



Order F26-82

METRO VANCOUVER REGIONAL DISTRICT

Rene Kimmett
Adjudicator

September 21, 2026

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) asked the Metro Vancouver Regional District (Regional District) for access to information related to an investigation. The Regional District withheld records under ss. 12(3)(b) (local public body confidences) and 14 (solicitor-client privilege). The adjudicator found the Regional District was authorized to withhold all the records in dispute under s. 14.

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

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) asked the Metro Vancouver Regional District (Regional District) for access to information related to an investigation.

[2] The Regional District gave the applicant access to some responsive records but entirely withheld other records under ss. 12(3)(b) (local public body confidences) and 14 (solicitor-client privilege) of FIPPA.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Regional District's decision to withhold the responsive records.

[4] OIPC-led mediation did not resolve the issues in dispute, and the matter proceeded to this inquiry.

ISSUES AND BURDEN OF PROOF

[5] In this inquiry, the issues are whether the Regional District is authorized under ss. 12(3)(b) or 14 to refuse the applicant access to the information in dispute.

[6] The Regional District has the burden to prove the applicant has no right of access to a record or part of a record withheld under ss. 12(3)(b) or 14.¹

DISCUSSION

Background

[7] Metro Vancouver is the name used to collectively refer to four legal entities: the Regional District, Greater Vancouver Sewerage and Drainage District (Drainage District), Metro Vancouver Housing Corporation, and Greater Vancouver Water District. When I use the term “Metro Vancouver” in this order, I am collectively referring to the four entities.

[8] The Drainage District’s Board (Board) had a meeting in January 2022 that was closed to the public. The applicant was a member of the Board at that time and he attended the meeting. During this meeting, the Board discussed whether to terminate an agreement (Agreement) with a contractor (Contractor). To inform this discussion, the Board received materials prepared by Metro Vancouver staff (Meeting Materials).

[9] Soon after the meeting, the Board terminated the Agreement and the Contractor filed a legal claim related to the termination in March 2022. The Drainage District filed a counter lawsuit. These disputes were recently settled.

[10] In May 2022, the Drainage District became aware that portions of the Meeting Materials had been provided to the Contractor without authorization from the Board (the Unauthorized Disclosure). In June 2022, the Drainage District hired an investigator (Investigator) to conduct an investigation into the Unauthorized Disclosure. The applicant was the respondent in the investigation.

Records at issue

[11] The Regional District has entirely withheld eight pages of photographs taken of certain pages of the Meeting Materials and 189 pages of emails and email attachments sent from Metro Vancouver staff to the Investigator.

¹ FIPPA, s. 57(1).

Section 14 – solicitor-client privilege

[12] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. For the purposes of s. 14, “solicitor-client privilege” includes legal advice privilege and litigation privilege. The Regional District submits that both types of privilege apply to all of the records withheld under s. 14.²

Sufficiency of evidence to substantiate the s. 14 claim

[13] The Regional District did not provide me with the records it withheld under s. 14. The Regional District also initially did not provide affidavit evidence meaningfully describing the records in dispute. I determined I did not have sufficient information to make an informed decision about the records in dispute under s. 14 and gave the Regional District the opportunity to provide more information about these records. Specifically, I invited the Regional District to provide further evidence about the records in dispute on a document-by-document basis and to clarify which parts of the Meeting Materials are depicted in the eight pages of withheld photographs.

[14] In response to my request, the Regional District provided further argument about the emails and email attachments sent from Metro Vancouver staff to the Investigator. However, the Regional District did not provide *evidence* describing these records and so I gave it a further opportunity to do so. The Regional District then provided affidavit evidence from the Director of Legal Services (Director) for the Regional District and the Drainage District describing the records.

[15] The applicant submits that the Regional District has not provided sufficient detail to assess its claims of privilege.³ He submits that the Regional District’s descriptions of the records are high-level characterizations that do not identify the subject matter of the information being communicated or sought.

[16] I am not persuaded by the applicant’s submissions on this subject. I accept the Director’s affidavit evidence and am satisfied that the Director reviewed all the records and created some of them. As a result, I find the Director has direct knowledge of the content of these records and the context in which they were created. I accept that she is a practicing lawyer and an officer of the court with a professional duty to ensure that privilege is properly claimed. Her evidence includes a description of each of the records and an explanation of the grounds on which privilege is claimed. Furthermore, contrary to what the applicant suggests, the Regional District is not required to share the nature of the

² Regional District’s initial submission at paras 50 and 73.

³ Applicant’s supplemental submission dated August 11, 2026.

information in dispute, where doing so may reveal the contents of privileged information.

[17] Regarding the photographs, the Regional District initially provided affidavit evidence from a lawyer with the Regional District and the Drainage District (Lawyer). The Lawyer's description of the photographs simply says that they depict the Meeting Materials.⁴

[18] The applicant describes, in more detail, the parts of the Meeting Materials depicted in the photographs. He submits he can do so because he was given a copy of the photographs as part of the investigation into the Unauthorized Disclosure.⁵

[19] I asked the Regional District whether the applicant's description of the photographs is accurate.

[20] In response, the Regional District confirmed that the photographs depict portions of two documents contained in the Meeting Materials, specifically a report authored by an engineer employed with Metro Vancouver (Engineer) and a legal opinion prepared by external legal counsel (External Legal Counsel).

[21] I find that I have sufficient evidence to decide whether the records withheld under s. 14 are subject to solicitor-client privilege without ordering production of these records for my review.

Legal advice privilege

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

- a communication between a 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.⁶

[23] Not every communication between client and solicitor is protected by legal advice privilege. However, if the conditions set out above are satisfied, then legal advice privilege applies.

⁴ Regional District's initial submission at paras 19 – 22; Lawyer's affidavit #1 at paras 15-17.

⁵ Applicant's submission at para 107.

⁶ *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at 837.

[24] Legal advice privilege also extends to communications that are a “part of the continuum of communications”, which includes the necessary exchange of information between solicitor and client for the purpose of obtaining and providing legal advice such as “history and background from a client” or communications to clarify or refine the issues or facts.⁷

[25] Legal advice privilege also applies to information that would reveal privileged communications, such as internal client communications about legal advice and its implications.⁸

[26] Email attachments are not automatically privileged simply because they are appended to a privileged communication. An email attachment may be privileged on its own or if it is an integral part of the communication to which it is attached and would reveal the communication protected by solicitor-client privilege.⁹

Emails and email attachments

[27] The Director describes each of the records in dispute and provides an explanation of the grounds on which privilege is claimed. She says that some of the records are emails and email attachments sent to the Investigator from Metro Vancouver staff between June 2022 and October 2022.

[28] The Regional District submits it retained the Investigator to conduct a privileged investigation regarding the circumstances of the Unauthorized Disclosure and provide legal advice arising from the investigation. The Regional District provided the Investigator’s Terms of Reference, which says, among other things, that the Investigator will provide legal advice to Metro Vancouver throughout the investigation and that any communications between the Investigator and Metro Vancouver will be privileged and confidential.

[29] The Regional District submits the Investigator was tasked with determining whether any legal duties had been breached, including potential breaches of confidentiality obligations, statutory provisions, bylaws or other legal constraints, and to advise on appropriate responses. It submits that even if the records are ostensibly factual – such as summaries of interviews or descriptions of how the Unauthorized Disclosure occurred – they are properly characterized as privileged because they were created for the purpose of enabling counsel to provide legal

⁷ *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 (CanLII) at paras 40-46; *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83.

⁸ *Ibid.* See also Order F22-16, 2022 BCIPC 18 (CanLII) at para 31.

⁹ *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at paras 110-111.

advice. The Regional District submits that the fact-gathering process cannot be artificially separated from the legal advice it was intended to inform.

[30] The applicant submits that the Investigator was acting merely as an investigator and not as a lawyer providing legal advice. To support this submission, he says:

- the Investigator and Metro Vancouver described her as an investigator, rather than legal counsel.
- the Terms of Reference describe her as a “neutral, third-party investigator”.
- the Investigator’s activities were that of an investigator and not a lawyer.
- the investigation report contained the results of the investigation rather than legal advice.
- Metro Vancouver provided him, as the respondent in the investigation, with the results of the investigation, which, he says, is inconsistent with its assertion the Investigator provided legal advice.

[31] The applicant also submits he believes that some of the attachments exchanged between the parties are independently existing documents, some of which are publicly available on Metro Vancouver’s website.

[32] Based on the Regional District’s evidence, I find there was a solicitor-client relationship between the Investigator and Metro Vancouver and that the Investigator was acting in her capacity as a lawyer during the communications with the Regional District. I find the emails are communications between a solicitor and their client, seeking and clarifying legal advice, that were intended to be confidential.

[33] The Director describes the email attachments as background information to facilitate the investigation or draft correspondence “for legal advice”. I understand the latter description means that the attachments are draft correspondence on which the Regional District was seeking legal advice. I am satisfied that the attachments are part of the continuum of communications necessary for the purpose of obtaining and providing legal advice.

[34] I accept the applicant’s submission that Metro Vancouver provided him with the Investigator’s final report. However, I disagree with the applicant’s assertion that doing so is inconsistent with the Regional District’s position that the

Investigator provided legal advice. The Investigator's final report is not in dispute in this inquiry. The fact that the report does not, in the applicant's opinion, contain legal advice, does not mean that the Investigator did not give legal advice to Metro Vancouver and does not mean the records in dispute cannot be subject to legal advice privilege.

[35] If the applicant is correct that some of the attachments are publicly available, this does not change my findings. Based on the context in which they appear in the records, I am satisfied that these attachments were provided by Metro Vancouver to the Investigator for the purpose of clarifying the issues and the scope of the legal advice sought. As a result, I find the attachments fall within the continuum of communication and are subject to legal advice privilege.

[36] In conclusion, I find that all the emails and email attachments sent from Metro Vancouver staff to the Investigator are subject to legal advice privilege and Metro Vancouver is authorized to withhold them under s. 14.

Photographs of the Meeting Materials

[37] The affidavit evidence from the Lawyer is that the photographs depict the Meeting Materials and that the Meeting Materials were prepared by Metro Vancouver staff and addressed to the Board.¹⁰ The Lawyer deposes that the Meeting Materials were "drafted for the sole purpose of advising the [Board] on terminating the Agreement and discussing legal advice provided by the [External Legal Counsel] with respect to the termination."¹¹

[38] The Regional District submits the Meeting Materials contain legal advice from the External Legal Counsel and include contractual analysis, identification of potential grounds for terminating the Agreement, and an assessment of the legal risks associated with different courses of action.¹²

[39] I understand the Regional District's position is that the Meeting Materials should collectively be treated as a single, confidential communication between solicitor and client that entailed the seeking or giving of legal advice.

[40] However, the Regional District confirmed that the photographs depict portions of two documents contained in the Meeting Materials, specifically a report authored by the Engineer and a legal opinion prepared by External Legal Counsel. I must consider whether legal advice privilege applies to each of these documents.

¹⁰ Regional District's initial submission at paras 19 – 22; Lawyer's affidavit #1 at paras 15-17.

¹¹ Lawyer's affidavit #1 at para 19.

¹² Regional District's initial submission at paras 56 and 58.

[41] I find that the part of the Meeting Materials prepared by the External Legal Counsel is a confidential communication between a lawyer and their client that entails the giving of legal advice. I find that this part of the Meeting Materials, which is depicted in three of the photographs, is subject to legal advice privilege and can be withheld under s. 14.

[42] Turning to the Engineer's report, I find it is not a communication between a lawyer and a client. The evidence before me is that these parts of the Meeting Materials were prepared by the Engineer and provided directly to the Board without the involvement of a lawyer. As a result, I find that the Engineer's report does not fall within the continuum of communications between a lawyer and their client.

[43] However, I find, on a balance of probabilities, that the Engineer's report is an internal client communication discussing the implications of legal advice and that, if it were disclosed, it would reveal or allow accurate inferences to be made about legal advice provided to the Board by the External Legal Counsel.

[44] The Regional District submits that the Engineer was responsible for bringing the report to the Board because she was the head of the relevant department and that her report "among other things, summarized the legal advice provided by external counsel and attached the full legal opinion prepared by [External Legal Counsel]."¹³ It also submits "the fact that the legal advice was communicated to the Board through a staff report does not alter the privileged nature of the underlying communications."¹⁴ It describes the staff report as a communication made for the purpose of considering and acting upon legal advice.

[45] The applicant, who has seen the photographs, submits "I can find very little in the [photographs of the Engineer's report] that constitutes or relates to legal advice."¹⁵ This suggests to me that there is something in the photographs of the Engineer's report that constitutes or relates to legal advice.

[46] Based on the context in which the Engineer's report was prepared and presented, the purpose of the report, and the applicant's submission about the content of this report, I am satisfied that the photographs of the Engineer's report show internal communications about legal advice that, if disclosed, would reveal privileged communications between the Board and the External Legal Counsel.

[47] For the above reasons, I find all eight of the photographs are subject to legal advice privilege and can be withheld under s. 14.

¹³ Regional District's supplemental submission dated September 10, 2026.

¹⁴ *Ibid.*

¹⁵ Applicant's submission at para 107.

Litigation privilege and s. 12(3)(b) – local public body confidences

[48] Having found the Regional District is authorized to withhold the records in dispute because the records are subject to legal advice privilege, it is not necessary for me to decide whether these records can also be withheld under litigation privilege or s. 12(3)(b). I decline to consider these issues.

CONCLUSION

[49] For the reasons given above, under s. 58 of FIPPA, I confirm the public is authorized to withhold the information in dispute under s. 14.

September 21, 2026

ORIGINAL SIGNED BY

Rene Kimmitt, Adjudicator

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