



Order F26-40

**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY (TRANSLINK)**

Amy O'Connor
Adjudicator

May 21, 2026

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Summary: An applicant asked TransLink for access to all records pertaining to him in a specified timeframe under the *Freedom of Information and Protection of Privacy Act* (FIPPA). TransLink disclosed some responsive records but withheld some information under various sections of FIPPA. The adjudicator confirmed TransLink's decision to withhold all of the information it withheld under s. 14 [solicitor-client privilege] and some of the information it withheld under s. 13(1) [advice or recommendations]. The adjudicator ordered TransLink to disclose the information it was not authorized to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 13(1) and 14.

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested that the South Coast British Columbia Transportation Authority (TransLink) provide him with access to all records pertaining to him in a specified timeframe. In response, TransLink provided access to some of the records but withheld entire records and parts of records under ss. 13(1) [advice or recommendations], 14 [solicitor-client privilege], 17(1) [disclosure harmful to the financial or economic interests of a public body] and 22(1) [unreasonable invasion of third-party personal privacy] of FIPPA.¹ The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review TransLink's decision to withhold information. Mediation did not resolve all of the issues in dispute, and the matter proceeded to this inquiry. Both TransLink and the applicant provided submissions.

¹ From this point forward, all section references are to FIPPA unless otherwise specified.

Preliminary Matter

[2] In its initial submission, TransLink says it is disclosing the information it had previously withheld under s. 22(1) to the applicant. It says it no longer relies on s. 22(1) because the information is no longer considered sensitive given the passage of time. Section 22(1) is therefore no longer at issue, and I will not consider it any further.

ISSUE AND BURDEN OF PROOF

[3] The issues I must decide in this inquiry are whether TransLink is authorized to refuse to disclose the information at issue under ss. 13(1), 14 and 17(1) of FIPPA.

[4] Section 57(1) places the burden on TransLink to prove the applicant has no right of access to the information withheld under ss. 13(1), 14 and 17(1).

DISCUSSION

Background

[5] TransLink is a public transportation authority that is responsible for planning and managing the transportation system within Metro Vancouver. The applicant is a former employee of TransLink.

[6] During the COVID-19 pandemic, TransLink adopted a mandatory vaccination policy (Policy). The applicant sought an exemption from the Policy's vaccination requirements based on religious beliefs. The exemption was not granted, and the applicant was placed on a leave of absence from his position. His employment was later terminated.

[7] Several complaints and legal claims resulted from this context, including: (1) a grievance advanced with the applicant's union (Union); (2) a complaint about the Union made to the BC Labour Relations Board (LRB); and (3) a complaint against TransLink and the Union made to the BC Human Rights Tribunal (HRT).

[8] The access request is for any records pertaining to the applicant in a specified timeframe.

Records and information at issue

[9] The records largely consist of email correspondence, letters and submissions of the applicant and other parties in various proceedings. There are

also policies, guidance documents, meeting notes, agreements and the applicant's human resources (HR) file.

[10] The records in dispute total 1,446 pages, and the information at issue is found on 842 of those pages. TransLink withheld 821 pages in their entirety and withheld some information on the remaining 21 pages.

Solicitor-client privilege – s. 14

[11] Section 14 states that a public body may refuse to disclose information that is subject to solicitor-client privilege. It is well-established that s. 14 encompasses both legal advice privilege and litigation privilege.² In this case, TransLink is claiming both legal advice privilege and litigation privilege over the information withheld under s. 14.

Legal advice privilege

[12] Legal advice privilege applies to confidential communications between a solicitor and client for the purposes of obtaining and giving legal advice, opinion or analysis.³ The Supreme Court of Canada has explained that “without the assurance of confidentiality, people cannot be expected to speak honestly and candidly with their lawyers, which compromises the quality of the legal advice they receive.”⁴ As such, the privilege has been recognized as a fundamental legal right, essential to the integrity of the legal system.⁵ Given its importance, the Supreme Court of Canada has said the privilege “should only be set aside in the most unusual circumstances.”⁶

[13] The test for legal advice privilege is well established. There must be: (1) a communication between a solicitor and client (or their agent); (2) that entails the seeking or giving of legal advice; and (3) that is intended by the parties to be confidential.⁷

[14] Regarding scope, it is not only the direct communication of advice between solicitor and client that may be privileged. The BC Court of Appeal has established that legal advice privilege extends to the “continuum of communications” related to the advice that would reveal the substance of the advice.⁸ This includes the necessary exchange of information for the purpose of

² *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, [2002 BCCA 665](#) [College], paras 24-26.

³ *Ibid*, para 31.

⁴ *Alberta (Information and Privacy Commissioner) v University of Calgary*, [2016 SCC 53](#) [Calgary], para 34.

⁵ *R v McClure*, [2001 SCC 14](#), para 17.

⁶ *Calgary*, *supra* note 4.

⁷ *Solosky v The Queen*, [\[1980\] 1 SCR 821](#), p 837.

⁸ *British Columbia (Attorney General) v Lee*, [2017 BCCA 219](#), paras 32-33.

obtaining legal advice, as well as communications at the other end of the continuum such as internal client communications about legal advice and its implications.⁹ Accordingly, past OIPC orders have held that legal advice privilege applies both to actual legal advice exchanged between a solicitor and client, and to information that, if disclosed, would reveal or allow an accurate inference to be made about privileged communications between a solicitor and their client.¹⁰

[15] In relation to email attachments, an attachment may be privileged: (1) if it is an integral part of the communication to which it is attached, and it would reveal the communication protected by solicitor-client privilege either directly or by inference; or (2) on its own, independent of being attached to another privileged record.¹¹ The BC Supreme Court has cautioned “that it makes no practical sense to parse the contents of attachments in order to sever the parts that are privileged from the parts that are not”, and if some of the attachment is part of the legal advice, then all of it is privileged.¹²

Section 14 records not provided

[16] TransLink chose not to provide the disputed s. 14 records and information for my review. Instead, it provides affidavit evidence and tables of records. TransLink submits this is sufficient for me to determine whether s. 14 applies.

[17] The applicant says TransLink must provide the unsevered records for me to determine that the information at issue is privileged. He says TransLink has refused to adhere to the OIPC’s instructions, as the email from the Registrar of Inquiries (Registrar) containing the notice of inquiry instructs TransLink to provide the OIPC with the records in dispute on the same day it provides its initial submissions. In sum, the applicant submits it is not possible for me to determine that the severed information is privileged if I do not have access to it, and he requests that TransLink provide an unredacted copy of the records for my review.

[18] Under s. 44(1)(b), the Commissioner or their delegate can order a public body to produce a record for the purposes of conducting an inquiry under s. 56, including records over which solicitor-client privilege is claimed.¹³ The OIPC, however, exercises this authority cautiously and with restraint given the clear direction by the Courts that a reviewing body’s decision to examine privileged

⁹ *Bilfinger Berger (Canada) Inc v Greater Vancouver Water District*, [2013 BCSC 1893](#), paras 22-24.

¹⁰ See, for example, Order F22-34, [2022 BCIPC 38](#), para 41, Order F22-53, [2022 BCIPC 60](#), para 13, and Order F23-07, [2023 BCIPC 8](#), para 25.

¹¹ *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, [2021 BCSC 266](#) [*Minister of Finance*], paras 110-111.

¹² *Ibid*, para 112.

¹³ Section 44(1)(b) of FIPPA states the Commissioner may order the production of a record, and s. 44(2.1) confirms that a production order may apply to a record that is subject to solicitor-client privilege.

documents must never be made lightly or as a matter of course.¹⁴ Given the importance of solicitor-client privilege, and in order to minimally infringe on that privilege, the OIPC will only order production of records being withheld under s. 14 when it is absolutely necessary to decide the issues in dispute.¹⁵

[19] Moreover, when s. 14 is at issue, the OIPC makes an exception to its usual practice of requiring the public body to provide the OIPC with an unredacted copy of the records in dispute.¹⁶ Rather, if a public body declines to provide the information withheld under s. 14 to the OIPC for adjudication, and instead relies on affidavit evidence to support its claim of privilege, the following principles apply:

- there is considerable latitude in how much information is required to demonstrate solicitor-client privilege for specific documents, and it will vary depending on the document;¹⁷
- the public body is expected to provide a description of the information or records in a manner that, without revealing privileged information, enables the other party and the adjudicator to assess the validity of the claim of privilege;¹⁸ and
- the evidence should specifically address the records subject to the privilege claim and should come from an affiant with direct knowledge of the disputed records.¹⁹

[20] Where a lawyer provides sworn evidence asserting a claim of privilege, the Courts have accepted that it is up to the lawyer to determine how much information will be provided to justify the claim of privilege, without revealing the privileged information.²⁰ In those instances, some deference is owed by the adjudicator to the lawyer claiming the privilege.²¹

Sufficiency of evidence provided by TransLink regarding s. 14

[21] TransLink provides four affidavits in support of its privilege claim, the first from its Manager of Information Access (MIA). The MIA's affidavit establishes that she is responsible for receiving, responding to and overseeing the responses to access requests received by TransLink.

¹⁴ Order F19-21, [2019 BCIPC 23](#), paras 44-46, citing *GWL Properties Ltd v WR Grace & Co of Canada Ltd*, [1992 CanLII 182 \(BCSC\)](#), pp 11-12.

¹⁵ Order F19-14, [2019 BCIPC 16](#), para 10; *Calgary*, *supra* note 4, para 68.

¹⁶ Order F25-48, [2025 BCIPC 56](#), para 40.

¹⁷ *Minister of Finance*, *supra* note 11, paras 77-78 & 87.

¹⁸ *Ibid*, para 78.

¹⁹ *Ibid*, para 91; Order F20-16, [2020 BCIPC 18](#), para 10.

²⁰ *Minister of Finance*, *supra* note 11, para 79.

²¹ *Ibid*, para 86.

[22] The remaining three affidavits are from lawyers: TransLink’s General Counsel and Corporate Secretary (General Counsel), TransLink’s Associate General Counsel and a lawyer at a private firm (External Counsel). All three affiants describe how they were personally involved in providing legal advice to TransLink in relation to matters involving the applicant. All three have direct knowledge of the disputed records and are practising lawyers and officers of the court with a professional duty to ensure that privilege is properly claimed.

[23] The affidavits of the General Counsel and the Associate General Counsel establish that, in their respective roles, they provided legal advice to TransLink and oversaw or instructed external legal counsel engaged by TransLink in relation to the applicant’s refusal to comply with the Policy. The External Counsel’s affidavit establishes that she was retained to act as legal counsel for TransLink in relation to: (1) the grievance advanced with the Union (Grievance); (2) the complaint to the LRB (LRB Proceeding); and (3) the complaint to the HRT (HRT Proceeding). All three affidavits contain a table of records describing the information withheld under s. 14.

[24] While I can understand the applicant’s desire to have me review all information withheld under s. 14 to confirm its applicability, I am bound by the jurisprudence on solicitor-client privilege.²² I accept the sworn evidence provided by TransLink in support of the s. 14 privilege claim. I am satisfied that the individuals providing the affidavit evidence have direct knowledge of the nature and content of the communications reflected in the records. I am also satisfied the lawyers have a strong understanding of the scope and purpose of the solicitor-client privilege exemption.

[25] Based on the information before me, I am satisfied I have sufficient evidence to decide if s. 14 applies. For that reason, I determined it was unnecessary to order production of the records.

Parties’ arguments about legal advice privilege

[26] TransLink says the information withheld pursuant to legal advice privilege consists largely of direct communications between TransLink and its legal counsel for the purposes of seeking, formulating or providing legal advice. TransLink says this includes: (1) communications with External Counsel in relation to the Grievance, the LRB Proceeding and the HRT Proceeding (Legal Proceedings); and (2) internal communications sent or received by the General Counsel and Associate General Counsel in relation to the applicant’s employment, the Policy and the Legal Proceedings. TransLink says the remainder of the information consists of email communications between and among TransLink personnel, either: (1) forwarding or referring to legal advice that was provided to TransLink; or (2) expressing an intention to seek legal advice

²² For similar reasoning, see Order F25-48, *supra* note 16, paras 34-41.

that was subsequently sought or provided. TransLink submits that these communications are properly withheld under s. 14 because disclosure would reveal the legal advice that was sought or obtained.

[27] The applicant says that, although he believes there is privileged information contained in the records, he does not believe that all the severed information is privileged. His submissions are largely centered around TransLink having not provided the information at issue under s. 14 for my review. The applicant says it is difficult to determine which of the severed information is privileged given the convoluted nature of the documents submitted by TransLink. He submits that TransLink is relying on the broad nature of the description of privilege to withhold information that may not necessarily fall in that category. Lastly, he asserts that the unprecedented nature of the circumstances under which he was dismissed should have a bearing on whether TransLink can arbitrarily use privilege as a reason to sever the records.

Analysis and findings, s. 14

[28] For the reasons that follow, I find that legal advice privilege applies to the information withheld by TransLink under s. 14.

[29] Firstly, I am not persuaded that it is difficult to determine which of the severed information is privileged or that TransLink submitted its documents in a convoluted nature. As noted above, TransLink provides affidavits from three lawyers containing tables of records which clearly list each communication over which TransLink claims privilege, cross-referenced with the applicable page numbers in the records. It is clear from these tables and the records themselves which of the severed information TransLink claims is privileged, along with the basis for the privilege.

[30] I find that most of the information withheld under s. 14 consists of emails between TransLink and its External Counsel, and the remainder consists largely of internal emails sent or received by the General Counsel or the Associate General Counsel. A few of the remaining emails are internal amongst staff and do not include a lawyer.

[31] All three lawyers provide sworn evidence asserting TransLink's claim of privilege. Each email is listed separately in a table of records, and the affiant provides considerable detail including: (1) the date on which the email was sent; (2) the names of those on the chain; (3) the general topic of discussion; and (4) the number of attachments. They also set out the particulars of the privilege claim over each email, with the relevant lawyer attesting in each instance:

1. a solicitor-client relationship was established with TransLink;
2. the email:

- a. is between themselves and TransLink staff, and it entails the seeking or giving of legal advice; or
 - b. is internal amongst TransLink staff, the lawyer has reviewed the email, and it is part of the continuum of communications related to their legal advice and would reveal the substance of their advice if disclosed;
3. the attachments, where applicable, are independently privileged or would reveal or allow an accurate inference to be made about a privileged communication if disclosed; and
 4. the information was intended to be confidential.

[32] In my view, the lawyers have provided sufficient information to justify TransLink's claims of privilege. I accept their evidence and am satisfied that all elements of the test for legal advice privilege have been established in relation to each specific communication. Frankly, in the context of a public body providing affidavit evidence to establish a claim of privilege, I do not see how the evidentiary foundation could be stronger. As such, I find the information withheld under s. 14 is subject to legal advice privilege.

[33] The applicant says the unprecedented nature of the circumstances under which he was dismissed "should have a bearing on whether TransLink can arbitrarily use privilege as a reason to sever" the records. The context in which legal advice is provided, however, has no impact on a claim of privilege. Additionally, TransLink provides substantial evidence and argument to justify its claim of privilege. This includes the MIA's affidavit which addresses the various factors considered by TransLink in exercising its discretion to apply s. 14.

Litigation privilege

[34] TransLink asserts that litigation privilege also applies to some of the information it withholds pursuant to legal advice privilege. Since I have found that legal advice privilege applies to that information, there is no need to decide if litigation privilege also applies.

Conclusion, s. 14

[35] In conclusion, I find that TransLink has established that the information at issue is subject to legal advice privilege. TransLink is authorized to refuse to disclose this information under s. 14.

Advice or recommendations – s. 13(1)

[36] It is unnecessary for me to consider whether s. 13(1) applies to the

information that I determined may be withheld under s. 14; therefore, the following analysis will only apply to the information that was not also withheld under s. 14. This information appears on 39 pages of the records.

[37] Section 13 says that the head of a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body. The purpose of s. 13 is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.²³ Section 13 protects "a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations".²⁴ Section 13 applies not only where the information directly reveals advice or recommendations, but also where knowledge of the information would permit an accurate inference about the advice or recommendations.²⁵

Parties' arguments about s. 13(1)

[38] TransLink submits that it is plain on the face of the records that the information withheld under s. 13(1) contains advice and recommendations made by employees of TransLink. TransLink says that this information relates to: (1) professional opinion and advice of TransLink employment and labour relations employees as it related to how to best manage leaves taken by contract employees in the context of the COVID-19 pandemic; (2) internal advice and opinions on salary negotiations related to the applicant and other employees; (3) draft documents, draft communications and editorial communications about draft documents; and (4) recommendations made by TransLink human resources and labour relations employees.

[39] The applicant did not discuss s. 13(1) in his submission.

Analysis and findings, s. 13

[40] The analysis under s. 13 has two steps. The first step is to determine whether disclosing the withheld information would reveal advice or recommendations developed by or for TransLink. If so, the second step is to determine whether any of the categories or circumstances listed in s. 13(2) apply to that information, as well as determining whether the record has been in existence for more than 10 years in accordance with s. 13(3). If either ss. 13(2) or 13(3) apply, then TransLink cannot withhold the information under s. 13(1). In this case, the access request was for records dating from 2021 to 2024. I find that s. 13(3) does not apply, therefore, and I will not consider it further.

²³ *Insurance Corporation of British Columbia v Automotive Retailers Association*, [2013 BCSC 2025](#), para 52.

²⁴ Order 01-15, [2001 CanLII 21569 \(BC IPC\)](#), para 22; Order F23-13, [2023 BCIPC 15](#), para 16.

²⁵ Order 02-38, [2002 CanLII 42472 \(BC IPC\)](#), para 135; Order F17-19, [2017 BCIPC 20](#), para 19.

[41] The term “recommendations” includes material relating to a suggested course of action that the one being advised will ultimately accept or reject.²⁶ The term “advice” has a broader meaning than “recommendations”.²⁷ It includes providing relevant considerations, options, analyses and opinions, including expert opinions on matters of fact.²⁸ Advice can be an opinion about an existing set of circumstances and does not have to be a communication about a future action.²⁹

[42] I have reviewed the information withheld by TransLink under s. 13(1) and find that it consists of: (1) information contained in the body of internal emails; and (2) draft letters to the applicant, attached to internal emails.

[43] Regarding the information within emails, I find that disclosure would reveal advice and recommendations developed by TransLink staff. I can see from my review of this information that TransLink has withheld advice and recommendations explicitly set out in emails by staff.

[44] TransLink also withheld 12 draft letters in their entirety. Although the final versions were sent to the applicant, and are disclosed elsewhere in the records, TransLink is refusing to disclose any information contained in the draft letters. TransLink submits that, even where an HR employee provides a completed draft communication, it comprises that employee’s express recommendation as to the content that should be included and sent.

[45] Prior OIPC orders have found that a record does not automatically contain advice or recommendations simply because it is a draft, and a public body may withhold only the information from a draft or earlier version of a record that would reveal advice or recommendations.³⁰

[46] In this case, the draft letters are attached to email threads that have largely been disclosed to the applicant. In several of the emails, an HR employee directs another HR employee to deliver the draft to a third employee (Manager) for signature and actioning. The emails say, for example, to “please arrange for the letter to be placed on TransLink letterhead and have the Manager sign and issue the letter today to the employee.”³¹ Other emails are sent by an HR employee directly to the Manager and say to “please find attached a response letter for your signature” or “please review and sign the attached”.³²

²⁶ *John Doe v Ontario (Finance)*, [2014 SCC 36](#), para 23.

²⁷ *Ibid*, para 24.

²⁸ *College*, *supra* note 2, para 113.

²⁹ *College*, *supra* note 2, para 103.

³⁰ See Order F23-18, [2023 BCIPC 21](#), para 34 and the cases cited therein.

³¹ Page 1208 of the records (duplicate email at page 1401). Also see pages 962, 991, 1023, 1044, 1160 & 1382 of the records.

³² Pages 1069, 1377 & 1397 of the records.

[47] The OIPC has consistently held that directions, instructions or requests do not qualify as advice or recommendations under s. 13(1) where the recipient has no freedom to accept or reject them.³³ In an email thread in the present case, for example, the HR employees discuss and incorporate feedback from the Manager on one of the draft letters.³⁴ I found above that the Manager's feedback constitutes advice and recommendations within the meaning of s. 13(1). This is in keeping with past OIPC orders which have accepted that editorial suggestions or changes to wording may constitute advice or recommendations on the content of a record.³⁵ The draft letter at issue, however, appears at the end of the email thread, and the Manager's feedback has already been incorporated. It is not clear to me how disclosure of the draft letter would reveal advice or recommendations.

[48] TransLink expressly characterizes the draft letters as "completed draft communications". In my view, and in line with this characterization, the surrounding emails provided to the applicant establish that: (1) the HR employees were tasked with drafting the letters for the Manager's signature; and (2) the drafts were provided in final or nearly final form. As the authors of the letters, the HR employees were free to accept or reject any edits recommended by the Manager. The Manager, on the other hand, was not free to reject the directions to review and send the draft letters to the applicant. As such, I am not persuaded that the HR employees were providing advice or recommendations when they attached the draft letters at issue to their emails.

[49] Regardless, as noted above, the final versions of the letters were sent to the applicant. I have compared each of the draft letters with its final version and find that they are nearly identical. Accordingly, even if the HR employees were providing advice or recommendations regarding the contents of the letter, disclosure of the draft letters would not reveal the advice or recommendations because they have already been disclosed to the applicant.

[50] For these reasons, I find that disclosure of the draft letters would not reveal advice or recommendations developed by or for TransLink.

[51] I must next consider whether s. 13(2) applies to the information contained in emails that I found would reveal advice and recommendations developed by TransLink. Section 13(2) identifies certain types of records and information that may not be withheld under s. 13(1). I have considered whether any of the circumstances set out in s. 13(2) apply and find that none of them do.

³³ See Order F24-36, [2024 BCIPC 44](#), para 57 and the cases cited therein.

³⁴ Page 1122 of the records.

³⁵ Order F24-36, *supra* note 33, para 60.

Conclusion, s. 13

[52] In conclusion, I find that disclosure of the information withheld from emails would reveal advice and recommendations developed by TransLink staff. TransLink may withhold this information under s. 13(1). I find that disclosure of the draft letters would not reveal advice or recommendations, and TransLink is not authorized to withhold this information under s. 13(1).

Section 17

[53] TransLink applied s. 17(1) solely to information that I found above was properly withheld under s. 13(1), so there is no need to decide if s. 17(1) also applies.

CONCLUSION

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

1. I confirm TransLink's decision to refuse the applicant access to information under s. 14.
2. Subject to item #3 below, I confirm, in part, TransLink's decision to refuse the applicant access to information under s. 13(1).
3. TransLink is required to give the applicant access to the information that I have determined it is not authorized to withhold under s. 13(1) on pages 966, 967, 1000, 1027, 1050, 1075, 1126, 1165, 1166, 1210, 1211, 1380, 1381, 1388, 1389, 1399, 1400, 1403 and 1404 of the records.³⁶
4. TransLink must concurrently copy the Registrar on its cover letter to the applicant, together with a copy of the pages described at item #3 above.

[55] Pursuant to s. 59(1) of FIPPA, TransLink is required to comply with this order by July 2, 2026.

May 21, 2026

ORIGINAL SIGNED BY

Amy O'Connor, Adjudicator

OIPC File No.: F24-97608

³⁶ On the PDF version of the records, these are pages 436, 437, 456, 466, 479, 494, 506, 519, 520, 538, 539, 578, 579, 586, 587, 597, 598, 601 and 602.