Order F26-33

CITY OF VANCOUVER

David S. Adams
Adjudicator

April 29, 2026

CanLII Cite: 2026 BCIPC 42
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 42

Summary: An applicant requested traffic impact studies related to the Sen̓áḵw development located on the reserve lands of the Squamish Nation from the City of Vancouver (the City). The City located and produced responsive records but withheld most of the information from the records under ss. 16(1) (disclosure harmful to intergovernmental relations) and 18.1 (disclosure harmful to the interests of an Indigenous people) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant also argued that the City had a duty to disclose all of the information in the records under s. 25(1) (disclosure in the public interest). The adjudicator found that the City was not required to disclose the information in the records under s. 25(1), and that it was authorized to refuse access to all of the disputed information under s. 16(1).

Statutes Considered: *Declaration on the Rights of Indigenous Peoples Act,* SBC 2019 c 44, s. 1; *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 16(1)(b) and 25(1)(b).

INTRODUCTION

[1] An applicant requested traffic impact studies related to the Sen̓áḵw development (including, but not limited to, such studies provided by the Squamish Nation) from the City of Vancouver (the City). The City disclosed some responsive records, but withheld most of the information in them under ss. 16(1)(b) (disclosure harmful to intergovernmental relations or negotiations) and 18.1 (disclosure harmful to the interests of an Indigenous people) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision to withhold information. The applicant also argues that the City has a duty under s. 25(1)(b) (disclosure clearly in the public interest) to disclose all of the withheld information without delay. Mediation by the OIPC did not resolve these issues and the matter proceeded to

inquiry. During the inquiry, the City located some additional responsive records, but withheld all the information in them under ss. 16(1)(b) and 18.1.

[3] The City and the applicant each provided submissions for this inquiry. The OIPC invited the Sḵwx̱wú7mesh Úxwumixw (Squamish Nation, or the Nation) under s. 54(b) of FIPPA, to participate as an appropriate person; however, the Nation declined to participate.[1]

ISSUES AND BURDEN OF PROOF

[4] The issues I must decide in this inquiry are as follows:

1. Is the City required to disclose the disputed information without delay under s. 25(1)(b)?

2. Is the City authorized to refuse to disclose the disputed information under s. 16(1)(b)? and

3. Is the City required to refuse to disclose the disputed information under s. 18.1?

[5] Under s. 57(1) of FIPPA, the City bears the burden to establish that the applicant has no right of access to the withheld information under ss. 16(1)(b) or 18.1.

[6] There is no statutory burden with respect to the application of s. 25(1)(b). Previous orders have said it is in the interest of each party, as a practical matter, to provide whatever arguments and evidence they have, but that it is ultimately up to the Commissioner to determine whether s. 25(1)(b) applies.[2] I agree with this approach and will adopt it for the analysis below.

DISCUSSION

Background[3]

[7] The City has a government-to-government relationship with the Nation. In 2010, it signed a protocol agreement with the Nation to serve as a basis for inter-governmental cooperation.

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[1] Nation's May 1, 2025 email to the OIPC.
[2] Order 02-38, 2002 CanLII 42472 (BC IPC) at para 39; Order 03-02, 2003 CanLII 49166 (BC IPC) at para 16; Order F25-85, 2025 BCIPC 99 (CanLII) at para 9.
[3] The information in this section is drawn from the parties' submissions and evidence and is not contested.

[8] The Nation announced its plan to develop a T-shaped parcel of its reserve lands (the Lands), located within the City on the south side of False Creek. The approach to the Burrard Street Bridge runs through the centre of the Lands. The proposed development (the Project) is known as Seṅáḵw, which is the name of a village previously on the lands known as False Creek Indian Reserve No. 6 or Kitsilano Indian Reserve. The Project will be developed in several phases and when complete, is projected to consist of 11 towers with 4,000,000 total square feet, consisting mostly of 6,000 residential rental units, with 170,000 square feet of office and commercial space and community amenities. However, it is planned to include fewer than 1,000 parking spaces. It is planned to be denser than any high rise development ever proposed for Canada, and is expected to have significant impacts on traffic and transportation in the City. The Lands are reserve lands and are within federal jurisdiction; this means they are not subject to the City's jurisdiction.

[9] The development of the Project is being undertaken by an entity known as the Seṅáḵw (Head Lease) Limited Partnership (the Partnership). At the times material to this inquiry, the Partnership consisted of the Nch'Kay Development Corporation (Nch'Kay), which is entirely owned by the Nation, and Westbank Projects Corporation (Westbank), with Nch'Kay and Westbank each initially having a 50% interest in the Partnership.[4]

[10] In the fall of 2019, the Nation indicated its desire to enter into an agreement with the City that would see the City provide civic services (policing, firefighting, sewer, water, etc.) for the Project, in exchange for payment (the Services Agreement). The Services Agreement also deals extensively with transportation-related matters such as the allocation of responsibility for required transportation infrastructure between the City and the Nation. The negotiations over the Services Agreement occurred from October 2020 to June 2022. On May 25, 2022, the City and the Nation executed the Services Agreement for a term of 120 years. On June 20, 2022, following negotiations between the Nation and the City as to how much of the Services Agreement would be disclosed to the public, its full text was released.[5]

[11] The applicant is a member of the Kits Point Residents Association (the Association), which is a society representing residents of the City's Kits Point neighbourhood. The neighbourhood is adjacent to the Lands.

[12] Following extensive correspondence with the City and the federal government about the Services Agreement and the anticipated neighbourhood

[4] Prior to September 2022, Westbank reduced its interest to 30%. Westbank has since sold its entire interest in the Partnership. Nonetheless, Westbank was a partner in the Partnership at all times that are material to this inquiry.
[5] The full text of the Services Agreement is available at https://vancouver.ca/files/cov/senakw-services-agreement.pdf

impacts flowing from the development of the Project, the Association petitioned the BC Supreme Court, challenging the City's authority, under the *Vancouver Charter*, to enter into the Services Agreement without public consultation (the KPRA Action).

[13] In 2023, Justice Forth dismissed the Association's petition, finding that although the members of the Association had legitimate concerns about the effect the Project would have on traffic congestion and were provided with no public forum to bring forward their concerns, the Services Agreement was valid and the City had been entitled to enter into it without public consultation.[6]

Records and information at issue

[14] There are 236 pages of responsive records that include both the City's initial disclosure package and the second package it identified during the inquiry. The records consist almost entirely of traffic impact studies which have been withheld in their entirety under both ss. 16(1)(b) and 18.1. The studies are dated November 4, 2019, April 11, 2022, and April 28, 2022. There is also a transportation-related memo dated February 26, 2020.

Disclosure in the public interest – s. 25

[15] The applicant says that the City must disclose the disputed information without delay under s. 25(1)(b) of FIPPA on the basis that disclosure is clearly in the public interest. The City says this provision does not apply.

[16] The relevant parts of s. 25 say as follows:

> 25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
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> (a) about a risk of significant harm to the environment or to the health and safety of the public or a group of people, or
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> (b) the disclosure of which is, for any other reason, clearly in the public interest.
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> (2) Subsection (1) applies despite any other provision of this Act.
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> (3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify
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> (a) any third party to whom the information relates, and
>
> (b) the commissioner.

[6] *Kits Point Residents Association v. Vancouver (City)*, 2023 BCSC 1706 [*KPRA*].

[17] Section 25(1) requires a public body to disclose information in the circumstances set out in (a) or (b) even if there has been no request for the information. This obligation overrides every other provision in FIPPA, including the mandatory exceptions to disclosure set out in Part 2 and the privacy protections set out in Part 3. Given this broad override of FIPPA's privacy and other protections, the threshold for proactive disclosure under s. 25 is very high. Section 25 applies only in the clearest and most serious of situations.[7]

[18] What constitutes "clearly in the public interest" under s. 25(1)(b) is contextual and determined on a case-by-case basis. A public body must consider whether a disinterested and reasonable observer, knowing the contents of the information and all the relevant circumstances, would conclude that disclosure is plainly and obviously in the public interest.[8]

[19] Previous orders have established a two-part analysis to decide whether s. 25(1)(b) applies. First, I must decide whether the information concerns a matter that engages the public interest. If it does, then the second step of the analysis is to determine whether the nature of the information is such that disclosure meets the high threshold for disclosure.[9]

Does the matter engage the public interest?

[20] I must first consider whether the information relates to a matter that engages the public interest. The factors to be considered include:

- Does the matter relate to a systemic problem rather than to an isolated situation?
- Is the matter the subject of widespread debate or discussion by the media, the Legislature, Officers of the Legislature or oversight bodies?
- In the absence of public debate, is there nevertheless a clear public interest in disclosure, for example, if the matter is not yet known to the public? [10]

[21] The applicant says it was necessary to begin the KPRA Action because of the City's lack of meaningful consultation with City residents about the Services Agreement and the overall impacts of the Project. She says there is "significant public interest in the transportation impacts" of the Project, including the costs of the transit implications.[11] The applicant also points to several news stories about

[7] Order F20-42, 2020 BCIPC 51 (CanLII) at para 35 and the orders cited therein.
[8] *Ibid* at para 37.
[9] See, e.g., Order F25-85, 2025 BCIPC 99 (CanLII) at para 24.
[10] OIPC Investigation Report F16-02, 2016 BCIPC No. 36 (CanLII) at 27. Available at https://www.oipc.bc.ca/documents/investigation-reports/1875
[11] Applicant's response submission at paras 135-142.

increasing traffic congestion in Metro Vancouver generally, and about TransLink's funding problems and possible service cuts.[12]

[22] The applicant provided an affidavit from the City's Chief Strategy Officer (the Chief Strategy Officer, who also provided evidence on the City's behalf in this inquiry) in the KPRA Action, which says the following about some of the effects the City expects the Project to have:

> The City of Vancouver will be consulting with the community on potential Senakw-related transportation changes in early 2023. This consultation will gather feedback on the walking, biking and intersection upgrades planned for Chestnut, Greer and Cypress [Streets]. Staff will also use this opportunity to listen to community concerns about existing parking and traffic circulation challenges in the neighbourhood to help refine transportation priorities moving forward.
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> …
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> While the provision of significant amounts of rental housing is a benefit to the City, it limits the project's ability to deliver other public amenities that are typically secured on major project sites. As such, consistent with rental developments on non-reserve land in Vancouver, Senakw will not be able to meet all of the public amenity needs generated by the growth it is causing.
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> The Senakw development is unprecedented in size and scale, and is located in an area of the city that is anticipated to see significant changes over the coming years, with major adjacent initiatives such as the Broadway Plan and potential changes to False Creek South. The area also has other large sites in close proximity including the former Molson's Brewery. The Vancouver Plan, currently underway, will provide a high level framework to guide future planning in the area.[13]

[23] The City says that even if the traffic impacts of the Project engage the public interest, disclosure of the traffic studies themselves is not in the public interest.[14]

[24] As the applicant points out, in *KPRA*, Justice Forth found that the Association's "concerns are legitimate in respect to the impact the [Project] will have on traffic congestion, transportation challenges, and many other concerns. They were provided with no public forum to bring forward their concerns and have them heard."[15] While the decision in the KPRA Action related only to the Association's concerns (rather than the concerns of the general public), given the

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[12] Applicant's response submission at paras 140-141. TransLink is the authority responsible for the regional transportation network in Metro Vancouver, and is not under the City's jurisdiction.
[13] Chief Strategy Officer's December 12, 2022 affidavit in the KPRA Action at paras 29 and 38-39.
[14] City's initial submission at para 45.
[15] *KPRA*, *supra* note 6 at para 254.

large size and very high density of the Project, I have no difficulty finding that residents of the City and the region, and not just the residents of Kits Point, would be interested in a series of expert opinions about the traffic impacts anticipated to flow from the development of the Project.

[25] In light of these considerations, I am satisfied that the information in the records relates to a matter that engages the public interest.

Is disclosure clearly in the public interest?

[26] Turning to the second step of the analysis, I must determine whether disclosing the specific information at issue meets the high threshold that is required to be considered "clearly in the public interest". The factors to consider include whether the disclosure would:

- contribute to educating the public about the matter;
- contribute in a substantive way to the body of information that is already available;
- facilitate the expression of public opinion or allow the public to make informed political decisions; or
- contribute in a meaningful way to holding a public body accountable for its actions or decisions.[16]

Parties' submissions on disclosure in the public interest

[27] The City says disclosure of the information in the records is not clearly or unmistakably in the public interest.[17] It says there is no "objectively material public importance to the disclosure" of the information.[18]

[28] The City also explains that on one hand, the public's level of interest in the Project has declined over time, and on the other hand, concerns related to "maintaining the confidentiality, the trust and the support of the Squamish Nation for their development of Indigenous lands remain significant and would be a significant factor against public disclosure."[19] The City also points to Justice Forth's finding in the KPRA Action that it was reasonable for the City to enter into the Services Agreement without public consultation.[20]

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[16] OIPC Investigation Report F16-02, *supra* note 10 at 27.
[17] City's initial submission at paras 44-45.
[18] *Ibid* at para 46.
[19] *Ibid* at para 47.
[20] *Ibid* at para 48, citing *KPRA*, *supra* note 10 at paras 182-3 and 211-2.

[29] In his affidavit evidence, the City's Chief Strategy Officer says that in his view, given the "sensitivities" around the negotiation of the Services Agreement and his overall understanding of the issues, he does not consider disclosure of the records to be in the public interest. He explains that there has also been "considerable disclosure" since the Services Agreement became public (I note, however, that he does not specify the extent of this disclosure, nor does he say who undertook the disclosure). He also says that the maintenance of trust between the City and the Nation, and the City's support of the Nation for its development of its lands, are significant factors that weigh against public disclosure.[21]

[30] The City also says there has been "much less general interest in the Project as time has progressed," relying on the evidence of its director of access to information and privacy (the FOI Director) that of the 10 requests the City's FOI department has received regarding the Project since 2020, seven of those have come from the applicant, and that there have been no access requests under FIPPA related to the Project since 2023.[22]

[31] The applicant says traffic issues are "important to the City and transportation authorities such as TransLink, as they will ultimately be faced with addressing the traffic and transit issues caused by the size of the development for the City, and with obtaining funding from taxpayers and other levels of government to address it."[23] The applicant points to the City's own 2018 Congestion Management Strategy, and says that "[once] the City identified traffic congestion as an issue that was in the public interest it becomes plainly and obviously necessary for the City to disclose the information it has affecting the issues in order to avoid misleading the public with incomplete information."[24] She also points to engagement sessions the City itself has hosted relating to transportation in Kits Point, including changes related to the Project.[25]

[32] The applicant says that in view of the Project's size and density, which create legitimate concerns with respect to traffic and transportation, disclosure of the records is plainly and obviously in the public interest so it can be included in the existing public discourse about traffic and transit funding issues "and the resulting funding discussions at various levels of government." She says the City has an obligation to provide the public with "complete and accurate information, and not to mislead and 'cherry pick'" the information it provides.[26]

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[21] Affidavit of Chief Strategy Officer at paras 48-49.
[22] City's initial submission at para 47; Affidavit of FOI Director at paras 19-20.
[23] Applicant's response submission at para 81.
[24] *Ibid* at para 143.
[25] *Ibid* at para 144.
[26] *Ibid* at para 145.

[33] The applicant says disclosure of the information in the records is clearly in the public interest because disclosure would provide City residents with specific knowledge they do not currently have, including:

> (a) whether the robust traffic study and transportation planning that is required for the Senakw development has been undertaken;
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> (b) whether there is in fact a viable transportation plan for this development; and
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> (c) the projected transportation impacts on the surrounding neighbourhoods and the City as a whole.[27]

[34] The applicant also points to the enhanced accountability and participation that disclosure would enable, specifically, that disclosure would enable City residents to do the following:

> (a) to allow the residents of the City of Vancouver to make informed political decisions in relation to traffic and transportation implications for the region and to engage in an informed way in the funding discussions;
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> (b) to allow the public to be educated so that they can be meaningfully involved in the necessary public discussion about transportation planning going forward and public engagements offered by the City;
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> (c) to hold the City of Vancouver to account for their decisions now and in the future relative to the traffic and transportation impacts of the Senakw development for the City of Vancouver and for City traffic and transportation planning going forward; and
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> (d) to hold all levels of government accountable for decisions relating to traffic congestion and transportation investments going forward in the City of Vancouver.[28]

[35] The applicant says there are no legitimate competing interests that could overcome these considerations.[29] She concludes that it is clearly in the public interest that the records be disclosed without delay "so that the public can engage with public transportation issues (including traffic congestion, transportation infrastructure and transit funding) in an informed way, and hold all levels of government accountable to address the issues before a greater problem manifests."[30]

[36] In reply, the City says the applicant's submissions do not provide evidence of a widespread public interest in the specific records at issue in this inquiry. The City explains that the presence of traffic issues in the media is not an indication that traffic management in and around the Project is of a continuing and

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[27] *Ibid* at para 146.
[28] *Ibid* at para 146.
[29] *Ibid* at para 148.
[30] *Ibid* at para 149.

significant interest to the public. It says the news stories provided by the applicant are about transportation issues and transit funding in the lower mainland generally, and have no bearing on whether disclosure of the particular traffic studies at issue (which pertain to a localized area) is required in the public interest.[31]

[37] The City argues that there are competing interests at play with respect to the records: "The Project is not on City lands, the Records are not those of the City and the City does not have authorization from the Indigenous governing entity that supplied the records to disclose them." It says that while the applicant and the Association may have concerns, these are the concerns of a neighbourhood group rather than concerns of the general public.[32]

[38] The City concludes by arguing that the applicant has not provided evidence to establish that there is a broader public interest in the records sufficient to engage s. 25(1)(b) and override other sections of FIPPA.[33]

Analysis and findings on disclosure in the public interest

[39] The disputed information consists of studies of the traffic impacts expected from the development of the Project. The studies rely on some data provided by the City and some data collected directly by the studies' authors. Among other things, the studies include projections of the number and mode of trips to and from the Lands that are expected to be generated by the Project. One of the studies contains brief recommendations to the City about how to deal with the effects of these trips.

[40] On one hand, I think disclosure of the information in the records would contribute in some way to the public's education about the traffic impacts of the Project. While the City provided some evidence that "considerable disclosure" has taken place since the public disclosure of the Services Agreement, it does not say what kinds of disclosure it has made about the traffic impacts it anticipates from the development of the Project. Since the City has not clearly explained what disclosures it has already made, I can only conclude that disclosure of the information in the records would add to the body of information that is publicly available about the matter.

[41] I also find that disclosure of the information in the records may enable the expression of public opinion about the Project. Justice Forth found in the KPRA Action that the Project would "certainly" affect residents of Kits Point and Vancouver generally, "given its size, scale and unprecedented nature". However, she found that the "level and nature" of the impact was not enough to necessitate

[31] City's reply submission at para 19.
[32] *Ibid* at para 21.
[33] *Ibid* at para 23.

participatory rights in the form of public consultation. Nevertheless, Justice Forth concluded that the City had made it clear that there would be some form of consultation process about any transportation changes on City land that would result from the Project.[34] The Chief Strategy Officer also deposes that the City plans to consult "with the community and stakeholders" about potential impacts from the Project, "including for transportation infrastructure planning and design".[35] I find that the information in the records is reasonably likely to assist public participation in that consultation, should it occur.

[42] Despite my findings above, I cannot see how disclosure of the information in the records would contribute in a meaningful way to holding the City accountable for its decisions. The City has no jurisdiction over the type and size of the Project. The City may make decisions in relation to the traffic impacts of the Project, but I cannot see how disclosure of the specific information in the records will allow the public to hold the City accountable for its decisions in that respect. In addition, much of the material provided by the applicant relates to traffic issues that are outside, or only partially within, the City's jurisdiction, such as increasing traffic congestion in the greater Vancouver area and TransLink's funding issues. I also accept the City's evidence that there has been less general interest in the Project and fewer related access requests under FIPPA as time has passed.

[43] In Order F17-28, the adjudicator considered whether s. 25(1)(b) applied to a report of a traffic simulation model developed to understand "both existing and future traffic conditions, volume and queuing…including, for instance, estimates of trip time and volume for resident and non-resident traffic, graphs and statistics in photo or map format." She found that while this report may pique the interest of the public, the matters addressed in it did not approach the level of magnitude or broader public significance that s. 25(1)(b) requires.[36] In my view, the adjudicator's reasoning is equally applicable to the information at issue in this matter, which is itself similar to the disputed information in Order F17-28.

[44] In addition, I accept the City's evidence about the maintenance of its relationship of trust with the Nation, and find this to be a factor weighing against disclosure.

[45] Taking all of the principles and evidence discussed above into consideration, I am not satisfied that a disinterested and reasonable observer, knowing the contents of the records at issue and knowing all the circumstances, would conclude that disclosure is plainly and obviously in the public interest. I accept that the public might be interested in knowing the information contained in the records, but the public interest, in the context of s. 25, does not encompass

[34] *KPRA*, *supra* note 10 at paras 206 and 209.
[35] Affidavit of Chief Strategy Officer at para 32.
[36] Order F17-28, 2017 BCIPC 30 (CanLII) at paras 7-8 and 18-19.

everything the public might be interested in learning.[37] The reasons for invoking s. 25(1)(b) must be of sufficient gravity to override all other provisions of FIPPA. As I said above, a public body's s. 25(1)(b) duty will be engaged only in the clearest and most serious of situations, and the traffic studies that make up the records do not clearly meet that high threshold.

[46] I conclude that the City is not required to disclose any of the information in the records under s. 25(1)(b).

Harm to intergovernmental relations – s. 16

[47] The purpose of s. 16 is to prevent harm to intergovernmental relations or negotiations. The relevant parts of s. 16 say as follows:

> 16 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
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> (a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
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> …
>
> (iii) an Indigenous governing entity;
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> …
>
> (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies,
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> …
>
> (2) Moreover, the head of a public body must not disclose information referred to in subsection (1) without the consent of
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> (a) the Attorney General, for law enforcement information, or
>
> (b) the Executive Council, for any other type of information.

[48] The City takes the position that s. 16(1)(b) allows it to withhold all the information in the records, whereas the applicant says s. 16(1)(b) does not apply.

[49] In order to withhold information under s. 16(1)(b), the City needs to establish two things: first, that it received the withheld information from an Indigenous governing entity (or its agent) or one of its agencies; and second, that this receipt was confidential.[38] Given that the City refers to the Nation as the

[37] *Clubb v. Saanich (Corporation of the District)*, 1996 CanLII 8417 (BC SC) at para 33.
[38] Order F23-103, 2023 BCIPC 119 (CanLII) at para 66.

relevant Indigenous governing entity in this matter, I must also determine whether the Nation meets that definition for the purposes of the s. 16(1)(b) analysis.

Is the Nation an Indigenous governing entity?

[50] FIPPA defines "Indigenous governing entity" to mean "an Indigenous entity that exercises governmental functions, and includes but is not limited to an Indigenous governing body as defined in the *Declaration on the Rights of Indigenous Peoples Act.*" Section 1 of the *Declaration on the Rights of Indigenous Peoples Act*[39] defines "Indigenous governing body" to mean "an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982.*"

[51] It is common ground between the parties that the Nation is an Indigenous governing entity for the purposes of s. 16.[40] The evidence before me satisfies me that the Nation is an Indigenous entity that exercises governmental functions.[41] Having considered these circumstances, I find that the Nation is an Indigenous governing entity.[42]

Was the information received from an Indigenous governing entity or one of its agencies?

[52] The City does not say from whom it received the disputed information in the records. Instead, it says the entity that provided it with the records did so on behalf of the Nation.

[53] The applicant says there was no such relationship of agency, and that both the Partnership and Westbank were private parties acting in their own interests.

Parties' submissions on receipt of information

[54] The City takes the position that the information in the records originated from the Nation and belongs to the Nation. It says the Project is on the Nation's reserve lands and will benefit the Nation's members. It says the Nation authorized both the Partnership and Westbank to act as its agents, and that they acted in that capacity at all material times. On the basis of these stated facts, the City says that the withheld information was provided by an Indigenous governing entity or one of its agents.[43]

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[39] SBC 2019 c 44.
[40] City's initial submission at para 58; Applicant's response submission at para 45.
[41] Affidavit of Chief Strategy Officer at paras 7 and 36.
[42] For a similar finding, see Order F23-96, 2023 BCIPC 112 (CanLII) at paras 76 and 82.
[43] City's initial submission at paras 58-63.

[55] The City's Chief Strategy Officer deposes in his affidavit evidence that the negotiations over the Services Agreement occurred from October 2020 until June 2022.[44] He says the Nation delegated responsibility for negotiating the Services Agreement with the City to the Partnership, and that the records were provided to the City on behalf of the Nation.[45] He deposes that the Nation has delegated authority for the delivery of the Project to Nch'Kay and that Nch'Kay's mandate is to "develop, manage and own the active businesses of the Nation". To the best of his knowledge, the Nation has also authorized Westbank to act as its agent. He explains that the City considers any representatives of the Partnership (i.e., Nch'Kay, Westbank, and/or the Partnership itself) who provided documents to the City to have been acting on behalf of the Nation as its agent(s) under delegated authority.[46]

[56] The City's FOI Director deposes that the Nation made a request for the City to withhold the records in their entirety.[47] She says that in July 2025 (i.e., after she affirmed her first affidavit), the Nation "confirmed" its request that the City withhold the records.[48]

[57] The applicant says the City has not established that either the Partnership or Westbank was acting as an agent of the Nation in providing the information in the records to the City. She summarizes her position as follows:

> …the City must establish that the records were "received from" an "Indigenous governing entity" "or their agencies". In this case the evidence (including what can be observed from the Records themselves) shows that:
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> > (i) the traffic impact studies comprised in the records (including the Early Bunt Studies and the April 2022 traffic impact studies) were physically provided to the City by, and [therefore] physically received from, Westbank or the Senakw Partnership;
> >
> > (ii) the traffic impact studies comprised in the Records were commissioned by Westbank and/or the [Partnership] and were addressed to Westbank and/or the [Partnership];
> >
> > (iii) Bunt & Associates were the "developer's consultant" not the [Nation's] consultant (see disclosed letter from City Engineering at paragraph 4);

[44] Affidavit of Chief Strategy Officer at para 27.
[45] *Ibid* at paras 19 and 27.
[46] *Ibid* at paras 15, 19, and 37-38.
[47] Affidavit #1 of FOI Director at paras 14 and 18.
[48] Affidavit #2 of FOI Director at para 6.

> (iv) the traffic impact studies comprised in the Records were paid for and owned by Westbank and/or [the Partnership] (by the City's own evidence);
>
> (v) the Early Bunt Studies were commissioned and received by the City before the commencement of negotiation of the Services Agreement;
>
> (vi) in acting as developer of the project [the Partnership] acts in its own right and not as mere agent of the [Nation];
>
> (vii) Westbank (or affiliate) was a partner in the development partnership and was not in that capacity acting as a mere agent for the [Nation].

Correspondingly there is no evidence that:

> (i) Westbank (as opposed to [the Partnership]) has acted as agent of [the Nation] in any capacity beyond the City's bare assertion in that regard in these proceedings;
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> (ii) [the Partnership] has acted as agent of the [Nation] except to the extent that [the Nation] delegated to [the Partnership] the negotiation of the Services Agreement with the City on their behalf;
>
> (iii) the traffic impact studies were owned and controlled by the Squamish Nation and therefore theirs to provide to the City;
>
> (iv) Westbank and/or [the Partnership] are agencies of the Squamish Nation;
>
> (v) the Squamish Nation owns all records of the Senakw Partnership.[49]

[58] The applicant takes issue with the Chief Strategy Officer's evidence, saying that his bare statement that the records were provided to the City in confidence on behalf of the Nation is "a statement of belief without personal knowledge, without stated reasons for belief, and without documentary evidence." She argues that he is attempting to decide the question that the City has the onus to prove.[50] Furthermore, she says the City's evidence does not establish the date on which the records came into the City's possession, and consequently that there is no evidence about whether the records were provided during the negotiations or after their conclusion.[51]

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[49] Applicant's response submission at para 89.
[50] *Ibid* at para 63.
[51] *Ibid* at para 69.

[59] In reply to what the applicant says about the evidence, the City says the Chief Strategy Officer has "more than ample firsthand knowledge" to provide evidence on the matters he deposed to, as he was the senior City staff member who supported the City during the negotiation of the Services Agreement, and he authored several reports for City Council on the matter. The City says he has "extensive firsthand knowledge" of the negotiations resulting from his involvement, and that he developed his understanding over two years in his role. It argues that I should accept his evidence as reliable and persuasive, and the applicant has not submitted evidence to contradict it.[52]

[60] The City also says that at the material times, "Westbank and [the Nation], via Nch'Kay, were acting in concert, with Westbank providing the studies on their behalf."[53] It says that in contrast to the applicant's assertions, nothing turns on the dates that formal announcements were made or on the dates of the traffic studies, because the studies were provided in the context of the negotiation of the Services Agreement. It says discussions between the City and the Nation for the negotiation of the Services Agreement began in the fall of 2019, and it received some of the records "in or around that time for the purpose of evaluating transportation management in the overall preliminary context of entering discussions related to the Services Agreement."[54]

[61] The City also says the purpose of s. 16(1)(b) is to promote and protect the free flow of information between governments and their agencies for the purpose of discharging their duties and functions. It says the evidence is "overwhelming" that "the records at issue were part and parcel of an exchange of information made in contemplation of and for the purpose of negotiating an intergovernmental Services Agreement for the Project."[55] It says what matters for the purposes of s. 16(1)(b) is not who *owns* the records, but from whom it received them:

> The test is whether the information reveals information received in confidence from *inter alia*, an *Indigenous governing entity* or their agencies. This contemplates *how* the information came to be in the possession of the public body. Therefore, what is determinative, in the City's submission, is the context in which the records at issue were provided to the City: that is on whose behalf or for what purpose…the evidence is that Squamish Nation delegated the responsibility for negotiating the Services Agreement to [the Partnership]. [The Partnership], or one of its constituent partners Westbank, provided the records at issue to the City in the context of and for the purpose of the engagement for the negotiation of the Services Agreement, and this

[52] City's reply submission at para 13.
[53] *Ibid* at para 3.
[54] *Ibid* at para 4.
[55] *Ibid* at para 7.

provision of records was on a confidential basis and on behalf of Squamish Nation. There is no evidence to refute this.[56]

Analysis and findings on receipt of information

[62] In analyzing the City's receipt of the records, the question I must answer is whether the City received the information in the records from an Indigenous governing entity, or an Indigenous governing entity's agency, or some party acting on behalf of that governing entity or agency.[57]

[63] I will say at the outset that I give significant weight to the evidence of the Chief Strategy Officer because of his experience in government-to-government negotiations, including the negotiations that led to the execution of the Services Agreement, during which he led the City's staff working group.[58] I find that he is well-placed to comment on the character of these negotiations, as well as the intentions of the City, the Partnership, and the Nation.

[64] Unhelpfully, the City failed to specify exactly when, and from whom, it received the records. I find it difficult to believe that the City does not have this information. The City and its affiants say, variously, that the records were provided by the Nation or on its behalf by Nch'Kay and/or Westbank,[59] that the records were provided to the City on behalf of the Nation,[60] that the records were provided to the City "by" the Nation,[61] and that the records were provided by Westbank.[62]

[65] I agree with the applicant that there is no argument or evidence that the Partnership itself is an Indigenous governing entity. Given this lack of evidence, I do not find that it is. However, in my view the precise structure of the Partnership, and the agency relationships that may exist among the various parties that make up the Partnership, are not the essential questions for the purposes of s. 16(1)(b). The question requiring an answer at this stage is from whom the City received the disputed information that makes up the records.

[66] The applicant says much about the ownership of the records and the circumstances of their creation. She suggests that my review of the records will allow me to determine their "source and ownership".[63] In my view, these considerations are not relevant to the narrow question I have to decide at this

[56] *Ibid* at para 9.
[57] See, e g., Order F23-96, 2023 BCIPC 112 (CanLII) at para 82.
[58] Affidavit of Chief Strategy Officer at paras 2, 4, and 21-23.
[59] City's initial submission at para 61.
[60] Affidavit #2 of FOI Director at para 4; Affidavit of Chief Strategy Officer at para 27; City's initial submission at para 25.
[61] Affidavit #1 of FOI Director at para 10.
[62] City's reply submission at para 3.
[63] Applicant's response submission at para 47.

stage, which is who provided the records to the City. Likewise, whether the studies' author was the Partnership's consultant, the Nation's consultant, or some other party's consultant, does not seem to me to have any relevance.

[67] Similarly, the applicant says much about the timing of the commissioning of the reports that make up the records. Again, I do not think these considerations are relevant and the applicant does not persuasively explain how they are. In order for the City to receive documents in confidence in the context of a negotiation with the Nation, it is not necessary for the documents to have been created after negotiations begin.

[68] I must consider the context of the government-to-government negotiations between the City and the Nation that led to the execution of the Services Agreement. The applicant concedes that the Partnership acted on behalf of the Nation with respect to these negotiations.[64] Many of the Services Agreement's terms relate to the parties' respective responsibilities for transportation works. It seems obvious that the Partnership or one of its constituent partners would provide transportation-related documents to the City on the Nation's behalf during those negotiations. This is true even if, as the applicant asserts, the Nation, the Partnership, and Westbank acted separately for the purposes of developing the Project. In addition, while the Nation did not participate directly in this inquiry, there is evidence in the material before me that the Nation made repeated requests to the City to keep confidential the very records that are in dispute in this inquiry.[65] Although this point does not decide the issue on its own, such requests would make little sense if the City had not received the records from a party acting on the Nation's behalf.

[69] With respect to the timing of the City's receipt of the records, I agree with the City that "nothing turns on when formal announcements were made or on the dates of the studies",[66] and that the relevant question is on whose behalf the records were provided to the City. However, as I said above, it would have been helpful for the City to have provided evidence about the date(s) of the provision of the records to it, and the identity of the provider. While it is possible that the party providing the records did so after the conclusion of negotiations for the Services Agreement, in my view nothing about the circumstances of the negotiation in the evidence before me raises this to more than a mere possibility.

[70] Considering all this, I am persuaded on a balance of probabilities that the Nation, or an entity acting on the Nation's behalf, provided the information in the records to the City. Having reviewed the evidence and arguments, I accept the City's characterization of its receipt of the records as "part and parcel of an exchange of information made in contemplation of and for the purpose of

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[64] Applicant's response submission at paras 36, 58, and 76.
[65] Affidavit #1 of FOI Director at para 14; Affidavit #2 of FOI Director at para 6.
[66] City's reply submission at para 4.

negotiating an inter-governmental Services Agreement for the Project".
I therefore conclude that the City received the information in the records from an Indigenous governing entity.

Did the City receive the information in confidence?

[71] The next issue I must decide is whether disclosure of the withheld records would reveal information received by the City *in confidence*. In order for information to be received in confidence, there must be an implicit or explicit agreement or understanding of confidentiality both on the part of the party giving the information and of the party receiving the information.[67]

[72] Previous orders have identified a non-exhaustive list of factors to consider when determining whether information was received in confidence. These include:

- the nature of the information;
- explicit statements of confidentiality;
- evidence of an agreement or mutual understanding that the information would be treated confidentially; and
- objective evidence of an expectation of (or concern for) confidentiality.[68]

[73] In the analysis that follows, I will consider the available evidence and arguments in the context of these factors.

Parties' submissions on confidentiality

[74] The City says all provision of information to the City in the context of the negotiation of the Services Agreement was done with a "clear expectation" of confidentiality on the part of both the Partnership and the City. It says representatives of the Partnership requested that City staff treat information provided by the Partnership as "strictly confidential", consistent with the City's established practice. It says it has not received authorization from the Nation or the Partnership to disclose the records, and that in responding to the access request at issue, the Partnership has "repeatedly requested" that all information provided by it be withheld. It summarizes its position: "The sharing of the information at issue with the City, and the negotiation of the Services Agreement, were sensitive matters set on the backdrop of the City's reconciliation framework."[69]

[67] Order No. 331-1999, 1999 CanLII 4253 (BC IPC) at 7.
[68] *Ibid* at 8-9; Order F25-50, 2025 BCIPC 58 (CanLII) at para 57.
[69] City's initial submission at paras 64-71.

[75] The Chief Strategy Officer provides affidavit evidence in support of the City's position. He says it is his understanding that while there was no written confidentiality agreement, the Partnership "expected" all information provided to the City regarding the Project to be held in strict confidence. He says he is aware, from his discussions with the Partnership's representatives, that they made verbal requests of the City to this effect. He says the City has a consistent practice of treating information provided by third parties related to developments as confidential, particularly information related to service agreements with First Nations, in order to preserve a relationship of trust.[70]

[76] The Chief Strategy Officer also says that although some information about the Project has now been made public, the City has consistently treated the records at issue as confidential. He says the City consulted with the Partnership in the course of preparing its response to the applicant's access request, and that the Partnership requested that all the information it provided to the City be withheld.[71]

[77] Finally, the Chief Strategy Officer says he is aware, from his involvement in discussions with the Partnership, that some of the Partnership's plans for the Project have changed over time, and that he believes the Partnership "would not want to create confusion" with respect to its plans if earlier information provided to the City in confidence were disclosed now. He says, therefore, that the Partnership's concern for the confidentiality of information provided to the City is still active. He says that in his view, the City's disclosure of the records would risk eroding the relationship of trust the City has built with the Nation.[72]

[78] The applicant says that on the whole, the City has not discharged its evidentiary burden to show that it received the records in confidence. On the contrary, she says that the evidence establishes the following:

- There was no written confidentiality agreement;
- There is no evidence of a specific request for confidentiality for the traffic studies;
- The traffic studies "contain information that would be expected to be made public and should have been either commissioned or undertaken by the City directly or obtained by the City on a non-confidential basis as they relate to projections of conditions that the public will experience in the City of Vancouver and for which the City will have to prepare";
- The City's evidence provides no timeline (or only a vague timeline) regarding the alleged requests for confidentiality; and

[70] Affidavit of Chief Strategy Officer at para 40.
[71] *Ibid* at paras 42-43.
[72] *Ibid* at para 44-45.

- The information in the records has not been treated as confidential by the City because information excerpted from some of the traffic studies has been disclosed without redactions in the City's records package.[73]

[79] The City says in reply that each of the traffic studies that make up the records includes a statement that it is confidential. It says the records were provided to the City in the context of the negotiation of the Services Agreement, and that the evidence provided by the applicant (i.e., the affidavits filed in the KPRA Action) supports this. Finally, it says the City has consistently treated the records themselves as confidential at the request of the Nation.[74]

Analysis and findings on confidentiality

[80] As discussed above, I give significant weight to the evidence of the Chief Strategy Officer because of his experience in government-to-government negotiations and his personal participation in the negotiation of the Services Agreement.

[81] I have reviewed the confidentiality provisions in the records themselves, and they seem to be generic boilerplate provisions that are concerned with shielding the studies' authors from liability if third parties rely on the studies. Previous orders have not considered generic provisions such as these to be conclusive evidence of an expectation of confidentiality,[75] and I reach the same conclusion with respect to these provisions in the records.

[82] On my review of the records themselves, without revealing their contents, I do not think they are of a kind that ordinarily entails expectations of confidentiality from the perspective of a reasonable person apprised of the circumstances. In Order F17-28, the adjudicator did not regard "statistical data obtained from a traffic model" to be inherently sensitive or confidential,[76] and I make a similar finding here.

[83] However, considering the City's and the Nation's behaviour with respect to the records, I find that there was at least an implicit, mutual understanding of confidentiality. The Chief Strategy Officer's evidence about the City's consistent practices of confidentiality, and the Partnership's repeated requests for confidentiality, is persuasive evidence of these parties' expectation of, and concern for, confidentiality in the context of a relationship of trust regarding the Project. The evidence of the FOI Director is that the Nation has made several

[73] Applicant's response submission at paras 91-94.
[74] City's reply submission at paras 14-15.
[75] Order F19-38, 2019 BCIPC 43 (CanLII) at para 123.
[76] Order F17-28, *supra* note 36 at para 37.

requests that the City keep the records confidential, and that reinforces this conclusion.[77]

[84] Next, I will address the applicant's argument that the disputed information in the records has not been treated as confidential because information excerpted from it has been disclosed in the City's disclosure package. The City's reply submission does not address this argument. There is a six-page letter dated May 14, 2020 (the Letter), which the City has disclosed to the applicant.[78] The Letter says its purpose is to "contribute towards a shared understanding of person trips and [transportation] mode splits" for the Project. The Letter refers to the November 4, 2019 Transportation Assessment and Management Study and the February 26, 2020 Memo: Summary of Senakw Trip Rate Projections, both of which are among the records the City withheld. In particular, the Letter compares the traffic studies' estimates of various trip-related metrics with those of the City. Its author uses data from those and other sources to undertake her own analysis and to make recommendations for further study by the City.

[85] A public body may only withhold information under s. 16(1)(b) if disclosure could reasonably be expected to *reveal* information received in confidence. Information that a public body itself discloses through, for example, its submissions or in inconsistent severing of records does not meet this bar.[79]

[86] In this case, the data excerpted in the Letter is only a very small amount of the data contained in the traffic studies. The Letter also does not include any of the study authors' analysis, conclusions, or recommendations. I do not think the Letter's use of this small amount of data prevents a finding that the City received the information in the disputed records in confidence, and has treated it confidentially. I do not think it would advance FIPPA's purpose of making public bodies more accountable to require the City to locate in the records, and disclose, each individual piece of data referred to in the Letter, or to find that by disclosing it to the applicant, the City has not generally treated the information confidentially. Considering all the circumstances, I accept that the City received the records in an objectively reasonable expectation of confidentiality, and that this concern for confidentiality on the part of both the sending and receiving parties has continued to the present.

[87] For these reasons, I find that the City received the disputed information in the records under a mutual, reasonable expectation of confidentiality. Therefore, I find that the disputed records were received in confidence for the purposes of s. 16(1)(b).

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[77] Affidavit #1 of FOI Director at para 14; Affidavit #2 of FOI Director at para 6.
[78] This letter is at pages 175-180 of the City's combined records package.
[79] See, e.g., Order F26-19, 2026 BCIPC 23 (CanLII) at para 40.

Conclusion on s. 16(1)(b)

[88] For the reasons given above, I find that disclosure of the withheld records could reasonably be expected to reveal information the City received in confidence from an Indigenous governing entity or one of its agencies. While there were significant gaps in the City's evidence, I find that each element it was required to prove under s. 16(1)(b) has been established on a balance of probabilities. The City may therefore withhold the information in the records under that section.

Harm to interests of an Indigenous people – s. 18.1

[89] Since I have found that the City may withhold the information in the records under s. 16(1)(b), there is no need for me to decide whether it must also withhold it under s. 18.1, and I decline to do so.

CONCLUSION

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

1. I confirm that the City is not required under s. 25(1)(b) to disclose any of the information in dispute.

2. I confirm the City's decision to refuse access to the information in dispute under s. 16(1)(b).

April 29, 2026

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File No.: F23-94333