

[50] For these reasons, I do not think the present circumstances are so exceptional as to warrant exercising my discretion to invite BC Housing to provide further submissions and evidence to bolster its claim of privilege.

Advice or recommendations – s. 13(1)

Should I order production of the three reports?

[51] BC Housing submits that if I do not find solicitor-client privilege applies to the three reports, I should find that they may be withheld in their entirety under s. 13(1) of FIPPA.⁵⁵ I will therefore need to determine whether s. 13(1) applies. Since BC Housing did not provide unredacted copies for my review, I must consider whether to exercise my discretion under s. 44(1)(b) to order BC Housing to produce the reports for me to review.

[52] In circumstances where a public body has failed to establish that s. 14 applies, but has also relied on another FIPPA exception to refuse access, OIPC adjudicators have exercised their discretion, under s. 44(1)(b), to produce the records in order to decide, on a line-by-line basis, whether the other exceptions applied.⁵⁶ I can see no special circumstances in this case that would warrant departing from the approach taken by previous orders. I am not satisfied that I can conduct the independent line-by-line analysis that is needed to decide if

⁵³ *Ibid* at para 33.

⁵⁴ See, e.g., Order F25-92, 2025 BCIPC 108 (CanLII) at paras 80-87; Order F19-21, 2019 BCIPC 23 (CanLII) at para 122.

⁵⁵ BC Housing's initial submission at para 71.

⁵⁶ Order F25-92, *supra* note 54 at paras 89-93; Order F25-10, 2025 BCIPC 11 (CanLII) at para 45; Order F23-85, 2023 BCIPC 101 (CanLII) at paras 41-42.

s. 13(1) applies to the disputed information based solely on affidavit evidence.⁵⁷ I therefore find it necessary to order BC Housing to produce the three reports for my review so that I can decide whether s. 13(1) applies to them. Once I review those records, I will issue a separate order regarding the application of s. 13(1).

CONCLUSION

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

1. BC Housing is not authorized to refuse to disclose the information at issue under s. 14 of FIPPA.

[54] For the reasons given above, I make the following order under s. 44(1)(b) of FIPPA:

1. BC Housing is required to produce to the OIPC an unredacted copy of the three reports at issue so a determination can be made about whether s. 13(1) applies to them. BC Housing is required to clearly identify what information in those reports it is withholding under s. 13(1).

[55] Under s. 44(3) of FIPPA, BC Housing must comply with paragraph 54, item 1 above by **February 3, 2026**.

January 19, 2026

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File No.: F23-95303

⁵⁷ See, e.g., Order F15-52, 2015 BCIPC 55 at paras 17-29 for an example of the detailed analysis required under s. 13.