



Order F26-58

VILLAGE OF HARRISON HOT SPRINGS

Elizabeth Barker
Director of Adjudication

July 2, 2026

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Summary: The applicant requested access to a workplace investigation report and the public body refused access under ss. 12(3)(b) (local public body confidences) and 14 (solicitor client privilege) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that s. 12(3)(b) did not apply but the public body was authorized to refuse to disclose the requested record under s. 14.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 12(3)(b) and 14. *Community Charter SBC 2003*, c. 26, ss. 90 and 92.

INTRODUCTION

[1] An individual (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPA), for a copy of a workplace investigation report (Report). The Village of Harrison Hot Springs (Village) responded to the request by denying access to the entire Report under ss. 12(3)(b) (local public body confidences) and 14 (solicitor client privilege) of FIPPA.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Village's decision to refuse him access to the Report. The OIPC was unable to resolve the matter by mediation, and the applicant requested that it proceed to inquiry. The Village and the applicant both provided written submissions during the inquiry process.

Preliminary matters

Affidavit evidence

[3] The Village provided no affidavit evidence with its initial submission but its reply submission included an affidavit from a lawyer. The applicant requested an opportunity to respond to that evidence, and the OIPC permitted him a two-page surreply. I am satisfied that the submission phase of this inquiry was procedurally fair to the applicant because he was provided an opportunity to respond to all of the Village's submissions and evidence.

Alleged defects in Village's reply submission

[4] In his surreply, the applicant points out what he perceives to be defects in the Village's reply submission, which he says demonstrate the Village did not prepare its reply submission with the accuracy required in an inquiry process. Specifically, he observes the administrative assistant's cover email that accompanied the Village's reply submission says the submission includes a January 7, 2024 email chain, when in reality it was a single email dated January 9, 2024. He also points out the Village's reply submission does not include the OIPC file number. Due to those things, he says the Village's submission should be given reduced weight.

[5] I do not find the Village's reply submission should be given less weight due to what I find to be minor clerical slips. Such inconsequential errors have no bearing on the issues to be decided in this inquiry.

Applicant's ability to provide a meaningful rebuttal

[6] The applicant also says in his surreply that he no longer has access to his emails from when he was an elected Village official, so he is hampered in his ability to dispute the Village's evidence. He says this creates "a structural disadvantage that prevents meaningful rebuttal."¹ While I acknowledge the applicant's concerns and have kept them in mind when considering his submissions, ultimately my task is to decide the FIPPA issues based on the evidence and argument the parties present.

Matters not related to FIPPA

[7] I note that a fair bit of what the applicant says in his submissions is about matters that do not relate to the FIPPA issues in this inquiry. For instance, he asserts that the investigation into the complaints against him was illegal, prejudicial, a witch hunt, and an abuse of power. He also complains that the investigation was not a confidential investigation because online interviews could

¹ Applicant's surreply at p. 1.

be heard from the lobby. I recognize the applicant holds strong views about these matters, but they are outside my jurisdiction to decide. Therefore, while I have read all the materials the parties provided, I will only discuss what is necessary to provide reasons about the FIPPA issues I am deciding.

ISSUES

[8] There are two issues to be decided in this inquiry. They are:

1. Is the Village authorized by s. 12(3)(b) to refuse to disclose the disputed information?
2. Is the Village authorized by s.14 to refuse to disclose the disputed information?

[9] Section 57 of FIPPA says that at an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access. Therefore, the Village bears the burden of proving ss. 12(3)(b) and 14 apply in this case.

DISCUSSION

Background

[10] The Village was incorporated in 1949 and operates as a municipality. The applicant is a former elected official of the Village.

[11] In late 2023, the Village decided to conduct a workplace culture assessment (Assessment). The Assessment uncovered complaints about the applicant, so the Village decided to conduct a workplace investigation (Investigation). The Investigation resulted in the Report the applicant seeks to access.

[12] The applicant resigned his elected position a few days before the Report was issued.

Record at issue

[13] The 45-page Report, which is dated June 13, 2024, is the only record in dispute.² The Village is refusing access to the entire Report under both ss. 12(3)(b) and 14. The Village provided a copy of the Report for my review.

² The Village says the Report is 46 pages, which I assume is a typographical error because there are only 45 pages.

Local public body confidences, s. 12(3)(b)

[14] Section 12(3)(b) states as follows:

12(3) The head of a local public body may refuse to disclose to an applicant information that would reveal

...

(b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

...

[15] In order to rely on s. 12(3)(b), a public body must meet all three of the following requirements:

1. It had the statutory authority to meet in the absence of the public (i.e., *in camera*);
2. An authorized *in camera* meeting was actually held; and
3. Disclosing the information in dispute would reveal the substance of deliberations of that meeting.³

Village's submissions

[16] The Village says that it held a council meeting on July 26, 2024 that was closed to the public (July Closed Meeting). The public was excluded, it says, under the following provisions of the *Community Charter*:⁴

90 (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

(a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;

...

(e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;

...

(g) litigation or potential litigation affecting the municipality;

...

³ See Order 00-14, 2000 CanLII 10836 (BCIPC) at 3.1, and Order 02-22, 2002 CanLII 42447 (BCIPC) at para 11. Subsequent orders have consistently followed this same test.

⁴ *Community Charter* [SBC 2003] c 26.

(i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

...

(k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the council, could reasonably be expected to harm the interests of the municipality if they were held in public;

...

92 Before holding a meeting or part of a meeting that is to be closed to the public, a council must state, by resolution passed in a public meeting,

(a) the fact that the meeting or part is to be closed, and

(b) the basis under the applicable subsection of section 90 on which the meeting or part is to be closed.

[17] The Village says that in advance of the July Closed Meeting, council members reviewed the Report under a strict confidentiality protocol and did not retain possession of the Report after they reviewed it. At the July Closed Meeting, the Village says council members reviewed a summary of the evidence and the overall findings of the Report, then deliberated on how to respond to the Report and address any potential liability arising from it.

[18] The Village provides a copy of the agenda and the minutes for the open portion of the council's July 26, 2024 meeting. The minutes record the reasons under the *Community Charter* for adjourning and excluding the public before resuming the meeting *in camera*.

[19] The Village says that on August 9, 2024, council held another meeting from which the public was excluded (August Closed Meeting). It says during the August Closed Meeting, council received legal advice from Law Firm 1 with respect to the Report. It also says that it received legal advice about a statement that was to be posted on the Village website. The Village provided a copy of the press release dated August 9, 2024.⁵

Applicant's submissions

[20] The applicant says the resolutions to close the meetings and the closed meetings themselves were illegal because one of the councillors was a complainant mentioned in the Report, so they had a conflict of interest and there was a loss of quorum. In support, he provides a copy of the Village's *Council Procedure Bylaw No. 1164* (Bylaw), a photograph of the people who attended the

⁵ The Village also provided a link to a YouTube video which I understand was of the portion of the July meeting during which council explains why they are excluding the public. The link was broken so I could not see the video, but I do not feel the need to view the video. Given I can see the minutes from that portion of the meeting, and I found that to be sufficient to understand what reasons the Council gave for excluding the public from the July Closed Meeting.

open portion of the July 26, 2024 meeting, and a copy of the minutes from the open portion of the August 9, 2024 meeting, which record the reasons under the *Community Charter* for closing the meeting to the public.

[21] The applicant also argues that the July and August Closed Meetings were not closed to the public because, given the thin walls of the meeting room, the public and staff would have been able to eavesdrop.

[22] The applicant does not say that the Village council failed to comply with the *Community Charter* by failing to pass resolutions that identified the provisions under the *Community Charter* that authorized excluding the public from the meetings. Nor does he say the public was present in the meeting room during the July and August Closed Meetings or that anyone actually eavesdropped on the meeting.

Analysis and findings, s. 12(3)(b)

[23] For the reasons that follow, I find that the Village is not authorized to refuse to disclose the Report under s. 12(3)(b).

[24] First, I conclude it is not necessary to decide the parties' dispute about whether the Village had the statutory authority to meet in the absence of the public and whether it actually met in the absence of the public. That is because of what I decide below about whether the disclosing the Report would reveal the substance of deliberations of the July and August Closed Meetings.

[25] Past s. 12(3)(b) orders have said that “deliberations” means discussions conducted with a view to making a decision or following a course of action.⁶ They have also said that the “substance” of deliberations is not the same as the topic, subject or basis of deliberations.⁷ Therefore, the phrase substance of deliberations only covers what was actually said during a meeting and not background materials which stimulated the discussion,⁸ unless disclosing those background materials would allow someone to draw accurate inferences about what was said or discussed during the meeting.⁹

[26] In this case, while one can reasonably conclude the Report was the topic of discussion and deliberations at the July and August Closed Meetings, the Report itself does not reveal what was actually said by the meeting attendees. One cannot tell from reading the Report what thoughts or opinions the meeting attendees shared with each other and what they discussed about which course

⁶ Order 00-11, 2000 BCIPC 11 (CanLII) at pp 5-6; Order F11-04, 2011 BCIPC 4 (CanLII) at para 35; Order F20-10, 2020 BCIPC 12 (CanLII) at para 9.

⁷ Order 00-11, *ibid* at pp 5-6; See also Order F11-04, *ibid* at paras 35-37; Order No. 326-1999, 1999 CanLII 4353 (BC IPC) at p. 4.

⁸ Order F11-04, *supra* note 6, at paras 29 and 35.

⁹ Order F12-11, 2012 BCIPC (CanLII) at para 14.

of action to take. I find that disclosing the Report would not reveal the substance of deliberations at the July or August Closed Meetings.

[27] As stated above, all three parts of the s. 12(3)(b) test must be met. Given the Village has not established that disclosing the Report would reveal the substance of deliberations of a meeting of its elected officials, I find it is not authorized to refuse the applicant access to the Report under s. 12(3)(b).

Solicitor-client privilege, s. 14

[28] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. Section 14 encompasses both legal advice privilege and litigation privilege.¹⁰ The Village is claiming legal advice privilege applies to the Report.

[29] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion or analysis.¹¹ In order for information to be protected by legal advice privilege it must be:

- a communication between solicitor and client (or their agent);
- that entails the seeking or providing of legal advice; and
- that is intended by the solicitor and client to be confidential.¹²

[30] Not every communication between a solicitor and their client is privileged, however, if the conditions above are satisfied, then legal advice privilege applies.¹³

[31] Further, the scope of legal advice privilege extends beyond the actual requesting or giving of legal advice to include the necessary exchange of information for the purpose of providing legal advice which is part of the “continuum of communications” between a lawyer and client.¹⁴ Privilege can also extend to information that would allow accurate inferences to be made about privileged communications, for instance internal client communications that discuss legal advice and its implications.¹⁵

¹⁰ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 26.

¹¹ *College*, *ibid* at para 31.

¹² *Solosky v. The Queen*, [1980] 1 SCR 821 [Solosky] at p. 837; *R. v. B.*, 1995 CanLII 2007 (BC SC) at para 22.

¹³ *Solosky*, *ibid*, at p. 829.

¹⁴ *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [Camp] at paras 42-44;

¹⁵ *Bank of Montreal v. Tortora*, 2010 BCSC 1430 at para 12; *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-44; *Camp*, *ibid* at para 46; *British Columbia (Attorney General) v Lee*, 2017 BCCA 219 at paras 39-40.

Village's submissions

[32] The Village says that in response to staff turnover and workplace disruptions, the Village's municipal council passed a resolution directing its legal counsel (Law Firm 1) to retain an independent investigator to conduct the Assessment. The Village explains that Law Firm 1 retained Law Firm 2 to conduct the Assessment.¹⁶

[33] During the Assessment, the Village says, complaints arose about the applicant, which if substantiated, could constitute a violation of the Occupational Health and Safety Regulation of the *Workers' Compensation Act* as well as the Village's oath of office, workplace policies and code of conduct.

[34] In response to the complaints, Law Firm 1 retained Law Firm 2 to conduct the Investigation and provide a privileged and confidential investigation report (i.e., the Report). The Village states that Law Firm 1, not the Village, was Law Firm 2's client when it came to the Investigation and the Report.¹⁷

[35] The Village provided an affidavit from a lawyer with Law Firm 1 (Affiant) who says the Investigation was "conducted on behalf of" Law Firm 1.¹⁸ The Affiant also says:

4. In my role as a lawyer, I was involved in providing legal advice to the Village arising from a written Investigation Report, dated June 13, 2024 (The "Investigation Report"), prepared by the Investigator.

5. The Village was concerned about the possibility of future litigation and/or legal proceedings arising out of the Investigation and [Law Firm 1] intended to rely on the Investigation Report to assist in providing the Village with legal advice.

6. The Investigator is a lawyer and in this capacity was retained to conduct the Investigation, provide legal findings, and produce the Investigation Report, which was intended to be Privileged and Confidential.

7. In accordance with the Retainer Agreement between [Law Firm 1] and the Investigator, also subject to privilege, the Investigator committed to advising all participants at the commencement of interviews that he was conducting a privileged and confidential Investigation as an (independent) external legal counsel.

8. The Retainer Agreement stipulated that the Investigation Report was to be marked as "Privileged and Confidential".

¹⁶ The Report says that this was done "on behalf of" the Village.

¹⁷ Village's reply submission at para 18.

¹⁸ Affiant's affidavit at para 3.

[36] The Village says that at the August Closed Meeting, it “received legal advice from [Law Firm 1] with respect to the Report.”¹⁹ The Village adds:

[Law Firm 2] provides legal advice to [Law Firm 1], the client, through, in part, the legal findings contained in the Investigation Report. [Law Firm 1], in turn, based on the legal finding contained in the Investigation Report, provided legal advice to the Public Body.²⁰

[37] The Village also says the Report was intended to be privileged and confidential, it is marked as such, and it has been treated as privileged.²¹ It adds that the council members reviewed the Report under a strict confidentiality protocol in advance of the July Closed Meeting and they did not retain possession of the Report.²²

Applicant’s submissions

[38] The applicant submits the Village’s decision to redact the entire Report was “arbitrary”.²³ He also submits s. 14 does not apply because the Report was from a third party investigator who was not giving legal advice and was only retained to investigate and provide a report to the Village.²⁴ In support, he provides a copy of an April 16, 2024 letter he received from the lawyer at Law Firm 2 who conducted the investigation which states, “Once I have completed interviews, I will prepare a report out-lining my findings and provide it to the Village. Please note that I do not provide legal advice to the Village or any of the party’s or witnesses in this investigation.”²⁵

Analysis and findings, s. 14

[39] For the reasons that follow, I find that the Report is subject to solicitor client privilege and the Village may refuse to disclose it under s. 14.

[40] First, I accept the Affiant’s evidence that the lawyer at Law Firm 2 who conducted the Investigation and wrote the Report was retained to act in their capacity as a lawyer. The Affiant’s evidence about that is supported by what I can see in the Report itself. The Report includes a review of the case law that relates to the matters under investigation, legal analysis of how that law applies to the facts, and legal findings. I am satisfied that the Report is a written communication from a lawyer at Law Firm 2 that was made for the purpose of

¹⁹ Village’s initial submission at para 16.

²⁰ Villages reply submission at para 18.

²¹ Village’s reply submission at para 18 and Village’s initial submission at paras 46 and 51.

²² Village’s initial submission at para 15.

²³ Applicant’s response at para 43.

²⁴ Applicant’s response at para 51.

²⁵ Investigator’s April 16, 2024 letter at p. 2.

providing legal analysis and opinion and not just for the purpose of providing investigation findings, as the applicant argued.

[41] The next question is who was the client that Law Firm 2 was communicating with when it produced the Report. The Village says that the Village's legal counsel is Law Firm 1, and it emphatically denies that it was Law Firm 2's client. It says Law Firm 1 was Law Firm 2's client, and that Law Firm 1 retained Law Firm 2 to conduct the Investigation and write the Report. In addition, the Affiant's sworn evidence, which I accept, is that:²⁶

- there was a retainer agreement between Law Firm 1 and Law Firm 2;
- the Investigation was conducted on behalf of Law Firm 1;
- Law Firm 1 intended to rely on the Report to assist it in providing the Village with legal advice; and
- Law Firm 1 did provide the Village with legal advice arising from the Report.

[42] Based on what the Village says in its submissions and the Affiant's evidence, I am satisfied that the Report is a communication between Law Firm 1, as client, and Law Firm 2, as solicitor.²⁷

[43] However, I am not persuaded the Report was intended to be a confidential solicitor client communication between Law Firm 1 and 2. While I can see that the Report is marked as privileged and confidential, and the Affiant's evidence is that the Report was intended to be privileged and confidential,²⁸ these statements are inconsistent with how the Report was treated. Before the Report was even written, the investigating lawyer at Law Firm 2 sent the April 16, 2024 letter saying they will provide the Report to the Village (and clearly it was provided to the Village). Given the Village insists it was not Law Firm 2's client, in my view, this letter is clear evidence that there was no intention for the Report to remain confidential within Law Firm 1 and 2's solicitor-client relationship.

[44] In the circumstances, I am not satisfied that the Report was a confidential communication between solicitor and client, which is the third required element of the test to establish a communication is protected by legal advice privilege.

[45] Nonetheless, for the following reasons, I am satisfied that the Report is subject to solicitor client privilege.

²⁶ As stated in the Affiant's affidavit at paras 3, 4, 5 and 7.

²⁷ I note the Village did not submit that Law Firm 1 was acting on the Village's behalf as its "agent" when it retained Law Firm 2 to investigate and write the Report.

²⁸ Affiant's affidavit at para 6.

[46] As explained at the outset, legal advice privilege applies not only to communications that satisfy the three part test for legal advice privilege. It can also apply to information that would allow accurate inferences about privileged communications, and that is what I conclude is the situation in this case.

[47] I find that there was a solicitor client relationship between Law Firm 1 and the Village and disclosing the Report could reasonably be expected to allow accurate inferences about their confidential communications about legal advice. I base this conclusion on what I can see in the Report itself (i.e., it contains legal analysis and findings) combined with the Affiant's evidence that Law Firm 1 obtained and then used the legal analysis in the Report to provide legal advice to the Village.²⁹ In my view, disclosing the Report could reasonably be expected to allow accurate inferences about what the Affiant says was Law Firm 1's legal advice to the Village "arising from" the Report.³⁰

CONCLUSION

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

1. The Village is not authorized by s. 12(3)(b) to refuse to disclose the Report to the applicant.
2. I confirm the Village's decision that it is authorized by s. 14 to refuse to disclose the Report to the applicant.

July 2, 2026

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

OIPC File No.: F24-98385

²⁹ Affiant's affidavit at para 4.

³⁰ Affiant's affidavit at para 4.