OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F26-98

Town of Comox

Carol Pakkala
Adjudicator

November 10, 2026

CanLII Cite: 2026 BCIPC 123
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 123

Summary: An individual (complainant) complained to the Office of the Information and Privacy Commissioner about the Town of Comox's refusal to waive the fee to process her access request. The adjudicator excused the fee on the grounds that the records related to a matter of public interest under s. 75(5)(b) of the *Freedom of Information and Protection of Privacy Act*.

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

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (complainant) asked the Town of Comox (Town) for access to records related to a real estate redevelopment proposal. The Town assessed a fee of $2250 to process the request.

[2] The complainant asked the Town to waive the fee on the basis that the records relate to a matter of public interest. The Town was not satisfied that s. 75(5)(b) of FIPPA[1] warranted a fee waiver.

[3] The complainant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Town's refusal to waive the fee. The OIPC's investigation and mediation process did not resolve this matter, and it proceeded to this inquiry.

[4] Both parties provided written inquiry submissions.

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

ISSUE AND BURDEN OF PROOF

[5] The only issue that I must decide in this inquiry is whether the fee should be excused, in whole or in part, under s. 75(5)(b) of FIPPA.[2]

[6] Under s. 58(3)(c), I have the power to confirm, reduce or excuse the fee. FIPPA does not identify who has the burden of proof for a fee waiver dispute. Previous orders have placed the burden on the complainant.[3] I agree with and adopt that same approach.

DISCUSSION

Background[4]

[7] The Town is in the process of considering a property development proposal to enable a six-lot subdivision of an ocean shoreline parcel. During this process, the Town considered multiple options for an access route to the subdivision.

[8] The complainant is a resident of the community adjacent to the proposed development. This community is represented by a neighbourhood group, and the complainant filed the access request on its behalf.

[9] There is no dispute between the parties that the proposed development has generated public interest, including interest in environmental planning matters.

Preliminary matter – earlier reasons for denial of fee waiver

[10] Both parties make submissions about earlier reasons given by the Town for refusing to waive the fee in the public interest. [5] While there is clearly a dispute between them about those earlier reasons, I have insufficient evidence before me to make any findings about them. Further, it is not necessary to do so because I will decide, based on the information before me, whether a fee waiver is warranted.

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[2] The reasonableness of this fee is outside the scope of this inquiry.
[3] Order F21-48, 2021 BCIPC 56 (CanLII) at paras 6-10. Recent orders have similarly placed the burden on the complainant including Order F26-80, 2026 BCIPC 100 (CanLII) at para 14; Order F26-70, 2026 BCIPC 89 (CanLII) at para 8; Order F26-45, 2026 BCIPC 54 (CanLII) at para 5; and Order F25-90, 2025 BCIPC 106 (CanLII) at para 4.
[4] This background information is from the submissions of the parties and is not in dispute.
[5] The complainant says the Town is backtracking from its earlier reasons for denying the fee waiver i.e., rejected for not being Town taxpayers: complainant's submission, p. 6 and Exhibit E, signed statement. The Town, at p. 2 of its reply submission challenges the complainant's recollection.

Public interest fee waiver - 75(5)(b)

[11] The relevant portions of s. 75 in this case provide as follows:

> **75** (5) If the head of a public body receives an applicant's written request to excuse payment of all or part of the fees required under subsection (1) (b), the head of the public body may excuse payment, if, in the head of the public body's opinion,
>
> …
>
> (b) the record relates to a matter of public interest, including the environment or public health or safety.

[12] Past orders have established a two-part test for determining whether a public interest fee waiver is appropriate. This test considers the following two questions:

1. Do the requested records relate to a matter of public interest?

2. If so, should the complainant be excused from paying all or part of the estimated fee?[6]

[13] As noted above, there is no dispute that the development itself is a matter of public interest. The Town does argue however that just because the records relate in some manner to a development that has generated public interest, does not mean the records themselves satisfy the public interest requirement under s. 75(5)(b).[7] For this reason, I consider next the question of whether the records relate to a matter of public interest.

Do the records relate to a matter of public interest?

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

1. Has the subject of the records been a matter of recent public debate?

2. Does the subject of the records relate directly to the environment, public health or safety?

3. Could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:

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[6] Order No. 332-1999, 1999 CanLII 4202 (BC IPC), p. 5; Order F17-38, 2017 BCIPC 42 (CanLII) at para 11; Order F19-09, 2019 BCIPC 11 (CanLII) at paras 12-14; Order F21-48, 2021 BCIPC 56 (CanLII) at para 17; and Order F24-19, 2024 BCIPC 25 (CanLII) at para 15.
[7] Town's initial submission, p. 1.

a. disclosing an environmental concern or a public health or safety concern? or
b. contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue? or
c. contributing to public understanding or debate about an important policy, law, program or service?

4. Do the records disclose how the public body is allocating financial or other resources?[8]

The access request

[15] The complainant says the access request is for records that bear directly on the formation of a significant and contested municipal land-use recommendation. The complainant says the request is for communications, technical input, agency responses, internal discussions, and professional advice underlying the Town's analysis and recommendation on access, environmental impacts, servicing and subdivision design.[9]

[16] The Town says the access request seeks the entire underlying administrative history associated with the development property.[10] The Town says the records responsive to it include routine administrative correspondence, preliminary inquiries, scheduling and coordination, servicing discussions, application administration, duplicate email chains, internal communications, and other records generated through the administration of a property and development file over many years.[11]

[17] I reviewed the access request.[12] In it, the complainant asked, on behalf of the neighbourhood group, for information related to the development application. Specifically, the complainant requested access to communications about the development between the Town and a list of agencies and individuals. That list includes various provincial government agencies, other federal and provincial public bodies, professionals engaged by the Town, and the K'ómoks First Nation. The complainant also requested access to internal communications about the development including within the planning, parks, engineering, and fire departments.

[18] I am satisfied that the records are entirely about the application to develop the particular parcel of land. The preamble to the request says it is about information related to the Town's review, analysis, and recommendations related

[8] Order No. 332-1999, 1999 CanLII 4202 BCIPC at 3.3 Applicable Principles.
[9] Complainant's submission, pp. 1-2.
[10] Town's initial submission, p. 5.
[11] Town's initial submission, p. 2.
[12] Access request dated May 27, 2026.

to the development. Each part of the request is qualified by the word "application" (pre and post) to develop that particular parcel.

Parties' submissions – public interest

[19] The Town says the proposed development has generated public interest. The Town further says that public interest in one or more aspects of a development does not extend to the entire underlying administrative history associated with that property.[13]

[20] The Town further says finding a public interest in the underlying administrative history risks creating a situation where any individual opposed to a development proposal could seek extensive historical and administrative records without paying the applicable processing fees, simply by identifying matters they believe warrant further study.[14]

[21] The complainant acknowledges a historical aspect to the request but says this aspect does not make the historical records merely administrative background. The complainant says the request identified specific categories of records reasonably expected to answer certain unresolved questions, including how the Town's park and development configuration emerged.[15]

[22] The complainant responds to the Town's concerns about opening a floodgate of requests by pointing out that future fee waiver requests would still have to be assessed on their own facts and satisfy the statutory requirements.[16]

Analysis – public interest

[23] The Town acknowledges the public interest in the development. I understand the Town's position to be that this interest extends only to technical and regulatory records, not to the underlying administrative record surrounding the property and development application.[17] For the reasons that follow, I am not persuaded by this argument.

[24] From the information before me, there is clearly public interest in the environmental impact of the development. This impact is determined by the choices made by the Town. Those choices include where road construction, grading, trenching, residential development, and associated ecological disturbance of sensitive ecosystems will occur and why.

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[13] Town's initial submission, p. 5.
[14] Town's reply submission, p.3.
[15] Complainant's submission, p. 7.
[16] *Ibid*.
[17] Town's initial submission, p. 2.

[25] During the process of making choices about a development application, the Town would of necessity, communicate both internally and externally about it. The request is for those communications. In my view, the responsive records are related therefore, to how and why the Town made choices about the development application.

[26] While some of the responsive records are likely to be administrative in nature, i.e., arranging meetings, I cannot see how or why that distinction diminishes the public interest.

[27] I find that the subject matter of the records is the proposed development and that this development relates directly to environmental concerns. I further find that sharing information about the Town's choices about the development could reasonably be expected to yield a public benefit. This benefit is the contribution to the public's understanding of municipal planning decisions that have an environmental impact.

[28] For all of the reasons above, I find that the records relate to a matter of public interest.

Step 2: Should the complainant be excused from paying the fee?

[29] At step one, I found that the records relate to a matter of public interest. The next step in the s. 75(5)(b) analysis is to consider whether the complainant should be excused from paying all or part of the estimated fee.

[30] Previous orders have considered a non-exhaustive list of factors relevant to the question of whether an applicant should be excused from paying all or part of a fee.[18] Here, I consider only those factors relevant to this particular case, as argued by the parties.[19]

[31] The factors I find relevant here are the respondent's purpose in making the request and ability to share the information for the benefit of the public, whether the information is already publicly available from other sources, and the cost burden of granting a fee waiver.

Purpose of making the request and ability to share

[32] This factor is about whether the complainant made the request for a purpose that can reasonably be expected to benefit the public rather than for some personal or private benefit. It is not about the extent to which there is public

[18] Order F21-48, 2021 BCIPC 56 (CanLII) at para 50.
[19] For a similar approach, see Order F26-70, 2026 BCIPC 89 (CanLII) at paras 37-48 and Order F25-90, 2025 BCIPC 106 (CanLII) at para 10.

interest in the information in the records; that has already been addressed in the first step of the s. 75(5)(b) analysis.[20]

[33] The complainant says she has demonstrated a clear public benefit purpose. She further says she has the intention and ability to share the information to the affected neighbourhood and broader community.[21]

[34] The Town does not dispute the complainant's purpose or intent. The Town instead says the intent to share for the public benefit, on its own, does not establish that a fee waiver is warranted.

[35] I find that the complainant made the request on behalf of a neighbourhood group and not for any private purpose. I further find the complainant has the intent and ability to share the information she receives in response to the access request for the benefit of the public.

Whether the information is already publicly available

[36] Previous orders have considered whether the information the applicant seeks to access is already available to the public through other avenues.[22]

[37] The Town says the complainant had access to substantial technical information both through the public engagement process and from external agencies.[23] The Town says the complainant has not established what additional substantive information relevant to the claimed public interest remains unavailable.[24]

[38] The Town also says it undertook extensive engagement with neighbouring residents outside of its formal access to information process.[25] The Town provided a detailed chronology of its voluntary public disclosure and community engagement efforts.[26]

[39] In response to the availability of information argument, the complainant acknowledges that the Town made some information available but also identifies, in considerable detail, specific categories of information that remain publicly unavailable.[27] For example, the complainant identifies that the Town released a

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[20] Order F26-70, 2026 BCIPC 89 (CanLII) at para 37 and Order F26-29, 2026 BCIPC 37 (CanLII) at paras 52-54.
[21] Complainant's submission, p. 8.
[22] Order F25-90, 2025 BCIPC 106 (CanLII) at para 16 and Order 01-35, 2001 CanLII 21589 (BC IPC) at paras 47 and 50.
[23] Town's initial submission, p. 3.
[24] *Ibid*.
[25] Town's initial submission, p. 2.
[26] Town's initial submission, Appendix A.
[27] Complainant's submission, pp. 2-4.

staff report containing a summary of recommendations it attributed to an ecosystem biologist. The complainant says the access request seeks the Town's full referral to, and response from, the biologist, not merely the Town's summary.[28]

[40] From the Town's chronology, I can see that in response to the public interest about the development, it: answered written questions from the public, held public information sessions, hosted neighbourhood representatives to present their concerns, and released technical reports ordinarily only required during the permit stage of the development application process.

[41] I am satisfied that the Town proactively engaged with the public interest in the development.[29] This engagement does not, however, answer the question about whether the specific information the applicant requested is already publicly available.

[42] After considering all of the above, I am satisfied that the information already publicly available is not the information the complainant is seeking in her access request. The complainant seeks access to information about how the Town came to make choices about the development, including its internal deliberations, consultations with stakeholders, and opinions of external consultants. I find that this information is not already publicly available.

[43] As somewhat of an outlier to its argument that the complainant has not established what information is not publicly available, the Town says "[I]nformation that has not yet been prepared cannot be disclosed through an FOI request."[30]

[44] The Town says that the complainant appears to assume the existence of an underlying analysis about alternative access routes to the development. The Town says it chose not to proceed with analysis about alternative routes and that the complainant disagrees with that decision. The Town says this disagreement is not evidence that the responsive records include an existing comprehensive analysis of the alternative access routes.

[45] In my view, the Town's decision to not proceed with the analysis of alternative routes is information that is likely to be documented in the responsive records and is precisely the type of information the complainant seeks.

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[28] Complainant's submission, p. 2.
[29] The conduct of the parties is also a circumstance I considered. Neither party alleges the other behaved uncooperatively in the access process, so I found it unnecessary to include this factor in the analysis.
[30] Town's reply submission, p. 1.

Cost burden

[46] Previous orders have considered whether granting a fee waiver would unreasonably shift the cost burden from an access applicant to the public body.[31]

[47] The Town says the fee at issue represents only a portion of the actual public resources required to process the request. The Town says the work of reviewing records for applicable exceptions, consulting third parties or other public bodies, and severing information, is not recoverable through FIPPA's fee provisions and must be borne by the Town regardless of the fee charged to the complainant.[32]

[48] The Town also identifies its concern that a public interest fee waiver in relation to a development proposal is problematic in the context of provincially mandated housing reforms. The Town says the same municipal resources required to undertake the responsibilities associated with those reforms are also required to search for, retrieve, and process extensive development related access requests.[33]

[49] The complainant says the Town's concern about the cumulative administrative burden of hypothetical future requests cannot substitute for assessing the evidence in this inquiry.[34]

[50] The Town has not provided me with specific details about how granting the fee waiver would impact its finances. The information it does provide is about responding to access requests generally. Therefore, I find that I do not have a sufficient basis to assess if, or how, waiving this fee would unreasonably shift the cost burden to the Town.

Conclusion, s. 75(5)(b)

[51] I found above that the responsive records relate to a matter of public interest. I also found that the complainant made the request on behalf of a neighbourhood group affected by the development and can effectively share the information she receives in response to the request. I was not persuaded that the assessed fee unreasonably shifts the cost burden from the complainant to the Town.

[52] After considering all relevant circumstances, I find it is appropriate to excuse the complainant from paying all fees associated with the access request.

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[31] Order F25-90, 2025 BCIPC 106 (CanLII) at para 26, Order 02-28, 2002 CanLII 42459 (BC IPC) at para 33, and Order F19-09, 2019 BCIPC 11 (CanLII) at para 49.
[32] Town's initial submission, p. 5.
[33] Town's initial submission, p. 6.
[34] Complainant's submission, p. 7.

Remedy, s. 58(3)(c)

[53] As the Commissioner's delegate, under s. 58(3)(c), I have the authority to confirm, excuse or reduce the disputed fee in the appropriate circumstances. The jurisdiction to intervene under s. 58(3)(c) is broad and it enables me, in appropriate cases, to substitute my decision for that of the head of the public body.[35]

CONCLUSION

[54] For the reasons given above, under s. 58(3)(c), I excuse the complainant from paying the $2250 fee.

November 10, 2026

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No.: F26-02261

[35] Order F21-10, 2021 BCIPC 14 at para 28 citing Order 332-1999,1999 CanLII 4202 (BC IPC), p. 3; Order 01-04 2001 CanLII 21558 (BC IPC) at para 14; and Order 01-24, 2001 CanLII 21578 (BC IPC), p. 8.