Order F26-08

CITY OF VANCOUVER

David S. Adams
Adjudicator

February 9, 2026

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Summary: An applicant requested information related to the purchase and sale of the Pacific Centre property from the City of Vancouver (the City). The City disclosed some responsive records but withheld some emails and portions of emails under s. 14 (solicitor-client privilege) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that most of the emails and email portions were privileged, but that some were not. The adjudicator ordered the City to disclose the non-privileged emails.

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 applicant requested, from the City of Vancouver (the City), records related to the City's sale of a piece of property. The City provided a package of records responsive to this request, but withheld some complete email chains and portions of other emails under various sections of the *Freedom of Information and Protection of Privacy Act* (FIPPA), primarily s. 14 (solicitor-client privilege).

[2] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the City's decision to withhold records and information. Mediation resolved some of the issues.[1] However, the issue of solicitor-client privilege was not resolved and that issue proceeded to inquiry.

[1] As a result, ss. 3(5)(a) (request is for a record that is available for purchase by the public), 15(1)(l) (disclosure harmful to the security of a property or system), 17(1) (disclosure harmful to financial or economic interests of a public body), 21(1) (disclosure harmful to third-party business interests), and 22(1) (disclosure would unreasonably invade third-party privacy) are no longer in issue in this inquiry.

[3] Both parties provided written submissions, and the City provided affidavits from two of its staff members: an FOI case manager (the FOI Manager) and a lawyer who is the assistant director of the City's in-house legal department (the Lawyer).

Preliminary matter – information no longer at issue

[4] The City has disclosed the information it had previously withheld on page 115 of the records package. The City has also identified other information in the responsive records that it says is not at issue in this inquiry. The FOI Manager provides evidence to this effect.[2] The applicant did not dispute the City's position or evidence about this information. As a result, I find that these pages are not at issue and I will not consider them in this order.

ISSUE AND BURDEN OF PROOF

[5] The issue I must decide in this inquiry is whether the City is authorized to refuse to disclose information under s. 14.

[6] Under s. 57(1) of FIPPA, the City bears the burden of proving that the applicant has no right of access to the withheld information.

DISCUSSION

Background[3]

[7] The City owned a piece of property in downtown Vancouver known as Pacific Centre, which had been leased to a private company (the Purchaser) pursuant to a 1970 lease. The lease contained an option to purchase the property, and the Purchaser exercised this option. In 2014 and 2015, the City and the Purchaser entered into negotiations for the purchase and sale of Pacific Centre (the Transaction).

Records and information at issue

[8] The records and information at issue consist mainly of emails and portions of emails exchanged among City staff, including several of the City's lawyers. There are also some emails between lawyers for the City and the Purchaser, portions of which the City has withheld. Finally, there are some handwritten annotations on some of the emails.

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[2] Namely, pages 62-66, 74-75, 112-113, 120-122, 130-131, and 135 of the records package: City's initial submission at paras 8-10; Affidavit of FOI Manager at para 6.

[3] The information in this section is drawn from the City's submissions and evidence and is not in dispute.

Solicitor-client privilege – s. 14

[9] The City is relying on s. 14 to withhold all the records and information in dispute. Section 14 encompasses both legal advice privilege (which protects confidential communications between a solicitor and a client) and litigation privilege (which protects documents prepared for litigation).[4] The City takes the position that legal advice privilege applies to the records and information it withheld under s. 14.[5]

Evidentiary basis for the application of solicitor-client privilege

[10] With some exceptions, the City did not provide for my review the records and information over which it claims legal advice privilege.[6] Instead, in order to prove its privilege claim, it provided an affidavit from the Lawyer, who deposes that he has reviewed and familiarized himself with the records and information over which the City asserts privilege.[7] He also deposes that he has been employed as a lawyer with the City for 28 years and advises the City on the purchase and sale of property.[8]

[11] The applicant says the City has not sufficiently described each communication it seeks to withhold, so it is necessary for me to see the withheld records and information in order to fairly decide whether privilege applies to them.[9] The City says in reply that the materials it provided are "more than sufficient" to explain the context in which the communications arose and their nature. It says the applicant has provided nothing more than a suggestion that the City's redactions under s. 14 have been improperly applied.[10]

[12] Sections 44(1)(b) and 44(2.1) of FIPPA, read together, allow me to order the production for my review of records over which a public body has claimed privilege. However, because of the importance of solicitor-client privilege to the legal system, I will do so only when production is absolutely necessary to fairly decide the question of privilege.[11]

[13] When s. 14 is at issue, the OIPC makes an exception to its usual practice of requiring the public body to provide the OIPC with an unredacted copy of the

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[4] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para 26.
[5] City's initial submission at para 7.
[6] The City did provide for my review the information it says is subject to the common interest exception to waiver, discussed below.
[7] Affidavit of Lawyer at para 10.
[8] *Ibid* at paras 3-5.
[9] Applicant's response submission at para 1.
[10] City's reply submission at paras 6 and 14-20.
[11] *College*, *supra* note 4 at para 26.

records in dispute.[12] Where a public body declines to provide the information or records withheld under s. 14 to the OIPC for adjudication, it is expected to describe the information or records in a manner that, without revealing privileged information, enables the other party and the adjudicator to assess the validity of the claim of privilege.[13]

[14] In the present case, the City provided an affidavit from the Lawyer, who is an experienced practicing lawyer who has reviewed the records and who regularly advises the City on the purchase and sale of property.[14] The City also provided a descriptive table (the Table), which sets out, for each withheld record and portion of information, a description of the record or information, the dates of the communications and the parties involved, and the basis for its redaction. The Lawyer deposes that the descriptions set out in the Table are accurate.[15]

[15] I do not agree with the applicant's assertion that since the Lawyer was not directly involved in the Transaction, his conclusions about the character of the communications related to the Transaction are of "limited reliability".[16] The applicant cites no authority for this proposition. The OIPC has accepted evidence from lawyers who have reviewed the communications at issue, even though they were not directly involved in them.[17] It is clear to me from the Lawyer's affidavit that he formed his beliefs about the withheld records and information from a review of them combined with his professional expertise. Moreover, I agree with the City that the Lawyer is the person best placed to provide evidence to prove its privilege claim, since the lawyers whose advice was sought with respect to the Transaction are no longer with the City.

[16] For these reasons, I am satisfied that I can decide the question of privilege based on the materials the City has put before me, and that it is not necessary to order production of the withheld emails and email portions.

Parties' positions

[17] The City says legal advice privilege applies to all the emails and portions of emails it withheld. It says each of these records fall into one of several categories:

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[12] Order F25-48, 2025 BCIPC 56 (CanLII) at para 40.
[13] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para. 78.
[14] Affidavit of Lawyer at paras 3-5.
[15] *Ibid* at para 20.
[16] Applicant's response submission at para 2.
[17] See, e.g., Order F25-40, 2025 BCIPC 48 (CanLII) at para 85.

1. Emails and attachments containing legal advice from a City lawyer or the exchange of information related to the seeking and formulation of the advice, or allowing an inference to be drawn about the advice;
2. A confidential communication between two of the City's in-house lawyers which they exchanged in relation to their provision of legal advice; and
3. Confidential notes to file made by one of the City's lawyers which reveal legal advice sought and provided.[18]

[18] The City says disclosing any part of these communications would allow someone to infer the content of the legal advice sought and given.[19] The Lawyer deposes that he believes, based on the context of a significant conveyancing transaction, the parties to the withheld communications understood and expected them to be confidential.[20]

[19] The applicant says the Lawyer was not personally involved in the Transaction, and his knowledge is based on his review of the records, so that his statements are of "limited reliability".[21]

[20] In reply, the City says it has given a detailed description of the withheld emails and attachments and their context. It says it has given as much detail as possible without revealing privileged information.[22] It says the applicant's submission on the possibility that some withheld information may be "factual historical information and financial terms" is misguided as to the law on the continuum of communications.[23] It also says the applicant's claim about the reliability of the Lawyer's evidence is "without foundation", and that the Lawyer is the person best placed to provide the necessary evidence in this inquiry since the other lawyers and staff involved in the Transaction are no longer employed by the City.[24]

Analysis – legal advice privilege

[21] 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 by the parties to be confidential.[25] Legal advice privilege also attaches to the continuum of communications made within the framework of the solicitor-client relationship, including factual information provided by a client to a solicitor, and

[18] City's initial submission at para 47; Affidavit of Lawyer at para 22.
[19] City's initial submission at para 50.
[20] Affidavit of Lawyer at para 16.
[21] Applicant's response submission at para 2.
[22] City's reply submission at paras 7-12.
[23] *Ibid* at para 19.
[24] *Ibid* at paras 25-27.
[25] *R v. B*, 1995 CanLII 2007 (BC SC) at para 22; see also *Solosky v. The Queen*, 1971 CanLII 9 (SCC), [1980] 1 SCR 821 at 837.

internal client communications that comment on the legal advice received and its implications.[26] Legal advice privilege also applies to information that would reveal or allow an observer to draw accurate inferences about the contents of privileged communications.[27]

[22] As a starting point, I will consider whether the City and its in-house lawyers were in a solicitor-client relationship, and whether its lawyers were acting in their capacity as legal counsel, at all material times. The Lawyer deposes that each of the City's lawyers provided legal advice and support to City staff within an established solicitor-client relationship, and that in all the emails in which they were involved, they were acting in their capacity as legal counsel and not in a business or managerial capacity.[28] The applicant does not dispute these characterizations. I accept the Lawyer's uncontested evidence and find that the City's lawyers and the City were in a solicitor-client relationship and that the lawyers were acting in their capacity as legal counsel.

[23] I find the records and information at issue under s. 14 can be grouped into the following three categories: (1) internal communications and attachments; (2) communications including an external consultant; and (3) communications including the Purchaser's lawyer. I will discuss each category in turn.

Internal communications and attachments

[24] Most of the emails at issue are described as communications among City employees, including several of the City's lawyers. The Lawyer deposes that these emails involved the seeking, formulation, and provision of legal advice, and were intended to be confidential.[29]

[25] I am satisfied, based on the Lawyer's evidence, that these emails are confidential communications between a solicitor and client, or else belong to the continuum of communications in which legal advice is given and received.

[26] In addition, the City describes some of the email chains in dispute as containing attachments. An attachment is not privileged merely because it is attached to a privileged communication. Instead, an attachment may be privileged either on its own or because it is an integral part of the privileged communication to which it is attached and its disclosure would reveal the communications protected by legal advice privilege, either directly or by inference.[30]

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[26] *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 21-24.
[27] Order F22-16, 2022 BCIPC 18 (CanLII) at para 31.
[28] Affidavit of Lawyer at para 29.
[29] *Ibid* at paras 22-24 and 28-30.
[30] Order F18-19, 2018 BCIPC 22 (CanLII) at paras 36-40.

[27] The Lawyer says all the withheld attachments were "part and parcel of a chain or continuum of communications related to legal advice sought from, formulated or given by" the City's lawyers, and that he believes their disclosure would reveal, or allow an inference to be drawn, about the substance of legal advice. The Lawyer describes most of these attachments as emails originating outside the City, which were circulated among City employees for the purpose of obtaining legal advice.[31]

[28] The applicant says the attachments may contain factual historical information or financial terms that are not subject to legal advice privilege.[32] The City says in reply that what the applicant says is only an "unsupported inference" and that its Table describes the withheld attachments with as much detail as possible without risking the disclosure of privileged information.[33]

[29] From what I can ascertain from the Table, most of the withheld attachments consist of emails from the Purchaser's lawyer which are then discussed between City staff and lawyers for the purpose of seeking and giving advice. I accept the Lawyer's evidence that disclosure of these attachments would reveal, or allow accurate inferences to be drawn about, privileged communications, and therefore find that they are privileged.

[30] There is one attachment, however, where the City does not identify what type of record is being withheld.[34] The Table says that this record is attached to an email chain consisting of confidential communications that reveal information provided to the City's lawyer in the context of seeking advice, and the advice provided.[35] All the Table says about the attachment itself is that it is "part of the continuum of communications". While the City's description of this attachment is limited, I recognize that I owe some deference to the judgment of a lawyer making a claim of privilege, given the lawyer's professional obligation to ensure privilege is properly claimed.[36] There was nothing in the Lawyer's evidence or the City's submissions about s. 14 that led me to me question the Lawyer's assertions about this attachment. Therefore, I accept the Lawyer's evidence that its disclosure would reveal or allow an accurate inference to be drawn about privileged material.

Communications including an external consultant

[31] Two of the withheld email chains are described in the Table as confidential communications that include several City employees (including two of its

[31] Affidavit of Lawyer at paras 23-24.
[32] Applicant's response submission at para 1.
[33] City's reply submission at paras 8-9 and 19.
[34] At pages 169-172 of the records package.
[35] At pages 153-155 of the records package.
[36] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII) at para 86.

lawyers) and an external consultant.[37] The City does not say anything about the external consultant's role. The City describes the two email chains in the Table as follows:

> Confidential communications that reveal that legal advice was sought and provided in the course of a transaction, and reveal the subject matter of the legal advice and information provided to legal counsel for the purpose of considering and formulating the legal advice, and [allow] an inference [as] to the advice provided by legal counsel.

and:

> Confidential communications that reveal that legal advice was sought and provided in the course of a transaction, and reveal information provided to legal counsel for the purpose of advising.

[32] Communications that include third parties are not normally covered by legal advice privilege. There are exceptions where the third party is acting as a line of communication between solicitor and client, or where the third party is essential to or integral to the solicitor-client relationship. In the latter case, the "true function" of the third party is to be determined from all the circumstances.[38]

[33] In this case, the City provided no explanation or evidence about the role of the external consultant. It does not say the consultant was acting as a line of communication between the City and its lawyers. It does not say the consultant shared an identity with the City for the purposes of solicitor-client communications, or was otherwise functionally essential to the solicitor-client relationship. I cannot infer either of these circumstances from the context. Previous orders have found legal advice privilege does not normally attach to communications between a solicitor, a client's employees, and an external consultant.[39]

[34] I considered whether to ask the City for further explanation concerning the role of the external consultant, given the importance of solicitor-client privilege to the legal system. In *British Columbia (Minister of Public Safety) v. British Columbia (Information and Privacy Commissioner)*, the BC Supreme Court reviewed an OIPC order in which the adjudicator found that s. 14 did not apply to certain documents over which the public body had claimed privilege.[40] During the course of this judicial review, the public body took the position that the

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[37] The first such email chain is at pages 2-8, duplicated at pages 14-19, and with portions repeated at pages 67-69 and 70-71. The second such email chain is at page 45.
[38] *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 532 at paras 26-29.
[39] Order F23-88, 2023 BCIPC 104 (CanLII) at paras 58-62 (a party petitioned for judicial review of the adjudicator's conclusion on a different issue); Order F17-22, 2017 BCIPC 23 (CanLII) at paras 18-20.
[40] Order F23-42, 2023 BCIPC 50 (CanLII) at paras 36-46.

adjudicator should have offered it a further opportunity to provide evidence to support its claim of privilege. 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".[41] 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 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.[42]

[35] The City was represented in this inquiry by counsel, and provided a detailed affidavit from the Lawyer. In the course of preparing its submissions, the City clearly turned its mind to the fact that an external party was included on these communications. It expressly said so in the Table. A request for further submissions would cause a delay in this inquiry. While it is open to me to use my discretion to request further submissions and evidence,[43] I do not think the circumstances here are so exceptional as to warrant exercising my discretion to request a further explanation from the City about the role of the external consultant and whether it takes the position that the external consultant was part of the solicitor-client relationship between the City and its lawyers.

[36] As a result, I find, with one exception, that the emails which include the City's external consultant are not confidential communications between a solicitor and client, and are not protected by legal advice privilege.

[37] The exception to this finding is one page in the email chain described in the Table as containing a City lawyer's handwritten notes.[44] The City did not say which City lawyer wrote the notes. While the Lawyer does not provide evidence specifically about the handwritten notes on this page, he deposes that "all the communications and attachments referenced above [i.e., in a paragraph describing this page, among others] were part and parcel of a chain or continuum of communications related to legal advice sought from, formulated or given" by one of the City's lawyers. There is no indication that these handwritten notes were disclosed to the external consultant.

[38] A lawyer's handwritten notes about a communication with a third party have been held to be privileged where they were prepared for the purpose of

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[41] *British Columbia (Minister of Public Safety) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 345 [*Minister of Public Safety*] at paras 20-21 and 28-38.
[42] *Ibid* at para 33.
[43] *Ibid* at para 32.
[44] Page 14 of the records package.

providing legal advice to the client, they reflect the lawyer's subjective impressions or thoughts about the underlying information, and where that information is used to assist the lawyer in communicating with their client in confidence about a legal matter.[45] While the evidence on this point is somewhat thin, I am satisfied that this set of handwritten notes was prepared by a City lawyer for the purpose of advising the City, that they reflect the City lawyer's thoughts about the underlying email chain between City staff, City lawyers, and an external consultant, and that the notes were part of the continuum of communications in which the City lawyer provided advice. I therefore find them to be privileged.

Communications including the Purchaser's lawyer

[39] I now turn to consider the information the City provided for my review, which I will refer to as the Common Interest Information.[46] This information consists of portions of emails between a lawyer for the Purchaser and a lawyer for the City about the Transaction, with employees of the Purchaser and of the City sometimes being copied.[47] The City says these emails contain privileged advice, or would allow a reader to make an accurate inference about privileged advice.[48] It says the City and the Purchaser had a common interest in completing the Transaction and their sharing of what it characterizes as confidential legal advice and positions was made with a view to the successful completion of the Transaction, and not in order to waive privilege over the information.[49]

[40] The Lawyer says of the Common Interest Information:

> …this transaction had some distinct financial terms which led to the communications at issue [the Common Interest Information]. It is my understanding that the closing requirements were not contentious but certain aspects needed to be determined cooperatively to facilitate closing the [Transaction]. The exchange of information was expressly confidential…and evidently for the common goal of bringing the transaction to a close within time constraints and without further extension to the closing date…This was achieved by obtaining/providing comfort and reaching consensus on certain points; setting out legal advice; settling details particular to this transaction which are not usual and coming to the necessary determinations; and facilitating review of information.

[45] Order F23-91, 2023 BCIPC 107 (CanLII) at paras 90-97. See also Order F23-78, 2023 BCIPC 94 (CanLII) at paras 39-45, citing Adam M. Dodek, *Solicitor-Client Privilege* (Markham, ON: LexisNexis, 2014) at ss. 5.80-5.82.
[46] Namely, pages 20-21, 30-31, 39, 46, 48-49, 90-91, 99-100, 102, 125-126, and 139-141 of the records package.
[47] Affidavit of Lawyer at para 25.
[48] City's initial submission at para 52; Affidavit of Lawyer at para 25.
[49] City's initial submission at para 63.

> In my view, the particular information exchanged, and the details of the approach considered, recommended or taken, to get to the common objective of closing the transaction, were confidential, overseen by legal counsel in their legal capacity and integral to or related to the legal advice sought and provided.[50]

[41] The Lawyer also deposes that the City has only waived its privilege over certain emails between lawyers for the Purchaser and for the City (which have been disclosed to the applicant) because those emails deal with matters that are "more routine".[51]

[42] While I cannot say much about the contents of the Common Interest Information without risking its disclosure, based on my review of them and considering the Lawyer's evidence, I am satisfied that they reveal communications that were part of the continuum of communications (between the City and its lawyers in some cases, and between the Purchaser and its lawyers in others) in which legal advice aimed at the completion of the Transaction was sought and received. It is not always apparent to me on the face of the Common Interest Information what underlying privileged advice it would reveal. However, recognizing once again that some deference is owed to the judgment of a lawyer claiming privilege, I accept the description given by the Lawyer in the Table that it reveals legal advice given for the goal of concluding the Transaction, as well as the Lawyer's evidence that it contains privileged advice or allows accurate inferences to be made about privileged advice.[52]

[43] I accept that there were underlying confidential communications between solicitor and client involving the seeking and giving of legal advice which would be revealed (or an accurate inference about them be permitted to be drawn) if the Common Interest Information were disclosed. I next turn to consider whether the City waived its privilege over the Common Interest Information by disclosing it to the Purchaser's lawyer (or *vice versa*).

Waiver and the common interest exception

[44] The Common Interest Information was shared with the Purchaser, a party outside of the solicitor-client relationship that existed between the City and its lawyers. The City says the communications between lawyers for the Purchaser and the City were confidential and were not intended as a waiver of privilege. It says the City and the Purchaser shared a common interest in the successful completion of the Transaction, and these communications were made to facilitate this.[53]

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[50] Affidavit of Lawyer at para 25; citations removed and a paragraph break added.
[51] *Ibid* at para 27.
[52] *Ibid* at paras 26-27.
[53] City's initial submission at paras 51-55; Affidavit of Lawyer at para 25.

[45] In particular, the City points to the non-contentious aspects of the Transaction which still had to be settled before the Transaction could close. As I noted above, the Lawyer provides evidence about the nature of these aspects: providing comfort, reaching consensus on certain points, setting out legal advice, settling unusual details, and facilitating the review of information.[54]

[46] The applicant says the Lawyer's assertions about the confidentiality of the exchanges between parties to the Transaction are not based on evidence, but only on the Lawyer's belief.[55] The applicant does not say anything expressly about whether the City waived its privilege. In reply, the City points to the Lawyer's experience and familiarity with the records, and says the privileged character of the withheld portions (which have been disclosed to me) is evident on the face of those records when they are considered in the context provided by the Lawyer.[56]

[47] Normally, a party waives privilege when it voluntarily discloses privileged information to a third party who is outside the solicitor-client relationship.[57] However, there are exceptions to this general rule. What is sometimes called "common interest privilege" is not an independent basis of privilege, but rather an exception to the general rules of waiver that protects privileged communications that are disclosed to certain third parties with whom the disclosing party shares a common interest.[58] The common interest exception was developed in the context of litigation, but has been extended to include commercial transactions in whose successful completion both parties have an interest.[59]

[48] A valid underlying privilege must first exist for the common interest exception to be engaged.[60] I found above that the City has established such a privilege over the Common Interest Information.

[49] In *Pitney Bowes of Canada Ltd. v. Canada*, Justice O'Reilly of the Federal Court traced the development of the common interest exception as it relates to commercial transactions:

> …the cases do not say, as I read them, that the mere existence of a commercial transaction is sufficient on its own to insulate all shared solicitor-client communications from attempts to gain access to them. There may well be cases where the parties to a commercial transaction disclose privileged documents in

[54] Affidavit of Lawyer at para 25.
[55] Applicant's response submission at para 3.
[56] City's reply submission at paras 25-29.
[57] *S & K Processors Ltd. v. Campbell Ave. Herring Producers Ltd.*, 1983 CanLII 407 (BC SC) at para 6; Order F23-41, 2023 BCIPC 49 at para 99.
[58] Adam M. Dodek, *Solicitor-Client Privilege* (Ontario: LexisNexis Canada Inc., 2014) at 247ff; Order F20-21, 2020 BCIPC 25 (CanLII) at para 38.
[59] *Maximum Ventures Inc. v. De Graaf*, 2007 BCCA 510 at para 14.
[60] *Ross v. Bragg*, 2020 BCSC 337 at para 22.

> circumstances that suggest that there has indeed been a loss or waiver of privilege. As mentioned, in the commercial setting it is less clear than in Lord Denning's example [in which parties had a common interest in litigation] which parties have common interests. Therefore, it is more difficult to make a hard and fast rule. I agree with the observation of Slatter J. in *Pinder v. Sproule*…that "[p]otential parties to a merger or other business transaction are in many ways adverse in interest, and it strains the common interest exception to try and fit disclosures between such parties within that exception".
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> Still, in many commercial transactions, the parties will want to negotiate on the footing of a shared understanding of each other's legal position. They will seek legal advice from reputable solicitors whose opinions will be respected by the other parties. Indeed, the solicitors may represent more than one party to the deal. The sharing of legal opinions will ensure that each party has an appreciation of the legal position of the others and negotiations can proceed in an informed and open way. The advice may be provided for one or more party on the understanding that others should be provided copies. The expectation, whether express or implied, will be that the opinions are in aid of the completion of the transaction and, in that sense, are for the benefit of all parties to it. Such circumstances, in my view, create a presumption that the privilege attaching to the solicitor-client communications remains intact notwithstanding that they have been disclosed to other parties.[61]

[50] The mere fact that the parties exchanging privileged information are parties to a commercial transaction (and are interested in its completion) is not enough to engage the common interest exception. In *Hui 789 Development Ltd. v. Fraserway RV Limited Partnership*, Justice Majawa considered a privileged memo exchanged between the agent for a seller of a property and the buyer and held as follows:

> The only common interest I can discern…is for the transaction to close. If merely desiring a commercial transaction to close provides parties who are otherwise adverse in interest to engage the common interest privilege, the privilege would exist in every commercial transaction. I do not think the concept is meant to go so far as that, and I have been pointed to no authority in support of such a broad interpretation of the concept.[62]

[51] The applicant does not dispute that the City and the Purchaser had an interest in the successful completion of the Transaction. I find that they did. The question is whether this interest is sufficient to engage the common interest exception. Having reviewed the Common Interest Information, I accept the Lawyer's characterization of the non-contentious aspects of the Transaction that were under discussion. While I am mindful of Justice Majawa's warning that the common interest exception should not extend to every commercial transaction in whose completion the parties are interested, I am satisfied, based on the

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[61] *Pitney Bowes of Canada Ltd. v. Canada*, 2003 FCT 214 at paras 19-20 (citations omitted), citing *Pinder v. Sproule*, 2003 ABQB 33 at para 62.
[62] *Hui 789 Development Ltd. v. Fraserway RV Limited Partnership*, 2023 BCSC 2479 at para 40.

evidence provided, that the purpose of the underlying privileged advice set out in the Common Interest Information was for the mutual benefit of the City and the Purchaser. I think this is sufficient to bring the non-contentious aspects of the Transaction out of the adversarial context and thus to engage the exception.

[52] I also accept the Lawyer's evidence that the Common Interest Information was shared between the City and the Purchaser on a confidential basis, and that no waiver was intended.

[53] For these reasons, I find that the City has not waived its privilege over any of the records or information I found to be privileged.

Conclusion on s. 14

[54] I find that the City has met its burden of establishing legal advice privilege over most of the withheld records and information, and it is therefore authorized to refuse to disclose these materials under s. 14. However, I find that it has not met its burden of establishing privilege over its communications with an external consultant, and it is not authorized to refuse to disclose these communications under s. 14.

CONCLUSION

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

1. Under s. 58(2)(b), I confirm the City's decision to refuse access to the records and information it withheld under s. 14, except for the records set out in item 2 below.

2. The City is not authorized under s. 14 to refuse access to the records at pages 2-8, 15-19, 45, 67-69, and 70-71 of its package of records, and it must give the applicant access to those records.

3. The City must provide the OIPC registrar of inquiries with proof that it has complied with item 2 above.

[56] Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by March 24, 2026.

February 9, 2026

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

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