



Order F26-17

## CITY OF VANCOUVER

David S. Adams  
Adjudicator

March 09, 2026

CanLII Cite: 2026 BCIPC 21

Quicklaw Cite: [2026] B.C.I.P.C.D. No. 21

**Summary:** The City of Vancouver (the City) requested that the adjudicator reconsider his decision about one category of records in Order F26-08. The adjudicator found that his original order did not reflect his manifest intention and issued a new order with respect to this category of records, finding that they are subject to s. 14 (solicitor-client privilege) of the *Freedom of Information and Protection of Privacy Act* and that the City is authorized to withhold them.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, s. 14.

### INTRODUCTION

[1] This order arises from a request by the City of Vancouver (the City) that I reconsider part of Order F26-08. In that order, I found the City had not proven that some of the records it withheld under s. 14 (solicitor-client privilege) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) were privileged and ordered it to disclose them to an access applicant. Since this category of records involved an external consultant, I will refer to them in this order as the Consultant Records.

[2] The City now says an inadvertent ambiguity in its description of the Consultant Records led to this finding. It says this ambiguity prevented me from expressing my manifest intention in Order F26-08, which was to find that privilege applied to records in which City staff forwarded an email from an external party for confidential discussion among themselves and the City's lawyers. It says the Consultant Records also properly belong to this category, and therefore asks that I reconsider my finding in light of its more accurate

description and additional evidence,<sup>1</sup> which it provided with its reconsideration request.

[3] The City and the applicant each provided submissions for this reconsideration request.

### **ISSUES AND BURDEN OF PROOF**

[4] The issues I must decide are:

1. Should I reconsider the part of Order F26-08 that dealt with the City's claim of solicitor-client privilege over the Consultant Records?
2. If the answer to issue 1 is yes, is the City authorized to withhold the Consultant Records under s. 14 of FIPPA?

[5] In my view, it is the City which bears the burden of establishing that I should reconsider my decision.<sup>2</sup> The City also has the burden of proving that s. 14 applies to the Consultant Records.<sup>3</sup>

### ***Relevant background***

[6] The City owned the Pacific Centre property in downtown Vancouver. Pacific Centre 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 the property (the Transaction).

[7] An access applicant requested records related to the Transaction. The City disclosed some records, but withheld some records and information under s. 14 of FIPPA. The matter came to inquiry, and I issued Order F26-08 disposing of the sole issue: whether the City could rely on solicitor-client privilege to withhold the records and information in dispute.

[8] In that order, I found that for the most part, the City had met its burden of establishing that s. 14 of FIPPA applied. However, when it came to the Consultant Records, which were communications that the City described as including several named "city parties" and one "external party", a consultant, I

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<sup>1</sup> Affidavit #2 of the City's in-house lawyer (the Lawyer).

<sup>2</sup> In the context of a different administrative tribunal, see, e.g., *Grant v. City of Vancouver and others (No. 4)*, 2007 BCHRT 206 (CanLII) at para 10. Also see Order F26-05, 2026 BCIPC 7 (CanLII) at para 7. The City accepts that it has the burden on this point: City's February 24, 2026 submission at 4.

<sup>3</sup> FIPPA, s. 57(1).

found that these were not communications between a solicitor and client. I reviewed the jurisprudence on communications that include third parties outside of the solicitor-client relationship. I did not find that any exceptions covering third-party communications applied. Accordingly, I found that the City had not made out its claim of privilege with respect to the Consultant Records.<sup>4</sup> While I considered giving the City an opportunity to provide further explanation and evidence on the role of the external consultant in the communications, I did not find the circumstances so exceptional as to warrant taking that step.<sup>5</sup> On this basis, I ordered the City to disclose the Consultant Records to the applicant.<sup>6</sup>

## DISCUSSION

### *Relevant legal principles - functus officio*

[9] FIPPA does not have a provision that expressly empowers the OIPC to reopen an inquiry where an order has been issued under s. 58. As a result, the OIPC applies the common law doctrine of *functus officio* (“having performed his or her office”) when considering applications to reconsider its orders.

[10] The legal principle of *functus officio* holds that when an administrative tribunal or court has rendered a final decision in a matter, subject to certain exceptions, the court or tribunal ceases to have any authority to deal again with the matter that has been decided.<sup>7</sup> This principle is based on the policy ground which favours finality of proceedings.<sup>8</sup>

[11] The doctrine of *functus officio* applies to the OIPC, but with greater flexibility than it does for courts.<sup>9</sup> The OIPC has recognized exceptions to the doctrine, including where there has been a breach of procedural fairness, where the test for admitting new evidence is met, where a mistake (including a mistake by the parties) prevents the decision from reflecting the decision maker’s manifest intention, and where the decision maker has some unspent jurisdiction (for instance, where the decision maker has not completed their statutory duty).<sup>10</sup>

### *Parties’ positions*

[12] The City says an inadvertent ambiguity in its description of the Consultant Records led to Order F26-08 not expressing my manifest intention. It points out

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<sup>4</sup> Order F26-08, 2026 BCIPC 11 (CanLII) at paras 31-33.

<sup>5</sup> *Ibid* at paras 34-35.

<sup>6</sup> *Ibid* at paras 55-56.

<sup>7</sup> *Chandler v. Alberta Association of Architects*, 1989 SCC 41, [1989] 2 SCR 848 [*Chandler*] at 860; *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 [*CBC*] at paras 32-35.

<sup>8</sup> *CBC*, *ibid* at paras. 32-35.

<sup>9</sup> *Chandler*, *supra* note 7 at 862; Order 01-16, 2001 CanLII 21570 (BC IPC) at para 15.

<sup>10</sup> Order F26-05, *supra* note 2 at para 11 and the cases cited therein; Order F20-25, 2020 BCIPC 30 (CanLII) at paras 5-8.

that I did not include the Consultant Records in the category I referred to as “internal communications and attachments”. It says the Consultant Records *do* properly belong to that category because the external consultant was not a party to the privileged communications. Therefore, it says I should reconsider my findings with respect to the Consultant Records in order to maintain the internal consistency of Order F26-08.<sup>11</sup>

[13] The City says my conclusion on the Consultant Records in Order F26-08 turned on a finding that those communications included the City’s external consultant, but in fact, the consultant’s emails, along with emails from the Purchaser’s lawyer (which were in some instances “pasted together for discussion”)<sup>12</sup> formed the basis for discussion and the seeking and giving of legal advice among the City’s staff and lawyers. In other words, it says, emails from the external consultant were forwarded for discussion among City parties, and the external consultant was not a party to the rest of the email chains, which are privileged.<sup>13</sup>

[14] The City allows that its evidence on the point of the external consultant’s role, in circumstances in which I did not have the opportunity to review the Consultant Records, was “open to interpretation and did not specify that the consultant did not remain a party to the email chain involving” the other City parties. It says I should accept the clarification and additional evidence it now offers, given the particular uncommon circumstances and the importance of the solicitor-client privilege.<sup>14</sup>

[15] The City concludes:

...the circumstances here are exceptional in that the error was inadvertent and due to the challenge of describing records that are not disclosed for review. In the circumstances, procedural fairness, in addition to the importance of solicitor-client privilege, mandate that the City’s explanation and the supporting evidence be considered in a re-opening of the Inquiry...The City wishes to prevent inconsistent findings in Order F26-08 that are based on an incorrect distinction in the evidence and to ensure that the Adjudicator’s intentions and holdings are properly reflected in the Order. This is particularly important to avoid the disclosure of records that are properly privileged.<sup>15</sup>

[16] The applicant opposes the reopening of this inquiry. He says the City had an ample opportunity to present all its evidence and arguments. He points to the OIPC’s grant of an extension of time for the City to file its submissions, noting that the OIPC’s registrar cited the importance of the adjudicator’s having the

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<sup>11</sup> City’s February 24, 2026 submission at 2-3 and 4-5.

<sup>12</sup> Affidavit #2 of Lawyer at para 5.

<sup>13</sup> City’s February 24, 2026 submission at 5.

<sup>14</sup> *Ibid* at 3.

<sup>15</sup> *Ibid* at 6.

most comprehensive submissions from all parties. He also says that in a previous case in which he was involved with the City, the City successfully argued that he could not raise a legal argument in his inquiry submission because he had not raised the issue prior to the inquiry.<sup>16</sup>

### *Analysis on my jurisdiction to reconsider*

[17] In its evidence in the initial inquiry, the City provided a table of records that described the Consultant Records as communications involving eight individuals it called “City parties” and a consultant it called an “External party”.<sup>17</sup> It now says this external party was not a party to the privileged communications, which took place only among City lawyers and other City staff.

[18] There are factors in this case that do not favour reconsideration. For one thing, it was incumbent on the City to provide a precise, accurate, and fulsome description of the records over which it asserted privilege because it had chosen not to produce the records for my review during the inquiry. There is also a well-established principle favouring finality of proceedings.<sup>18</sup> Finally, I agree with the applicant that the City had an ample opportunity to put its best foot forward.<sup>19</sup>

[19] However, there are also strong factors favouring reconsideration. I agree with the City on the central importance of solicitor-client privilege to the legal system.<sup>20</sup> It has never been my intention to order the disclosure of records over which privilege is properly claimed. Furthermore, as was the case in Order F26-05, the nature of the Consultant Records themselves favours reconsideration because they are very similar to the “internal communications and attachments” that I found were protected by legal advice privilege in the initial inquiry.<sup>21</sup>

### *Conclusion*

[20] I find that the City’s unintentional misdescription of the Consultant Records led me to issue an order which did not reflect my manifest intention, which was to find that legal advice privilege applied to confidential communications between the City’s staff and its lawyers that involved the seeking and giving of legal advice and that did not include a third party. I agree with the City that if I had had the description and evidence the City has now provided, I would have found the Consultant Records to belong to the “internal communications and attachments”

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<sup>16</sup> Applicant’s February 26, 2026 submission.

<sup>17</sup> Affidavit #1 of Lawyer, Exhibit A at 11-12 and 15.

<sup>18</sup> *CBC*, *supra* note 7 at paras 34-35.

<sup>19</sup> See, e.g., Order F18-18, 2018 BCIPC 21 (CanLII) at para 17; Order F26-05, *supra* note 2 at para 46.

<sup>20</sup> Ministry’s February 24, 2026 submission at 4; *British Columbia (Minister of Public Safety) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 345 [Public Safety] at paras 30-31.

<sup>21</sup> Order F26-05, *supra* note 2 at para 53.

category. As a result, I am persuaded that this is an appropriate case in which to reconsider the part of Order F26-08 dealing with the Consultant Records. I turn next to consider the merits of the City's application of s. 14 to the Consultant Records.

### **Section 14 - are the Consultant Records privileged?**

#### *Parties' positions*

[21] The City says its initial description of the Consultant Records included an "inadvertent ambiguity" which was that despite its description of the external consultant as a party to the communications, the communications did not include the consultant.<sup>22</sup>

[22] The Lawyer deposes that the Consultant Records are email chains that began with an email from the external consultant and/or from the Purchaser's lawyer. These originating emails were forwarded for confidential internal discussions between the City's staff and lawyers for the purposes of seeking and giving legal advice. He says the external consultant was not copied on, and took no part in, these confidential discussions. He says that in his view, disclosure of any part of these email chains would reveal the privileged matters that City staff discussed with the City's lawyers.<sup>23</sup>

[23] The applicant says the City's new description does not invalidate the decision I made in Order F26-08 with respect to the Consultant Records. He says the City just wants another chance to establish the privilege it should have proven at the first instance. He says he cannot assess the City's claim of privilege given that he cannot see the Consultant Records, and that as a result, "the deck is stacked against applicants".<sup>24</sup>

#### *Analysis and findings on privilege*

[24] I will apply the same principles governing solicitor-client privilege, and specifically legal advice privilege, that I set out in Order F26-08.<sup>25</sup>

[25] As I noted in Order F26-08, the Lawyer is an experienced practicing lawyer who regularly advises the City on the purchase and sale of property and who has reviewed the records.<sup>26</sup>

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<sup>22</sup> City's February 24, 2026 submission at 4-5.

<sup>23</sup> Affidavit #2 of Lawyer at paras 3-9.

<sup>24</sup> Applicant's March 5, 2026 submission.

<sup>25</sup> Order F26-08, *supra* note 4 at paras 21-23.

<sup>26</sup> *Ibid* at para 14.

[26] I accept that it was perhaps an error on the City's part to initially describe the external consultant as a "party" to an email chain in which the consultant took no part beyond authoring the initial email that formed the basis for the City's confidential internal discussion. I accept the Lawyer's specific, detailed evidence in this reconsideration about the nature of the Consultant Records and the external consultant's role in them. In light of the City's improved description and evidence, I find that the Consultant Records properly belong to the "internal communications and attachments" category in which City staff and lawyers were seeking and giving legal advice. It follows that, like the records in that category, they are subject to legal advice privilege.

### *Conclusion*

[27] I have found that the Consultant Records are privileged, so that the City may withhold them under s. 14. I recognize that this result will be disappointing for the applicant. However, solicitor-client privilege is, as I said above, of central importance to the functioning of the legal system. The OIPC's decisions about solicitor-client privilege must be correct.<sup>27</sup> In the circumstances, no other result is possible.

## **CONCLUSION**

[28] For the reasons given above, under s. 58 of FIPPA, I confirm the City's decision to refuse to disclose pages 2-8, 15-19, 45, 67-69, and 70-71 of the records package under s. 14 of FIPPA.

March 9, 2026

### **ORIGINAL SIGNED BY**

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David S. Adams, Adjudicator

OIPC File No.: F24-96031

<sup>27</sup> See, e.g., *Public Safety*, *supra* note 20 at paras 7 and 30.