



Order F26-21

CITY OF VICTORIA

Denise Eades
Adjudicator

March 18, 2026

CanLII Cite: 2026 BCIPC 25
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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (complainant) requested records from the City of Victoria (City) related to stormwater, sanitary source control, and contaminant management. The City issued a fee estimate for processing the request. The complainant requested a full fee waiver under s. 75(5)(b) of FIPPA (public interest fee waiver), but the City denied the request. The complainant complained to the Office of the Information and Privacy Commissioner (OIPC) about the City’s refusal to grant him a fee waiver. The adjudicator found that a partial fee waiver was appropriate in the circumstances and excused the complainant from paying 50 percent of the fee.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 58(3)(c) and 75(5)(b).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA)¹, an individual (complainant²) asked the City of Victoria (City) for access to records “related to stormwater, sanitary source control, and contaminant management in the Core Area (Victoria, Esquimalt, Saanich, Oak Bay, and View Royal).”³ The complainant included a list of specific information to be searched for. The date range for the access request was 1995 to present.⁴

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

² As this inquiry concerns a fee complaint, I use the term “complainant” in this order rather than “applicant.”

³ OIPC Fact Report dated November 25, 2025 at para 1.

⁴ *Ibid.*

[2] The City issued a fee estimate of \$4,335 to locate, retrieve, and produce the records responsive to the access request.⁵ The complainant requested a full fee waiver from the City under s. 75(5)(b) (public interest fee waiver).⁶ The City denied this request.⁷

[3] The complainant complained to the Office of the Information and Privacy Commissioner (OIPC) about the City's decision to deny him a fee waiver. During the OIPC's mediation process, the complainant narrowed the date range of his access request to January 1, 2016 to present.⁸ As a result, the City reduced its fee estimate to \$2,985.⁹

[4] Mediation did not resolve the fee waiver dispute, and the matter proceeded to this inquiry.

PRELIMINARY MATTER

[5] During the inquiry, the City indicated that it does not expect there to be records responsive to one part of the complainant's request.¹⁰ In response to this, the complainant asked me to require the City to provide "a Section 6(1) certification confirming that no records exist, with reasons, if that remains the case."¹¹

[6] Section 6(1) is not identified in the complainant's request for review and is not listed in the Notice of Inquiry or Fact Report. The OIPC's *Instructions for Written Inquiries*¹², provided to the complainant at the outset of the inquiry, clearly explain the process for adding new issues. The complainant did not seek prior approval to add s. 6(1). Past OIPC orders have consistently said that parties may only add new issues into an inquiry if permitted to do so by the OIPC.¹³

[7] I am not persuaded by the record before me that it would be fair to add a new issue or that there are any exceptional circumstances to warrant its addition. Further, in any event, the City has not completed its search for records yet, as

⁵ *Ibid* at para 2.

⁶ *Ibid*.

⁷ *Ibid* at para 3.

⁸ *Ibid* at para 5.

⁹ *Ibid*.

¹⁰ City's response dated February 4, 2026 to Adjudicator letter to parties (hereafter "City's response letter") at p. 2.

¹¹ Complainant's reply dated February 9, 2026 to City's response letter (hereafter "Complainant's reply letter") at s. 3.2.

¹² Available online at <https://www.oipc.bc.ca/documents/guidance-documents/1658>.

¹³ For example, see: Order F12-07, 2012 BCIPC 10 (CanLII) at para 6; Order F23-25, 2023 BCIPC 29 (CanLII) at paras 3-4; Order F25-87, 2025 BCIPC 101 (CanLII) at paras 2-3.

the fee waiver dispute remains ongoing. Accordingly, the complainant's raising of s. 6(1) in relation to the City's search for records is premature.¹⁴

[8] For all of the above reasons, I decline to add s. 6(1) as an issue in this inquiry and I will not consider it further.

ISSUE, AUTHORITY, AND BURDEN OF PROOF

[9] The sole issue to be decided in this inquiry is whether the City's estimated fee of \$2,985 should be waived, in whole or in part, under s. 75(5)(b).

[10] Under s. 58(3)(c) of FIPPA, I have the authority, as the commissioner's delegate, to confirm, excuse, or reduce the disputed fee in the appropriate circumstances. The jurisdiction conferred by s. 58(3)(c) is broad and enables me, in appropriate cases, to substitute my decision for that of the public body.¹⁵

[11] FIPPA does not expressly set out who has the burden in inquiries about fee waiver disputes under s. 75(5). However, previous OIPC orders have established that the burden is on the complainant.¹⁶

DISCUSSION

Background

[12] The complainant is a founder of the Veins of Life Watershed Society, which he explains is a long-standing, non-profit community organization.¹⁷ The complainant submits that his role with the Society includes "coordination of watershed-based habitat restoration, stormwater/source-control advocacy, water quality monitoring, data interpretation, and public reporting in the Gorge Waterway and Victoria Harbour watershed."¹⁸

[13] The complainant submitted an access request to the City for the following:

1. Diversion of waste streams

Records, memos, or enforcement files documenting instances where landowners, businesses, or institutions diverted waste stream (e.g., wash water, chemicals, oily discharges) from sanitary sewers into storm drains or

¹⁴ For a case with a similar reasoning, see: Order PO-3936, 2019 CanLII 23917 (ON IPC) at para 49.

¹⁵ Order F22-18, 2022 BCIPC 20 (CanLII) at para 14, citing Order F21-10, 2021 BCIPC 14 (CanLII) at para 28; and Order F20-14, 2020 BCIPC 16 (CanLII) at para 14.

¹⁶ For example, see: Order F25-90, 2025 BCIPC 106 (CanLII) at para 4; Order F24-19, 2024 BCIPC 25 (CanLII) at para 5; and Order F21-48, 2021 BCIPC 56 (CanLII) at paras 6-10.

¹⁷ Complainant's fee waiver request dated October 14, 2025.

¹⁸ Complainant's affidavit dated February 9, 2026 at para 1.

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- onto roads, following implementation of the CRD Source Control Program (1995-present).
2. Quantification of contaminant shifts

Internal reports, studies, or briefing notes estimating contaminant load “shifts” from sanitary sewers into stormwater systems since the start of the Source Control Program.
 3. Cross-connections and infrastructure

Current inventories of storm-sanitary cross-connections within each municipality, including inspection and repair schedules.

Correspondence between the CRD and municipalities (2010-present) on storm-sanitary cross-connection identification and remediation.
 4. Stormwater monitoring and exceedances

Datasets and reports on stormwater solids and aqueous contaminants collected in the Core Area (2010-present), including Rock Bay outfalls 626/626A/627, Cecelia Creek, Banfield Park, and other priority outfalls.

Technical notes or communications documenting stormwater contaminant exceedances of CCME/BC guidelines and subsequent source-tracing or corrective actions.
 5. Integration of data

Records showing how Rock Bay stormwater source-tracing (2018-2023) and Cecelia Creek exceedances data have been integrated into regional contaminant budgets or load models.
 6. Enforcement and regulatory response

Policies, procedures, or enforcement case files describing how storm water contaminant exceedances are addressed: under municipal bylaws, CRD Source Control, or both.
 7. Utility and governance discussions

Reports, studies, or correspondence since 2015 discussing the establishment of a combined sanitary + stormwater utility for the Core Area, modeled on King County, Washington or other regional wet-weather utilities.
 8. Historical correspondence with senior governments

Correspondence between CRD or municipal staff and Transport Canada, BC Ministry of Environment, or Environment and Climate Change Canada

regarding recontamination of Rock Bay sediments from municipal stormwater outfalls post remediation.¹⁹

[14] The City issued a fee estimate of \$4,335 to process the complainant's access request.²⁰ Due to the amount of the estimate, the City also requested the complainant provide a 50 percent deposit of \$2,167.50 before it would begin processing his request.²¹

[15] The complainant requested a full fee waiver from the City under s. 75(5)(b) (public interest fee waiver). His reasons in support of his request were as follows:

This request meets s. 75(5)(b) on its face: the records concern stormwater discharges, environmental quality, and public health and safety in the Core Area. They will directly inform residents, First Nations, and decision-makers about how environmental risks are identified, managed, and funded.

Veins of Life Watershed Society is a long-standing, non-profit community organization. We analyze, translate, and publish information at no cost to the public. We will make any responsive records, and our analysis, broadly available for public benefit.²²

[16] The City denied the complainant's request for a fee waiver. Its reasons for the denial were as follows:

The records requested are general and broad, and do not relate to a specific environmental matter. Simply being records related to stormwater does not mean there is a public health concern and would not be in the public interest to waive the fee.²³

[17] The complainant submitted a complaint to the OIPC about the City's decision to deny his request for a full fee waiver.

Requested Records

[18] As the fee estimate dispute remains unresolved, the City has not yet searched for or compiled the records responsive to the complainant's request. Instead, the City submits that it reviewed a "representative sample" of responsive records when calculating the fee estimate and considering the complainant's request for a fee waiver.²⁴

¹⁹ Complainant's FOI Request dated September 20, 2025.

²⁰ City's fee estimate dated October 14, 2025 at p. 2.

²¹ *Ibid.*

²² Complainant's fee waiver request dated October 14, 2025.

²³ City's fee waiver decision dated October 15, 2025 at p. 2.

²⁴ City's response letter at p. 4.

[19] In absence of being able to review the responsive records in this inquiry, I requested the City to provide a detailed description of the responsive records and the total number or estimated range of responsive records.²⁵

[20] The City advised that it “expects the total number of responsive records will be approximately 8,000 to 13,000.”²⁶

[21] The City provided the following description of the records that “would be reviewed for responsiveness”:

The responsive records include emails, PDFs, Word Docs, Excel sheets, and files of other formats that detail investigations and enforcement, reports and studies, inspection records, datasets and technical documents, and correspondence with various levels of government...Given the breadth of the request, a *detailed* description may not be inclusive of all responsive records, as the City can only provide a description based on knowledge of the records and a sample of what has been collected. The following summaries below do not confirm the existence of any records but are a summary of what would be reviewed for responsiveness:

For item 1 (item 1, bullet 1 in FOI request), the records include correspondence, reports, briefings, datasets, and other documents required for an investigation.

For item 2 (item 2, bullet 1), records consist of communications, reports, and notifications sent from the Supervisory Control and Data Acquisition system.

For item 3 (item 3, bullet 1), various spreadsheets exist providing information related to inspections and testing.

For item 4 (item 3, bullet 2), records will generally be emails with the Capital Regional District (CRD), and other municipalities related to “storm-sanitary cross-connection identification and remediation” and would likely contain attachments including reports and datasets.

For item 5 (item 4, bullet 1), datasets include technical information that report on particles found at various outfalls. Records are in prepared reports and in raw format in various file types.

For item 6 (item 4, bullet 2), records will include datasets from the CRD on metals and hydrocarbons, reports from other judications, and source tracing reports.

For item 7 (item 5, bullet 1), staff are unaware of any responsive records.

For item 8 (item 6, bullet 1), in addition to the records detailed in item 1, emails, staff reports, briefing notes, draft bylaw updates for various city bylaws.

²⁵ Adjudicator letter to parties dated January 29, 2026 at p. 1.

²⁶ City’s response letter at p. 2.

For item 9 (item 7, bullet 1), the City has a limited number of emails related to this matter.

For item 10 (item 8, bullet 1) records are generally email communications and physical correspondence with multiple levels of government regarding the Rock Bay outfalls. Email records will generally contain various attachments including reports, datasets, and meeting minutes/agendas.²⁷

Section 75(5)(b) – public interest fee waiver

[22] FIPPA allows public bodies to require individuals to pay fees for access to records, subject to certain exceptions.²⁸ It also allows public bodies to waive these fees in some circumstances. These circumstances are set out in s. 75(5)(a) and (b).

[23] In this case, the complainant requested a fee waiver under s. 75(5)(b). Section 75(5)(b) authorizes a public body to excuse payment of all or part of the fees for service if “the record relates to a matter of public interest, including the environment or public health or safety.”

[24] Previous orders have established a two-part test for determining if a public interest fee waiver is appropriate. This test asks:

- 1) Do the records relate to a matter of public interest?
- 2) If so, should the applicant be excused from paying all or part of the estimated fee?²⁹

[25] Past orders have also set out a variety of non-exhaustive factors to consider when applying each part of the test to the records at issue.

[26] I will apply this test to the records at issue in this inquiry in the following sections.

Step 1 – do the records related to a matter of public interest?

[27] The first step is to determine if the records relate to a matter of public interest. A public interest fee waiver requires that the requested records *themselves* relate to a matter of public interest.³⁰ A complainant’s intention to use

²⁷ *Ibid* at p. 1-2.

²⁸ FIPPA at s. 75.

²⁹ Order F25-90, *supra* note 16 at para 8; Order F25-95, 2025 BCIPC 111 (CanLII) at para 11; Order F24-19, *supra* note 16 at para 15.

³⁰ Order F25-95, *supra* note 29 at para 12.

the records in a manner that relates to the public interest is not sufficient.³¹ Further, simply identifying public interest issues as the motivation for the access request also does not suffice.³²

[28] If a record “relates to” a matter that is of public interest, this branch of the test is satisfied.³³ The test is not whether a matter is “sufficiently” of public interest. There is no room under s. 75(5)(b) for a public body to assess the *degree* of public interest in a matter.³⁴

[29] Previous orders have set out the following non-exhaustive list of factors to consider when deciding whether the records relate to a matter of public interest:

- 1) Has the subject of the records been a matter of recent public debate?
- 2) Does the subject of the records relate directly to the environment, public health or safety?
- 3) Could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
 - a) disclosing an environmental concern or a public health or safety concern?
or
 - b) contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue? or
 - c) contributing to public understanding or debate about an important policy, law, program or service?
- 4) Do the records disclose how the public body is allocating financial or other resources?³⁵

[30] It is not necessary for all of these factors to be present in order for records to relate to a matter of public interest.³⁶

[31] I will consider the applicability of each of these four factors to the case at hand below.

Recent public debate

[32] This factor asks whether the subject matter of the records has been a matter of recent public debate. The relevant time frame to gauge whether debate

³¹ *Ibid.*

³² *Ibid.*

³³ Order F24-19, *supra* note 16 at para 17.

³⁴ *Ibid.*

³⁵ Order F24-19, *supra* note 16 para 16; Order F25-95, *supra* note 29 at para 14; Order F21-48, *supra* note 16 para 20; F19-09, 2019 BCIPC 11 (CanLII) at para 15.

³⁶ Order No. 332-1999, 1999 CanLII 4202 (BC IPC) at s. 3.3 “Applicable Principles.”

was “recent” is at the time of the access request and the public body’s response.³⁷

Parties’ submissions

[33] The complainant’s initial submissions did not directly engage with this factor. However, indirectly, in the complainant’s initial submission he states “recent advisories and news coverage show sewage leaks from aging City infrastructure into the Gorge near Banfield Park, resulting in a “no swim” warning...”.³⁸ At the end of this sentence, the complainant included a link to a Times Colonist news article entitled “Gorge added to list of no-swim zones after sewage spill.”³⁹

[34] The complainant did not specifically discuss the content of the Times Colonist article in his submissions or clearly explain how it relates to the subject matter of the records at issue. However, having read this article, I can see that it discusses a sewage spill that occurred in July 2025 and a resulting swimming advisory notice that was posted at a public dock in Victoria. The notice stated that swimming and other water contact activities were not recommended due to high levels of bacteria following a sewage spill. The spill was noted to be “the result of a leak in the sewage infrastructure because of a bypass during construction work.”⁴⁰

[35] In the City’s response submission, it noted that with the exception of one Times Colonist article, the complainant provided no evidence that the general subject of the records has been a matter of recent public debate.⁴¹ The City submits that “one news article is insufficient to make this extremely broad FOI Request a matter of recent public debate.”⁴²

[36] In reply to this, the complainant submits that “media coverage is not a legal prerequisite for a public interest fee waiver”, rather, it is just one non-exhaustive factor.⁴³ Additionally, in a later submission, the complainant added that “stormwater quality and its consequences have been debated in public council meetings, environmental planning sessions, and community discussions.”⁴⁴

³⁷ F19-09, *supra* note 35 at para 26.

³⁸ Complainant’s initial submission at para 23.

³⁹ Available online at <https://www.timescolonist.com/local-news/gorge-added-to-list-of-no-swim-zones-after-sewage-spill-11019075>.

⁴⁰ *Ibid.*

⁴¹ City’s response submission at para 20.

⁴² *Ibid.*

⁴³ Complainant’s reply submission at “Executive Summary.”

⁴⁴ Complainant’s reply letter at s. 7.1.

Analysis and findings

[37] For the following reasons, I find that the complainant has provided insufficient evidence to establish that the subject matter of the records has been a matter of recent public debate.

[38] With respect to the Times Colonist article, while it may touch generally on issues related to the complainant's access request, I agree with the City that one news article is insufficient evidence of recent public debate.⁴⁵ Although the complainant included numerous exhibits and hyperlinks to sources in his submissions, including to other news articles, he did not identify which of these materials are relevant to this factor or explain why. Accordingly, I have not considered them in my assessment of this factor. The obligation is on the complainant to clearly explain the relevance of any sources he includes in his submissions to the applicable factors under the s. 75(5)(b) test. In the case of this factor, he did not do so.

[39] Next, though the complainant submits that stormwater quality and its consequences have been debated in public council meetings, environmental planning sessions, and community discussions, he did not point me to any evidence to substantiate this claim. Accordingly, in absence of further evidence or explanation from the complainant on this point, I am unable to verify its accuracy.

[40] For these reasons, I am not persuaded that the subject matter of the records has been a matter of recent public debate. This factor therefore does not weigh in favour of finding the records relate to a matter of public interest. However, the complainant is correct that this is only one factor to consider in the overall analysis of whether the records relate to a matter of public interest.

Relates directly to the environment, public health or safety

[41] This factor asks whether the subject of the records relates directly to the environment, public health, or safety. These are the three non-exhaustive public interest grounds explicitly set out in s. 75(5)(b).

Parties' submissions

[42] The complainant submits that the records at issue concern storm-sewers, stormwater discharges, fecal contamination, water quality, and sediment contamination in public waters that are swum in, rowed and paddled in daily, fished and crabbed in for food, and that support key habitats for sand lance, Chinook salmon, and Southern Resident killer whales.⁴⁶ He submits that these

⁴⁵ For a case with similar reasoning, see: Order F22-18, 2022 BCIPC 20 (CanLII) at para 23.

⁴⁶ Complainant's initial submission at para 47.

records clearly relate to matters of environmental and public health within the meaning of s. 75(5)(b).⁴⁷

[43] The City submits that while some of the requested records do generally relate to the environment, the FOI request is so broad in nature that there is no specific environmental issue associated with all of the records being requested.⁴⁸ The City submits that an example of this is the complainant's request for current inventories of storm-sanitary cross-connections within the municipality, including inspection and repair schedules.⁴⁹ The City states that had the complainant sought records pertaining to a specific issue relating to stormwater, such as allegations of polluted water draining into Cecelia Creek, there would be a stronger argument that such records were in the public interest.⁵⁰

[44] The City also submits that some of the records requested are so dated that they have no bearing on an environmental issue of public interest today.⁵¹ As an example, the City states that records related to the diversion of waste streams from sanitary sewers into storm drains or onto roads from 2016 "would have no bearing whatsoever on the environment today."⁵²

[45] In reply to the City's submission about the age of some of the records, the complainant submits that historical records, including legacy investigations, monitoring data, and source control documentation, are necessary to establish baseline conditions, measures trends, and assess whether stormwater management actions have influenced environmental outcomes.⁵³

Analysis and findings

[46] To start, it is useful to set out some principles and orders that are relevant to the circumstances of this case and to this factor in particular.

[47] First, past OIPC orders have established that a record will relate to the environment within the meaning of s. 75(5)(b) "if it relates, at the very least, to the quality, health, protection, degradation, or preservation of the environment".⁵⁴ Contrary to the City's submission, nothing in the wording of s. 75(5)(b) requires there to be a specific environmental "concern" or "issue" in order for a record to relate to the "environment."⁵⁵

⁴⁷ *Ibid* at para 48.

⁴⁸ City's response submission at para 21.

⁴⁹ *Ibid*.

⁵⁰ *Ibid*.

⁵¹ *Ibid* at para 22.

⁵² *Ibid*.

⁵³ Complainant's affidavit at para 7.

⁵⁴ Order 01-35, 2001 CanLII 21589 (BC IPC) at para 30.

⁵⁵ *Ibid* at para 27.

[48] Second, previous public interest fee waiver orders have found that records concerning water quality relate to the environment and also to public health within the meaning of s. 75(5)(b). For example, in Order F05-36, some of the responsive records related to the effects of proposed land developments on water quality in the region. The Adjudicator, in finding that these records related to matters of public interest, noted that “water quality is an environmental issue (and may be a public health issue).”⁵⁶ Further, in Order 01-35, the requester sought access to records regarding logging in a particular watershed. The Commissioner found that “what happens or does not happen to water quality in this particular watershed is a matter of public interest for the purposes of s. 75(5)(b).”⁵⁷

[49] Third, for there to be a public interest in records relating to the environment or public health or safety under s. 75(5)(b), the records should relate to matters of current or prospective, rather than historical, concern or relevance.⁵⁸ In order for historical records to meet the test, there needs to be a link between the historical records and a current or prospective public interest matter.⁵⁹

[50] Turning to the records at issue in this case, the requested records relate to stormwater, sanitary source control, and contaminant management in the Victoria region. I am satisfied, based on the general subject matter and specific wording of the complainant’s access request, that some of the records responsive to this request would relate to the “quality, health, protection, degradation, or preservation” of waterways in the Victoria region, which form part of its environment.

[51] Some examples of this would be records regarding the diversion of waste streams into storm drains or onto roads (Item 1), records estimating contaminant load shifts from sanitary sewers into stormwater systems (Item 2), records concerning storm-sanitary cross-connection identification and remediation (Item 3), records documenting stormwater contaminant exceedances and subsequent corrective actions (Item 4), and records regarding recontamination of Rock Bay sediments (Item 8). Records on these subjects would clearly relate to the quality, health, protection, degradation, and/or preservation of the environment.

[52] My finding that some of the responsive records are likely to relate to the environment is supported by the City’s response submission in this matter, in

⁵⁶ Order F05-36, 2005 CanLII 46569 (BC IPC) at para 67.

⁵⁷ Order 01-35, *supra* note 54 at paras 31-33 and 37. For cases with similar reasoning, see also: Order PO-1953-F, 2001 CanLII 26150 (ON IPC) at “Findings” section and Order No. 03-001, 2003 CanLII 52558 (PE IPC) at *Does the record relate to a matter of public interest?*

⁵⁸ Order 02-28, 2002 CanLII 42459 (BC IPC) at para 28.

⁵⁹ *Ibid.*

which it acknowledges that “some of the requested records *do generally relate to the environment*” [my emphasis].⁶⁰

[53] Additionally, to the extent that some responsive records reveal or relate to recent or ongoing issues with water contamination or contaminant management in the Victoria area, such records could also engage matters of public health and safety. However, I cannot determine whether this is the case without reviewing the responsive records.

[54] Turning to the City’s submission that some of the records requested are too dated to have a bearing on the environment today, I acknowledge that due to the date range of the complainant’s request, some of the responsive records will be from several years ago. However, the complainant’s submission that older records are foundational to understanding whether current policy and infrastructure investments have altered environmental outcomes is not unreasonable, and appears to provide the necessary link between the older records and current public interest matters. Additionally, in any event, the City did not identify the number of records it considers to be too old to have an impact of the environment today or produce them for my review. Accordingly, I have insufficient information and evidence before me to assess which records or percentage of records, if any, are too old to relate to matters of current public interest.

[55] Last, I note that it is unlikely to be the case that *every* single one of the estimated 8,000 to 13,000 responsive records will relate directly to the environment or to public health and safety. For example, some responsive records may be merely administrative in nature. However, without seeing the responsive records, I am unable to parse these records out from the rest.

[56] In summary, taking all of this together, I am generally satisfied based on the wording of the access request that some of the records responsive to the request can reasonably be expected to relate to the environment, and that some could also relate to public health and safety. This factor therefore weighs in favor of finding that some of the records relate to a matter of public interest.

Dissemination or use of records could reasonably be expected to yield a public benefit

[57] This factor asks whether dissemination or use of the information in the records could reasonably be expected to yield a public benefit. The focus at this stage of the test is on the public benefit of dissemination of the information, *not*

⁶⁰ City’s response submission at para 21.

on the complainant's ability to disseminate it (this is a consideration at the second part of the test).⁶¹

[58] Disseminating or use of the information may yield a public benefit if the information:

- i. discloses an environmental concern or a public health or safety concern; or
- ii. contributes to the development or public understanding of, or debate on, an important environmental or public health or safety issue; or
- iii. contributes to public understanding or debate about an important policy, law, program or service.⁶²

Parties' submissions

[59] The complainant did not directly address this factor in his submissions. However, some of the arguments he makes throughout his submissions appear to engage this factor, so I will repeat them below:

- City-held records on sewage leaks, cross-connections, IDDE investigations, storm outfall sampling and coordination with Island Health/CRD directly inform whether recreational water in the Gorge/Harbour is being kept within acceptable health risk.⁶³
- The requested City records – storm assets, sampling, cross-connection and spill investigations, enforcement – are directly tied to how risks are managed or allowed to persist.⁶⁴
- Records related to [Rock Bay] outfalls – condition, solids management, IDDE work, follow up – are directly relevant to current human health and ecological exposure.⁶⁵
- The records are intended for inclusion in a public watershed health report that will be disseminated freely to the public, local governments, Indigenous partners, and

⁶¹ Order F24-19, *supra* note 16 at para 22. For this reason, I will not address or reproduce the arguments made by the City under this factor about the complainant's ability to disseminate the information in the records. I will, however, consider these arguments under the second part of the test.

⁶² Order F24-19, *supra* note 16 at para 16; Order F25-95, *supra* note 29 at para 14; Order F21-48, *supra* note 16 at para 20; F19-09, *supra* note 35 (CanLII) at para 15.

⁶³ Complainant's initial submission at para 41.

⁶⁴ *Ibid* at para 19.

⁶⁵ *Ibid* at para 30.

other stakeholders to improve awareness and decision making about stormwater quality, infrastructure performance, and ecological risk.⁶⁶

[60] The City made several submissions on this factor, including the following:

- It is not evident that dissemination of the requested records would contribute to public understanding or debate about a specific environmental issue, or contribute to public understanding of important policy, law, programs or service.⁶⁷ The nature of the requested records is so broad in nature and timeframe that this conclusion cannot be made.⁶⁸
- The complainant did not demonstrate sufficiently how the content of the records themselves actually support his arguments about environmental risks.⁶⁹
- Dissemination of the records is unlikely to contribute to public understanding or debate on a specific issue, as much of this information is already publicly available through the CRD's annual Core Area Stormwater Quality Program Report and City reporting, and the public are aware of these issues.⁷⁰
- Much of the information being requested is highly technical in nature, to the extent that the average member of the public would not be able to understand it, and the complainant has not demonstrated a history of dealing with such information.⁷¹
- Many of the records requested will be so old that they have no impact on today's environment or current environmental issues associated with stormwater.⁷² For example, there is very little public benefit to obtaining records from 2016 pertaining to a private property owner discharging inappropriate chemicals into the storm drain fronting their home.⁷³ There must be a link between the historical records and a current or prospective public interest matter, and that link has not been established by the applicant.⁷⁴

[61] In reply to the City's submission about the public availability of some of the requested information, the complainant submits that CRD monitoring does not disclose the City's enforcement, cross-connection inventories, or budget/assets decisions.⁷⁵

[62] Next, in reply to the City's submission about the technicality of some of the requested records, the complainant submits that the public interest test does not

⁶⁶ Complainant's affidavit at para 4.

⁶⁷ City's response submission at para 23.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid* at para 25.

⁷¹ *Ibid* at para 24.

⁷² *Ibid* at para 26.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Complainant's reply submission at s. VI, subsection 1).

require the records to have lay readability.⁷⁶ Further, the complainant submits that Veins of Life Watershed Society’s mandate includes “translating technical data into public reporting.”⁷⁷ Additionally, the complainant submits that many technical records (e.g., outfall water quality, solids composition) directly inform environmental risk assessments, and that the public has a right to see the original data that underpins agency decisions and summaries.⁷⁸

[63] Last, in reply to the City’s submission about the age of some the requested records, the complainant submits:

- Stormwater quality is cumulative; patterns of past issues inform present and future risk
- The effectiveness of remediation cannot be judged without baseline and trend data
- Older records may contain unique investigations or datasets that are not otherwise captured in annual summaries or public reports
- Many environmental statutes and policies (e.g., CCME, provincial water quality guidance) explicitly require trend analysis
- Historical context is foundational for understanding whether current policy and infrastructure investments have altered outcomes.⁷⁹

Analysis and findings

[64] Considering the subject matter of the request, I think it is certainly possible that records pertaining to stormwater, sanitary source control, and contaminant management in the Victoria area could disclose environmental or public health concerns and/or contribute to public’s understanding of or debate about these subjects, thereby yielding a public benefit.

[65] For example, some responsive records may disclose or shed light on recent or systemic issues with stormwater contaminant exceedances that affect water quality, which could constitute both an environmental and public health concern. Additionally, other records may document recent incidents where individuals or businesses improperly diverted waste streams into storm drains or onto roads, which could have environmental and public health implications depending on the particular facts underpinning these incidents.⁸⁰

⁷⁶ *Ibid* at s. VI, subsection 2).

⁷⁷ Complainant’s reply letter at s. 5.

⁷⁸ *Ibid*.

⁷⁹ *Ibid* at s. 4.

⁸⁰ Even assuming that these incidents have been addressed and resolved, the public’s interest in a matter does not necessarily end when the immediate environmental, public health or safety concerns have passed (Order F24-19, *supra* note 16, at para 21).

[66] Further, some responsive records can reasonably be expected to reveal how the City addresses stormwater contaminant exceedances, manages the inspection and repair schedule for storm-sanitary cross-connections, and responds to instances of improper waste stream diversion. Use and dissemination of such information could therefore yield a public benefit by contributing to the public's understanding of, or debate about, how the City manages these matters.

[67] Turning to the specific points raised in the City's submissions on this factor, I again acknowledge the City's position that some of the records are too old to have an impact on today's environment or current environmental issues associated with stormwater. However, I note that while some records may be as old as 2016, others will be as recent as 2025. This differentiates this case from Order 02-28, which was cited by the City in its submission on this factor, and involved a request for records that were all approximately 9-13 years old from the date of the access request.⁸¹ Further, while at the time of the City's response submission the complainant had not identified a link between the older records and a current or prospective public interest matter, he subsequently clarified that it is his position that historical records are necessary to establish baseline conditions, measure trends, and assess whether stormwater management actions have influenced environmental outcomes.

[68] Next, in response to the City's claim that many of the responsive records are highly technical in nature, I do not think this precludes this information from yielding a benefit to the public. Even if the complainant is unable to understand the data himself, there is nothing preventing him from consulting with someone with the necessary expertise to understand the subset of responsive records that are "highly technical in nature."

[69] Last, regarding the City's claim that much of the information in the records is already publicly available in the CRD Core Area Stormwater Quality Program Report, the City subsequently clarified that the records themselves are *not* included in this report.⁸² Rather, the City explained that some of the requested records are in the form of data, which is provided to and collected by the CRD and interpreted by their team to inform their annual report.⁸³

[70] This may be the case, but this does not necessarily preclude the possibility that use or dissemination of the records containing the original source data would shed light on the information already publicly available in the CRD report, thereby yielding a public benefit by contributing meaningfully to the

⁸¹ Order 02-28, *supra* note 58 at para 1.

⁸² City's response letter at p. 3.

⁸³ *Ibid.*

public's understanding of the information in these reports.⁸⁴ Additionally, in any event, I have no information about the number of responsive records the City believes contain information that is already publicly available in the CRD reports.

[71] Finally, I note that in the City's submissions on this factor, it stated that "the Applicant did not demonstrate sufficiently how the content of the records themselves actually support their arguments about environmental risks." It is unclear to me how the City can fault the complainant for not engaging with the content of the records in his submissions considering he doesn't have access to them. In the OIPC order the City cites on this point, the complainant had been provided with the responsive records and therefore had the opportunity to tie their content to his submissions about environmental risks but did not do so.⁸⁵ This is not the case here.

[72] In summary, based on the general subject matter and specific wording of the complainant's access request, I find that it is possible that use or dissemination of records responsive to this request could yield a public benefit by revealing an environmental or public health concern or by contributing to the public's understanding of or debate about an important environmental or public health issue associated with stormwater, sanitary source control, and contaminant management in the Victoria area. At the very least, I cannot rule out this possibility based on the limited information before me. This factor therefore weighs in favor of finding the records relate to a matter of public interest.

[73] I note that, to the extent that some records are unrelated or have no connection to current environmental or public health matters, such as by virtue of their age or content, or to the extent that they contain information that is already publicly available, use or dissemination of the information in those records may not yield a public benefit. However, I have insufficient information and evidence before me to determine which records or percentage of records fall into these categories.

Public body allocation of resources

[74] This factor asks whether the records disclose how the public body is allocating financial or other resources.

[75] The parties did not have much to say on this factor. The complainant did not address this factor in his initial submission, and the City's response submission only noted that the complainant did not address this part of the test.⁸⁶ However, in the complainant's reply submission, he submits that "the records

⁸⁴ For a case with similar reasoning, see: Order PO-3621, 2016 CanLII 40893 (ON IPC) at para 76.

⁸⁵ Order 02-15, 2002 CanLII 42440 (BC IPC) at para 24.

⁸⁶ City's response submission at para 27.

include resource-allocation information (e.g., storm vs. sanitary spending; source control-budgets).⁸⁷

[76] Having reviewed the complainant's access request, I can see that it includes a request for records pertaining to the City's inspection and repair schedules for storm-sanitary cross connections and corrective actions taken in response to stormwater contaminant exceedances.⁸⁸ I am satisfied that records responsive to these items would reveal information about how the City allocates resources to address these matters. As such, I am satisfied that some of the responsive records would disclose how the City is allocating financial or other resources. This factor therefore weighs in favour of finding that some records relate to matters of public interest.

Conclusion re: matter of public interest

[77] Taking all of the above together, I am satisfied that some of the records requested by the complainant can reasonably be expected to relate to matters of public interest. This is because, based on the wording of the request, I am satisfied, and the City admits, that some responsive records relate to the environment. Further, others responsive records could potentially relate to public health and safety.

[78] Second, it is possible that use or dissemination of some of the records could yield a public benefit by revealing an environmental or public health concern or by contributing to the public's understanding of or debate about an important environmental or public health or safety issue related to stormwater, sanitary source control, and contaminant management in Victoria.

[79] Last, some of the responsive records can reasonably be expected to disclose how the City is allocating resources to address the matters listed in the complainant's access request.

[80] Accordingly, for these reasons, I am satisfied that the first part of the test has been met, and I will proceed to the second step.

Step 2 – should the complainant be excused from paying the fee?

[81] Since I have found that some of the requested records can reasonably be expected to relate to matters of public interest, I must now consider whether the complainant should be excused from paying all or part of the estimated fee.

[82] Previous orders have considered the following non-exhaustive list of factors at this stage of this test:

⁸⁷ Complainants reply submission at Executive Summary.

⁸⁸ Complainant's FOI request, items 3, 4, and 6.

- 1) Is the complainant's primary purpose for making the request to use or disseminate the information in a way that can reasonably be expected to benefit the public, or is the primary purpose to serve a private interest?
- 2) Is the complainant able to disseminate the information to the public?
- 3) Did the public body meet legislated time limits in responding to the request?
- 4) The manner in which the public body attempted to respond to the request (including in light of the public body's duties under s. 6 of FIPPA).
- 5) Did the complainant, viewed reasonably, co-operate or work constructively with the public body, where the public body so requested during the processing of the access request, including by narrowing or clarifying the access request where it was reasonable to do so?
- 6) Has the complainant unreasonably rejected a proposal by the public body that would reduce the costs of responding to the access request? It will almost certainly be reasonable for a complainant to reject such a proposal if it would materially affect the completeness or quality of the public body's response.
- 7) Would waiver of the fee shift an unreasonable cost burden for responding from the complainant to the public body?⁸⁹

[83] I will consider each of these factors in the sections below.

Complainant's purpose in making request

[84] This factor asks whether the complainant's primary purpose for making the request is to disseminate the information in a way that can reasonably be expected to benefit the public, or whether the purpose is to serve a private interest.

[85] The complainant submits that he intends to analyze and publish the information in the records for the public benefit, not for private gain.⁹⁰ He submits that the records requested are intended for inclusion on a public watershed health report that will be disseminated freely to the public, local governments, Indigenous partners, and other stakeholders to improve awareness and decision-making about stormwater quality, infrastructure performance, and ecological risk.⁹¹

⁸⁹ Order F24-19, *supra* note 16 at para 27; Order F21-48, *supra* note 16 at para 50; Order F19-09, *supra* note 35 at para 36.

⁹⁰ Complainant's initial submissions at para 48.

⁹¹ Complainant's affidavit at para 4.

[86] The City submits that the information requested cannot reasonably be expected to benefit the public, given the over-broad nature of the information requested.⁹²

[87] Based on the information before me, I am satisfied that the complainant's primary purpose for making the request is to use or disseminate the information for the benefit of the public. There is no indication that he made the request to serve or advance a private interest. Accordingly, this factor weighs in favour of waiving the fee.

Complainant's ability to disseminate information

[88] This factor asks whether the complainant is able to disseminate the information to the public.

Parties' submissions

[89] The complainant submits that the Veins of Life Watershed Society has been actively engaged in environmental monitoring and stewardship in the Victoria region since 1995, including the development and publication of watershed health reports, water quality summaries, and technical analyses.⁹³

[90] The City's submits that the complainant has not provided evidence of an ability to disseminate information.⁹⁴ The City notes that only one submission was provided evidencing the complainant's publication of information on the topic of the responsive records, namely an article from 2019 prepared in cooperation with the University of Victoria's Environmental Law Centre.⁹⁵ The City states that the complainant also provided as exhibits reference data, a brief, and a memo; however, there is no indication that any of these documents have been published or otherwise disseminated to the public.⁹⁶

[91] The City again submits that much of the information requested by the complainant is highly technical and granular in nature, and that this data requires expertise in order to disseminate and interpret it.⁹⁷ The City submits that the complainant has not provided any submissions on their qualifications or abilities to understand the data once they do obtain it.⁹⁸

⁹² City's response submission at para 30.

⁹³ Complainant's affidavit at para 2.

⁹⁴ City's response submission at para 31.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid* at para 32.

⁹⁸ *Ibid.*

Analysis and findings

[92] I find that the information and evidence provided by the complainant on his ability to disseminate information to the public to be thin. While the complainant submits that the Veins of Life Watershed Society has been involved in the development and publication of watershed health reports, water quality summaries, and technical analyses, he did not directly point me to any evidence to substantiate this claim.

[93] Having reviewed the complainant's submissions, I see that they include, as exhibits, copies of or references to three published reports that are identified as having been "prepared for" or submitted "on behalf of" the Veins of Life Watershed Society. These include i) *Cecelia Creek Project*, ii) *Re-inventing Rainwater Management: A Strategy to Protect Health and Restore Nature in the Capital Region*, and iii) *Cleaning up CRD Waterways and Beaches: Update of Reinventing Rainwater Management*.⁹⁹ However, the complainant did not explain in his submissions how he or the Veins of Life Watershed Society were involved in developing, publishing, or disseminating these reports to the public. Additionally, these reports were published in 1998, 2010, and 2019 respectively, and thus are not recent examples of the complainant's ability to disseminate information to the public.

[94] Although the complainant included over 1200 pages of exhibits and dozens of links to various sources in his submissions, he did not explain their relevance to this factor in his submissions. Accordingly, besides the three reports mentioned above, I have not considered them here. As noted above, it is the complainant's responsibility to clearly explain the relevance of any attachments and sources he includes in his submissions to the applicable factors under the s. 75(5)(b) test. In the case of this factor, this explanation was lacking.

[95] Taking all of this together, I accept that the complainant likely has some ability to disseminate information to the public given his association with Veins of Life Watershed Society, which is involved in watershed activism, and its involvement or association with published reports on water quality and stormwater management issues in the Victoria region in the past. However, in absence of more fulsome information and evidence from the complainant demonstrating an up-to-date ability to disseminate information to the public, I assign this factor minimal weight.

⁹⁹ Complainant's initial submission at Exhibit K (*Cecelia Creek Project* (1998)), Exhibit D at "Relevant Reports" (reference to *Reinventing Rainwater Management* (2010)), and Exhibit N (*Update of Reinventing Rainwater Management* (2019)).

Legislated time limits for responding

[96] This factor asks whether the public body met the legislated time limits in responding to the complainant's access request.

[97] The complainant did not address this factor. The City submits, and I accept, that it met all statutory time limits in responding to the complainant's access request.¹⁰⁰ Accordingly, this factor does not weigh in favour of granting the fee waiver.

Manner of public body's attempt to respond

[98] This factor involves a consideration of the manner in which the public body attempted to respond to the request, including in light of the public body's duties under s. 6 of FIPPA. Section 6(1) of FIPPA requires public bodies to "make every reasonable effort to assist complainants and to respond without delay to each complainant openly, accurately and completely."

Parties' submission

[99] The complainant made no submissions on this factor. The City submits that it "responded professionally to the FOI Request, providing extensive information to the Investigator as to what the basis of the fee was, and why the City declined the request to waive the fee."¹⁰¹

Analysis and findings

[100] Past Orders have provided guidance on the steps public bodies should take to assist individuals who make broad access requests that result in large fee estimates.

[101] In Order F25-90, the Adjudicator noted:

The City is correct that a broad access request will capture many categories of records. When this occurs, and results in a large fee estimate, the public body should engage the complainant in a conversation about what those categories of records are and clarify whether the complainant would like access to all or a subset of those categories.¹⁰²

[102] Further, in Order F07-01, the Adjudicator stated as follows:

Both complainants and public bodies bear some responsibility or have an incentive to, where appropriate, discuss a request early in the process to ensure that

¹⁰⁰ City's response submission at para 34.

¹⁰¹ *Ibid* at para 35.

¹⁰² Order F25-90, *supra* note 16 (CanLII) at para 24.

complainants will receive the records they really want or need. In this vein, however, public bodies should also bear in mind that complainants may not be familiar with the types of records a public body has or, more particularly, with the contents of records for which they receive a fee estimate, and may therefore be ill-equipped to narrow a request without the public body's help. It thus falls primarily to public bodies to assist complainants by describing responsive records and otherwise discussing requests with complainants. This would be time well spent and might result in lower fees and fewer fee disputes. It would also almost certainly result in better service, improved relations and higher complainant satisfaction.¹⁰³ [My emphasis]

[103] Based on the information before me, there is no indication that the City reached out to the complainant after receiving his access request to discuss it with him or to explore if it could be refined in a manner that would reduce the fee estimate and the response burden on the City while still meeting his information needs. Rather, it appears that the first time the complainant was asked about potentially narrowing his request was during the OIPC's mediation process. Likewise, I also see no indication that the City described the anticipated scope and/or nature of the responsive records to the complainant prior to the OIPC's review so that he could make an informed decision about whether to pursue access to all or only some of the responsive records.

[104] Given the broad nature of the complainant's access request and the City's assessment that it would take significant resources to respond to it, it would have been reasonable and in the best interests of both parties for the City to have taken these steps early in the process. It is unclear to me why it did not do so. For these reasons, while I do not think the City acted unreasonably in responding to the complainant's access request, I am unable to find that it made every reasonable effort to assist him with his access request.

[105] Additionally, past OIPC orders have established that when deciding whether to grant a fee waiver under s. 75(5)(b), public bodies must examine the requested records, or at least a representative sample of them, to decide if they relate to a matter of public interest.¹⁰⁴ Based on the City's response submission, it was unclear to me if the City had examined the responsive records in this matter because it did not produce them, or a sample of them, for my review, and also did not sufficiently describe their contents in its submissions. Further, I noted from the materials that the City denied the complainant's fee waiver request within one day of receiving it, which appeared to me to be an insufficient amount of time to allow the City to review the records responsive to such a broad request and decide whether some, all, or none related to a matter of public interest.

¹⁰³ Order F07-01, 2007 CanLII 773 (BC IPC) at para 103. See also F07-08, 2007 CanLII 14571 (BC IPC) at para 35.

¹⁰⁴ Order F19-09, *supra* note 35 at para 5; Order F07-08, *supra* note 103 at para 73; Order F09-11, 2009 CanLII 42410 (BC IPC) at para 35.

[106] Accordingly, I wrote to the City and asked as follows:

Past orders have established that, when deciding public interest fee waiver requests under s. 75(5)(b), the first step is for the public body to examine the requested records, or at least a representative sample of those records, in order to determine whether the records relate to a matter of public interest.

- a. When determining whether some, all, or none the requested records in this case related to a matter of public interest, did the City undertake an examination of the requested records or a representative sample of those records? Please explain.
- b. If the City reviewed a representative sample only, please describe how it selected this sample, the total number of records that were reviewed, and who they were reviewed by.¹⁰⁵

[107] In response to this, the City advised that it considered a “representative sample” of responsive records.¹⁰⁶ However, in the next line, the City stated that it “disputes that this is even possible given the multiple requested items and dates associated with the FOI request.”¹⁰⁷ The City also stated that “the OIPC decisions referred to in [my] letter, in which it was found that the public body must examine the requested records, or a representative sample of those records pertain to significantly more discrete requests for information than the situation at hand.”¹⁰⁸ It further submitted that “where the request is unreasonably broad such that it effectively amounts to a fishing expedition, necessitating thousands of records being produced under eight broad themes, that must bear some consideration on the assessment.”¹⁰⁹

[108] To be clear, when deciding whether to grant a public interest fee waiver, public bodies are required to review the responsive records or a representative sample of them, even where the request is for a voluminous number of records.¹¹⁰ This step is integral to properly applying the first part of the s. 75(5)(b) test¹¹¹, and has been affirmed in several OIPC orders.¹¹² The fact that a request is broad or captures a large number of records does not relieve the public body of this obligation. The City provided no authority that establishes otherwise.

¹⁰⁵ Adjudicator letter to parties dated January 29, 2026 at p. 2.

¹⁰⁶ City’s response letter at p. 4.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ Order F07-08, *supra* note 103 at para 73 (“The first step of that process involves an examination of the requested records, *or at least a representative sample of those records where there are voluminous records*, in order to determine whether the records relate to a matter of public interest.” [My emphasis]).

¹¹¹ *Ibid* at para 76.

¹¹² Order F19-09, *supra* note 35 at para 5; Order F07-08, *supra* note 103 at para 73; Order F09-11, *supra* note 104 at para 35; Order F07-09, 2007 CanLII 30394 (BC IPC) at para 77; Order F07-01, 2007 CanLII 773 (BC IPC) at para 35.

[109] In past cases where a public body did not undertake a proper review of the responsive records, or a representative sample of them, when applying the s. 75(5)(b) test, the OIPC has found that it failed to exercise its discretion in a reasonable manner under s. 75(5)(b) and remitted the matter back to the public body for reconsideration in one case¹¹³, or waived the fee entirely in others.¹¹⁴

[110] Turning to the case before me, I find it peculiar for the City to claim both that it reviewed a representative sample of the responsive records, and that it is not possible to do so. I also note that the City did not adequately explain how it selected the random sample of records it reviewed when considering the complainant's request for a fee waiver and also did not identify the number of records that were included in the sample, despite my request for this information. Without this information, I am unable to determine if the steps the City took to consider and respond to the complainant's fee waiver request were reasonable.

[111] Taking all of this together, based on the information before me, I am unable to find that the City took all reasonable steps to assist the complainant with his access request and fee waiver request, and this weighs in favour of granting the fee waiver.

Complainant's co-operation

[112] This factor asks whether the complainant, viewed reasonably, co-operated or worked constructively with the public body, where the public body so requested during the processing of the access request, including by narrowing or clarifying the access request where it was reasonable to do so.

[113] The complainant submits that during OIPC mediation he narrowed the data range of his request.¹¹⁵ In the City's reply submissions, it acknowledges that pursuant to mediation, the complainant narrowed his request to the period of 9.5 years (January 1, 2016 to the present). However, the City submits that given the extremely broad scope of the request, this narrowing to include nearly a decade was not sufficient to make the request reasonable.¹¹⁶

[114] This factor does not ask whether the request was reasonable. It asks whether the complainant co-operated or worked constructively with the public body, including by narrowing or clarifying the access request where it is reasonable to do so. As set out above, the City does not appear to have asked the complainant to narrow or clarify his request. However, during the OIPC's mediation process, the complainant agreed to narrow the date range of his

¹¹³ For example, see: Order F07-08, *supra* note 103 (BC IPC) at para 80.

¹¹⁴ For example, see: Order F09-11, *supra* note 104 at paras 38-39 and Order F07-09, *supra* note 112 at paras 81-84.

¹¹⁵ Complainant's initial submission at para 7. The complainant also indicates he narrowed the description; however, this appears to be inaccurate and is not reflected in the Fact Report.

¹¹⁶ City's response submission at para 36.

request considerably from its original scope. Though I acknowledge the City's point that the narrowed request is still broad, the complainant's willingness to reduce the original scope of his request still demonstrates cooperation on his part, which is the primary focus of this factor. Accordingly, I find that this factor applies and weighs in favour of waiving the fee.

Unreasonable rejection of proposal

[115] This factor asks whether the complainant unreasonably rejected a proposal by the public body that would reduce the costs of responding to the access request.

[116] The City submits that this factor is not applicable.¹¹⁷ The complainant did not address this factor in his submissions.

[117] Based on the information before me, the City did not put forward a proposal to the complainant that would reduce the costs of responding to the access request. Accordingly, I find this factor is not applicable.

Shifting of unreasonable cost burden

[118] This factor asks whether a fee waiver would shift an unreasonable cost burden from the complainant to the public body.

Parties' submissions

[119] The complainant did not address this factor in his submissions. The City submits that given the increased volume and breadth of FOI requests being reviewed by the City and the overbroad nature of the FOI request, to excuse this FOI request from fees would be deleterious to the City.¹¹⁸ The City further submits that the number of FOI requests received by the City has been steadily and significantly increasing over recent years.¹¹⁹ The City notes that it accepts that technology and cultural changes may naturally impact FIPPA request volume; however, to waive the fee in this case would place an unreasonable cost burden on the City given the resources required to respond.¹²⁰ Last, the City submits that it would set a dangerous precedent and potentially result in more challenges under FIPPA when the City denies fee waiver requests pursuant to claims of public interest, which would again place further cost burden on City resources.¹²¹

¹¹⁷ *Ibid* at para 37.

¹¹⁸ *Ibid* at para 38.

¹¹⁹ *Ibid*.

¹²⁰ *Ibid*.

¹²¹ *Ibid*.

Analysis and findings

[120] To begin, I appreciate that the City, like many public bodies, may be experiencing an increase in the volume and breadth of FOI requests. However, this submission does not assist me with deciding whether and to what extent the specific fee at issue *in this case* would shift an unreasonable cost burden to the City.

[121] Further, I disagree with the City that granting a fee waiver in this case would set a “dangerous precedent.” As is illustrated by this order, a number of factors go into considering whether a public body should grant a fee waiver. Each request for a fee waiver has to be considered based on the specific circumstances of the particular request at issue.¹²²

[122] Turning now to the particulars of the cost burden in this case, the City’s assessed the cost burden of responding to the complainant’s narrowed access request to be \$2,985.¹²³ Further, the City submits that it would take 99.5 billable hours to process his request.¹²⁴

[123] The City did not explain in its submissions how granting a \$2,985 fee waiver would unreasonably impact its finances or constrain its resources.

[124] Nevertheless, I acknowledge that the fee estimate of \$2,985 is not insignificant. Further, this is a broad access request that spans 9.5 years, with an estimated 8,000 to 13,000 responsive records. I accept the City’s affidavit evidence that, given the timescale and wide variety of the records that will have to be searched for, reviewed, and produced, responding will be resource intensive.¹²⁵ I also note that the complainant did not dispute the City’s fee estimate or the amount of time it says it will take to process his request. Last, I am mindful that, due to the broad scope and duration of the access request, it is unlikely that all 8,000-13,000 responsive records will relate to a matter of public interest within the meaning of s. 75(5)(b).

[125] For these reasons, I do not think this is an appropriate case to grant a full fee waiver. In other words, because of the undisputed time and cost associated with responding to the access request, and the fact that it is unlikely that all of the responsive records will relate to matters of current public interest, I think it would be unreasonable for the City to absorb the entire cost burden of responding to the request.

¹²² For a case with similar reasoning, see: Order F19-09, *supra* note 35 at para 49.

¹²³ Exhibit F to Affidavit #1 of Bradley Cranwell.

¹²⁴ *Ibid.*

¹²⁵ Affidavit #1 of Jas Paul at para 5.

[126] However, past OIPC orders have noted that fee waivers are not an all-or-nothing exercise.¹²⁶ In cases where a large fee estimate is involved, and there are grounds for concluding that a fee waiver is appropriate, a partial fee waiver may be the appropriate approach.¹²⁷

[127] In this case, I find that the following factors weigh in favour of granting a partial fee waiver:

- I have found that some of the requested records are reasonably likely to relate to matters of public interest
- The complainant's purpose for making the request is a public one, rather than a private one. Specifically, the complainant submits that he intends to analyze and publish the information in the records in the form of a free watershed health report that will be shared with the public, local governments, Indigenous partners and other stakeholders to improve awareness and decision-making about stormwater quality, infrastructure performance, and ecological risk
- There is some indication that the complainant is able to disseminate information to the public given his involvement with the Veins of Life Watershed Society and its association with published reports on the topics of stormwater management and water quality issues in the Victoria area in the past
- Based on the information before me, the City's efforts fell short of making every reasonable effort to assist the complainant with his access and fee waiver request
- The complainant agreed to limit the scope of his request significantly at mediation (from 1995 to present to 2016 to present)
- There is no indication that the complainant did not cooperate with the City or that he rejected a proposal put forward by the City that would reduce the cost of responding to the access request

[128] Having found a partial fee waiver to be an appropriate in the circumstances, I now must determine what proportion of the fee should be waived. Since both parties took an all or nothing approach to the fee waiver issue (i.e., complainant requested a full waiver, City denied a full waiver), I have no submissions from the parties on what would be an appropriate portion of the fee to waive in the case.

¹²⁶ Order No. 332-1999, *supra* note 36 at s. 3.3 "Applicable Principles."

¹²⁷ *Ibid.*

[129] After considering all the circumstances, I find a 50 percent fee waiver is appropriate for the following reasons.

[130] First, I have found that some of the responsive records can reasonably be expected to relate to matters of public interest. However, without seeing the responsive records, and only having a very high-level description of what they might be, it is impossible for me to determine which records or proportion of records do versus do not relate to matters of public interest. As such, in these circumstances, I find splitting the fee down the middle to be the most equitable approach to take in a situation where the evidentiary record does not permit me to determine with sufficient certainty which records do and do not relate to matters of public interest. Had I been able to review the responsive records or a representative sample of them, I could have engaged in a more granular analysis.

[131] Second, a fee waiver of 50 percent would result in the City bearing a cost burden of \$1,492.50.¹²⁸ There is no information or evidence before me to suggest this would impose an unreasonable cost burden on the City.

[132] Last, a proportionate sharing of the fee estimate recognizes the potential public interest in the records while balancing it equally against the fact that the request is broad in both scope and duration and will require the City to expend significant time and resources to process.

[133] For these reasons, I find that waiving 50 percent of the fee is appropriate in the specific circumstances of this case and that doing so would not shift an unreasonable cost burden onto the City.

Conclusion re: s. 75(5)(b)

[134] Taking all of the above together, I find it is appropriate to excuse the complainant from paying 50 percent of the fees associated with his access request.

[135] With respect to the first part of the test, I found that some of the responsive records are reasonably likely to relate to matters of public interest. Turning to the second part of the test, I found that there are several factors that weigh in favor of excusing the complainant from paying the fee. However, due to the scope of the access request, the amount of the fee, and the fact that it is unlikely that all responsive records will relate to matters of public interest, I found that it would be unreasonable to shift the entire cost burden to the City. Instead,

¹²⁸ This means that the complainant will bear the same cost burden of \$1,492.50. The complainant did not challenge the City's fee waiver on the basis of an inability to pay under s. 75(5)(a). Accordingly, my analysis does not include a consideration of if he is able to pay this amount as that issue is not before me in this inquiry.

for the reasons set out above, I find it appropriate for the City to waive 50 percent of its assessed fee.

[136] I note that it remains open to the parties to explore whether the complainant's request can be further narrowed or clarified in a manner that reduces the fee estimate and impact on the City's resources, while still meeting his information needs.

CONCLUSION

[137] For the reasons given above, under s. 58(3)(c), I excuse the complainant from paying 50 percent of the City's fee estimate. For clarity, if the final fee differs from the estimate (whether higher or lower), the City may charge the complainant no more than 50 percent of the final fee.

March 18, 2026

ORIGINAL SIGNED BY

Denise Eades, Adjudicator

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