



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
*for British Columbia*

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Order F15-20

## CITY OF COURTENAY

Elizabeth Barker  
Senior Adjudicator

May 4, 2015

CanLII Cite: 2015 BCIPC 22  
Quicklaw Cite: [2015] B.C.I.P.C.D. No. 22

**Summary:** The applicant requested that the City of Courtenay provide information about City council resolutions and votes concerning a privately owned property. The City refused to disclose information on the grounds that disclosure would reveal the substance of City council's *in camera* deliberations (s. 12(3)(b) of FIPPA) and because the information was protected by solicitor client privilege (s. 14 of FIPPA). The adjudicator found that most of the information could be withheld under s. 12(3)(b). However, the balance of the information in dispute (i.e., names of meeting attendees, dates and times of the meetings, and the date the minutes were adopted, signed and certified as correct) could not be withheld under either s. 12(3)(b) or s. 14.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 12(3)(b) and 14.

**Authorities Considered: B.C.:** Order No. 48-1995, [1995] B.C.I.P.C.D. No. 21; Order No. 67-1995, [1995] B.C.I.P.C.D. No. 40; Order 00-11, 2000 CanLII 10554 (BC IPC); Order 00-49, 2000 CanLII 14414 (BC IPC); Order 00-14, 2000 CanLII 10836 (BC IPC); Order 01-06, 2001 CanLII 21560 (BC IPC); Order 01-53, 2001 CanLII 21607 (BC IPC); Order 02-22, 2002 CanLII 42447 (BC IPC); Order 02-38, 2002 CanLII 42472 (BC IPC); Order 02-47, 2002 CanLII 42481 (BC IPC); order F03-09, 2003 CanLII 49173 (BC IPC); Order 03-28, 2003 CanLII 49207 (BC IPC); Order F05-13, 2005 CanLII 11964 (BC IPC); Order F08-02, 2008 CanLII 1647 (BC IPC); Order F10-23, 2010 BCIPC 34 (CanLII); Order F12-03, 2012 BCIPC 3 (CanLII); Order F12-11, 2012 BCIPC 15 (CanLII); Investigation Report F13-05, 2013 BCIPC No. 33; Order F13-10, 2013 BCIPC 11 (CanLII); Order F14-07, 2014 BCIPC 8 (CanLII); Order F14-07, 2014 BCIPC 8 (CanLII).

**Cases Considered:** *Aquasource Ltd. v. British Columbia Freedom of Information and Protection of Privacy Commissioner*, 1998 CanLII 6444 (BC CA); *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII); *R.v. B.*, 1995 CanLII 2007 (BC SC); *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37; *Liquor Control Board of Ontario v. Magnotta Winery Corporation*, 2010 ONCA 681; *Imperial Oil Limited v. Alberta (Information and Privacy Commissioner)*, 2014 ABCA 231.

## INTRODUCTION

[1] The applicant requested that the City of Courtenay (“City”) provide information about council resolutions and votes concerning a campground and the individuals who own the campground. The applicant explained that he only wanted the resolutions and voting record of the mayor and councillors, and he did not want any detail of their deliberations.

[2] The requested information is contained in the minutes of *in camera* City council meetings. The City provided the applicant with a letter containing an excerpt from the minutes of one *in camera* meeting.<sup>1</sup> However, the City refused to disclose the rest of the requested information on the grounds that disclosure would reveal the substance of deliberations of council meetings held in the absence of the public (s. 12(3)(b) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

[3] The applicant asked the Office of the Information and Privacy Commissioner (“OIPC”) to review the City’s decision. Mediation did not resolve the matter and the applicant requested that it proceed to a written inquiry.

[4] After the Notice of Inquiry was issued, the City informed the OIPC that it was also applying s. 14 of FIPPA to the information in dispute because it was protected by solicitor client privilege. The OIPC granted permission to add s. 14 to the issues to be determined in the inquiry.

[5] The parties each provided an initial and a reply submission. The OIPC approved the City’s request to submit portions of its initial submission and supporting affidavit *in camera*.

## ISSUE

[6] Is the City authorized to refuse access to the requested information under s. 12(3)(b) or s.14 of FIPPA? The burden of proving that the applicant has no right to access the information rests with the City under s. 57(1) of FIPPA.

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<sup>1</sup> The letter is exhibit C to the affidavit of the City’s Director of Legislative Services, who is also the City’s Privacy Coordinator. The excerpts are from a September 17, 2012 *in camera* meeting.

## DISCUSSION

[7] **Background** – This case involves a privately owned property (“Maple Pool Property”) located by the Tsolum River in the City. The Maple Pool Property was being used as a campground and RV park, and in late 2009 and early 2010 it experienced flooding, which resulted in the evacuation of some individuals who were living there year-round. The City determined that the use of the Maple Pool Property as a year-round campground and RV park was not permitted under the City’s zoning bylaws. It commenced efforts to encourage the property owner to voluntarily comply with the bylaws. When its initial efforts did not resolve the matter, the City filed a claim against the property owner in the B.C. Supreme Court.

[8] The applicant is a member of a group of concerned citizens who disagree with the City’s approach to the Maple Pool Property and want the City to end the litigation against the property’s owners.<sup>2</sup>

[9] **Information in Dispute** – The information requested by the applicant is contained in the written minutes of 23 *in camera* council meetings. The City withheld the entire contents of all 23 minutes under s. 12(3)(b). With only one exception (exhibit E), the City also withheld the records in their entirety under s. 14.

[10] **Preliminary Matter** – Although s. 25(1)(b) is not mentioned in the Notice of Inquiry or the Investigator’s Fact Report, the applicant submits in his reply submissions that it is an issue in this case. He says that the City is required by s. 25(1)(b) to disclose the disputed information.<sup>3</sup>

[11] Section 25(1)(b) states:

25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

...

(b) the disclosure of which is, for any other reason, clearly in the public interest.

[12] Past orders of the OIPC have said parties may not raise new issues at inquiry without permission because, among other things, it undermines the effectiveness of the mediation process that assists in defining and crystallizing

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<sup>2</sup> Applicant’s initial submissions, p. 1.

<sup>3</sup> Applicant’s reply submission, p. 4.

the issues prior to inquiry.<sup>4</sup> The applicant does not explain why he did not raise the issue sooner or request permission to add it to the inquiry. Absent any such explanation, I cannot see why he should be permitted to address it at this late stage of the inquiry. Furthermore, disclosure under s. 25(1) requires that there be a need for disclosure “without delay”<sup>5</sup> and based on my review of the records and the parties’ submissions, I can see no element of urgency in this case. Therefore, I will not consider s. 25 any further.

[13] **Local public body confidences** - The City submits that the information at issue would reveal the substance of deliberations of *in camera* council meetings, so it may be withheld under s. 12(3)(b). The relevant portions of s. 12 of FIPPA are 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.
- (4) Subsection (3) does not apply if
  - (a) the draft of the resolution, bylaw, other legal instrument or private Bill or the subject matter of the deliberations has been considered in a meeting open to the public, ....

[14] In Order 00-11, former Commissioner Loukidelis described the three conditions that must be met in order for a local public body to withhold information under s. 12(3)(b):

... a local public body can rely on s.12(3)(b) only if it proves all of the following things:

1. A meeting of its elected officials, or of its governing body or a committee of its governing body, was actually held;
2. An Act of the Legislature, or a regulation under the *Freedom of Information and Protection of Privacy Act*, authorized the holding of that meeting in the absence of the public; and
3. Disclosure of the requested information would reveal the substance of deliberations of that meeting.

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<sup>4</sup> Order F10-23, 2010 BCIPC 34 (CanLII) at para. 4; Order F08-02, 2008 CanLII 1647 (BC IPC), para. 30.

<sup>5</sup> Investigation Report F13-05, 2013 BCIPC No. 33; Order 02-38, 2002 CanLII 42472 (BC IPC), para. 53; and Order 03-28, 2003 CanLII 49207 (BC IPC), para. 25; Order F12-03, 2012 BCIPC 3 (CanLII), para 6.

If a local public body fails, in a given inquiry, to prove all three of those things, it cannot use s. 12(3)(b) to refuse to disclose information.<sup>6</sup>

[15] Previous Orders<sup>7</sup> have applied the above approach when analyzing a public body's application of s. 12(3)(b) to information, and I will do the same here.

*Did the in camera meetings take place?*

[16] The City's Director of Legislative Services ("Director") provided the following information about the City's practice regarding recording the minutes of *in camera* meetings:

Our practice at the City is to have a separate set of minutes for meetings or portions of meetings that are closed to the public. One set of minutes will set out the resolution passed by Council under section 90(1) of the *Community Charter* to close the meeting or part of the meeting. The second set of the minutes sets out the deliberation and any resolutions passed during the closed meeting or part thereof.

...The voting record in respect of resolutions is not expressly set out in the Minutes. Each resolution will show which Councillor moved and seconded a particular resolution. If the resolution is noted as "Carried", it means that every Councillor who attended that particular meeting voted in favour of the Resolution unless noted otherwise. Where a particular Councillor(s) voted against a resolution it is noted in the Minutes at the end of the resolution that the Councillor(s) was "opposed".<sup>8</sup>

[17] The above description of the City's practices is confirmed by the exhibits attached to the Director's affidavit, which include the minutes of each of the 23 *in camera* meetings and the minutes of the preceding public meeting containing the resolution to meet *in camera*. The City's evidence satisfies me that the *in camera* meetings took place on the dates recorded in their respective minutes and were closed to the public.

*Statutory authority to exclude the public*

[18] The City submits that its statutory authority to close the relevant meetings to the public comes from the *Community Charter* RSBC 2003, c. 26, specifically ss. 90(1)(d),(f),(g) and (i). The applicant does not make any submissions on that point.

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<sup>6</sup> Order 00-11, 2000 CanLII 10554 (BC IPC), p. 5.

<sup>7</sup> Order 00-14, 2000 CanLII 10836 (BC IPC); Order F14-07, 2014 BCIPC 8 (CanLII); Order F13-10, 2013 BCIPC 11 (CanLII).

<sup>8</sup> Director's affidavit, paras. 12-13.

[19] The portions of the *Community Charter* which are relevant in this case are as follows:

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:

...

(d) the security of the property of the municipality;

...

(f) law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;

(g) litigation or potential litigation affecting the municipality;

...

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

...

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.

[20] For each *in camera* meeting, the City provided the minutes of the preceding public meeting at which the resolution to meet in the absence of the public was passed. Each resolution lists the grounds under s. 90(1) for excluding the public. It is evident that the Maple Pool Property was not the only topic of *in camera* discussions at those meetings, therefore the s. 90(1) grounds are varied and reflect the diversity of matters discussed.

[21] From my review of the *in camera* minutes, I find that the discussions regarding the Maple Pool Property plainly involved matters listed in ss. 90(1)(d),(f),(g) and (i). In only one instance - February 18, 2013 - does the resolution recording why the meeting was going *in camera* list reasons that were clearly applicable to the other topics discussed rather than to the Maple Pool Property.<sup>9</sup> Nevertheless, I am satisfied that ss. 90(1)(g) and (i) could also have

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<sup>9</sup> Section 90(1)(c): labour relations or other employee relations and s. 90(1)(d): acquisition, disposition or expropriation of land or improvements.

been relied upon as grounds to go *in camera* at the February 18, 2013 meeting because the Maple Pool Property discussion dealt with legal advice and litigation.

[21] In conclusion, the City has satisfactorily established that it was authorized by the *Community Charter* to exclude the public from the meetings in question.

#### *Substance of deliberations*

[22] The City submits that disclosure of the minutes from the *in camera* meetings would reveal the substance of deliberations at those meetings. For instance, the City explains that the *in camera* minutes include information about who introduced, seconded or opposed a resolution, so reveal the positions that individual councillors held during the deliberations.<sup>10</sup> The City also submits that one would be able to draw accurate inferences about the deliberations based on what is recorded in the *in camera* minutes.<sup>11</sup>

[23] The applicant submits that *in camera* meeting resolutions and the details of how council members voted do not form part of the “substance of the deliberations” of an *in camera* meeting.

[24] In Order 00-11, former Commissioner Loukidelis provided the following guidance on the meaning of the term “substance of deliberations”:

The first question is what is meant by the words “substance” and “deliberations” in s. 12(3)(b). In my view, “substance” is not the same as the subject, or basis, of deliberations. As *Black’s Law Dictionary*, 8<sup>th</sup> ed., puts it, ‘substance’ is the essential or material part of something, in this case, of the deliberations themselves...

Without necessarily being exhaustive of the meaning of the word “deliberations”, I consider that term to cover discussions conducted with a view to making a decision or following a course of action...<sup>12</sup>

[25] I have reviewed the content of the *in camera* minutes, and absent any evidence to the contrary, I conclude that disclosure of the names of attendees, the dates and times of the meeting, the date the minutes were adopted and signed and who certified the minutes as correct would not reveal the substance of deliberations.<sup>13</sup> However, I find that disclosing the balance of the information in dispute would directly reveal, or permit the reader to draw accurate inferences about the substance of deliberations at the *in camera* meetings. That is because

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<sup>10</sup> City’s initial submissions, para. 50.

<sup>11</sup> City’s initial submissions, para. 49.

<sup>12</sup> Order 00-11, supra at p. 5.

<sup>13</sup> For a similar finding regarding attendee names, dates and times of meetings and subject matter see: Order F05-13, 2005 CanLII 11964 (BC IPC); Order 00-49, 2000 CanLII 14414 (BC IPC), para. 42; Order 00-14, supra at para. 21.

the information divulges what matters were discussed, the views council members expressed about those matters and how they voted. This finding is consistent with previous Orders where it was also found that the content of *in camera* minutes and how voting proceeded would reveal the substance of deliberations at *in camera* meetings.<sup>14</sup>

#### Section 12(4)(a)

[26] Section 12(4)(a) states that s. 12(3) does not apply if the subject matter of the deliberations has been considered in a meeting open to the public.

[27] The applicant submits that the City and some council members have publicly discussed the issues related to the Maple Pool Property and the related legal action. He provided newspaper clippings about the Maple Pool Property and the City's lawsuit as well as a copy of a BC Supreme Court decision and related transcripts regarding an application to add parties to the City's lawsuit. The applicant believes that some council members have made misleading public statements about how they voted, so the voting records of the individual elected officials should be released.<sup>15</sup> He writes: "Is it reasonable that they, as elected officials, should be able to discuss in public those aspects of this matter that they select, but then hide behind the *in camera* shield when it suits them?"<sup>16</sup>

[28] While the City acknowledges that the Maple Pool Property was an issue in recent municipal elections, it disputes that it publicly disclosed the information in dispute.<sup>17</sup>

[29] The subject matter of the *in camera* deliberations was about matters listed in ss. 90(1)(d),(f),(g) and (i) of the *Community Charter*, namely security of municipal property, the conduct of an investigation under, or enforcement of, an enactment, and litigation and/or legal advice – all in relation to the Maple Pool Property. There is nothing in the inquiry materials, including the applicant's news clippings, to suggest that the City considered the subject matter of these deliberations at a meeting open to the public (or in any other public setting, for that matter).

[30] While the news clippings the applicant provides indicate that the *topic* of the Maple Pool Property was publicly discussed by some members of City council, this does not satisfy the requirements of s. 12(4). I agree with the

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<sup>14</sup> For example: Order 00-11, *supra*; Order 00-14, *supra*; Order 02-22, 2002 CanLII 42447 (BC IPC); Order 02-47, 2002 CanLII 42481 (BC IPC); Order 00-49, *supra*; F03-09, 2003 CanLII 49173 (BC IPC) at para. 24; F12-11, 2012 BCIPC 15 (CanLII) at para. 23; F05-13, *supra*; Order 48-1995, (upheld on judicial review in *Aquasource Ltd. v. British Columbia Freedom of Information and Protection of Privacy Commissioner*, 1998CanLII 6444 (BC CA)).

<sup>15</sup> Applicant's initial submissions, summary.

<sup>16</sup> Applicant's initial submissions, para 2.

<sup>17</sup> City's reply submissions, para. 5.

following statement on this very point in Order 02-47 where Adjudicator Skinner said:

...such an approach could destroy the goal of s. 12(3)(b), which is to provide an exception consistent with the intent of *in camera* meetings, the intent being to afford elected local officials an opportunity - in fact, a legislated encouragement - to freely and privately debate contentious issues.

Section 12(4) refers to the "subject matter of the deliberations". I would restrict the phrase "subject matter of the deliberations" to mean the actual substance of what was discussed or presented at the *in camera* meeting – for example, a report, motion or discussion of a particular proposal or position – rather than the more general subject matter of the discussion, which may, again only as an example, be a long-standing local issue concerning land use.<sup>18</sup>

[31] This approach is also consistent with Order 02-22<sup>19</sup> where former Commissioner Loukidelis said that he was not persuaded that a general discussion of a subject would qualify as a consideration of the subject matter of the deliberations. I make a similar finding here – that the subject matter of the *in camera* deliberations were not considered in a meeting open to the public, so s. 12(4)(a) does not apply.

[32] In summary, I find that the information in dispute is in the minutes of *in camera* meetings that took place, and the City was authorized by the *Community Charter* to hold those meetings in the absence to the public. With the exception of the names of attendees, the dates and times of the meeting, the date the minutes were adopted and signed and who certified the minutes as correct, I find that the information in dispute would reveal the substance of the *in camera* deliberations. Finally, I find that the subject matter of the *in camera* deliberations was not considered in any meeting open to the public, so s. 12(4)(a) does not apply. Therefore, the only information in dispute that may not be withheld under s. 12(3)(b) is the names of attendees, the dates and times of the meetings, the date the minutes were adopted and signed and who certified the minutes as correct. I have highlighted that information in a copy of the records that has been provided to the City along with this order.

[33] **Solicitor client privilege** – Given that I have already found that the City is authorized to withhold most of the information in dispute under s. 12(3)(b), I will only consider the application of s. 14 to the balance of the information in dispute (i.e., the names of attendees, the dates and times of the meeting, when the minutes were adopted and signed and who certified the minutes as correct).

<sup>18</sup> Order 02-47, *supra* at paras. 21-22.

<sup>19</sup> Order 02-22, *supra* at para. 26. The same approach was taken in Order F14-07, 2014 BCIPC 8 (CanLII).

[34] Section 14 of FIPPA states:

- 14 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

[35] The law is well established that s.14 of FIPPA encompasses both types of solicitor client privilege found at common law: “legal advice”, the privilege applicable to communications between solicitor and client for the purposes of obtaining legal advice, and “litigation privilege”, which applies to communications and material produced or brought into existence for the dominant purpose of litigation.<sup>20</sup>

*Legal advice privilege*

[36] The City submits that legal advice privilege applies to some of the *in camera* meeting minutes.<sup>21</sup> The applicant submits that he is not requesting any information that would reveal details of the legal advice provided to the City and adds that disclosing the information in dispute would not harm any legal action the City is pursuing.<sup>22</sup>

[37] When deciding if legal advice privilege applies, OIPC orders<sup>23</sup> have consistently applied the following test:

... the privilege does not apply to every communication between a solicitor and his client but only to certain ones. In order for the privilege to apply, a further four conditions must be established. Those conditions may be put as follows:

1. there must be a communication, whether oral or written;
2. the communication must be of a confidential character;
3. the communication must be between a client (or his agent) and a legal advisor; and
4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

If these four conditions are satisfied then the communications (and papers relating to it) are privileged.<sup>24</sup>

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<sup>20</sup> *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII), para. 26.

<sup>21</sup> City’s initial submissions, para. 57, exhibits F, L, M, N, Q, S, T, U, V, W, Y, Z, AA.

<sup>22</sup> Applicant’s initial submissions, para. 4 and reply submissions, p. 3.

<sup>23</sup> See: Order 01-53, 2001 CanLII 21607 (BC IPC) and Order F13-10, *supra*.

<sup>24</sup> *R.v. B.*, 1995 CanLII 2007 (BC SC), para. 22.

[38] I have reviewed the remaining information in dispute, which is the names of attendees, the dates and times of the meeting, when the minutes were adopted and signed and who certified the minutes as correct. Absent any evidence or argument suggesting otherwise, I find that this information neither directly nor indirectly reveals communications between a client and a legal advisor. Nor is it related to seeking, formulating or giving legal advice. Therefore, it does not meet the necessary conditions to qualify as solicitor client privileged information.

#### *Settlement privilege*

[39] The City also submits that some of the information in dispute<sup>25</sup> is subject to the common law “settlement privilege” and that the s. 14 exemption applies to such information.<sup>26</sup> It references three cases as support for this proposition: *Sable Offshore Energy Inc. v. Ameron International Corp.* (“*Sable Offshore*”), *Liquor Control Board of Ontario v. Magnotta Winery Corporation* (“*Magotta Winery*”), and *Imperial Oil Limited v. Alberta (Information and Privacy Commissioner)* (“*Imperial Oil*”).<sup>27</sup>

[40] In *Sable Offshore*, Sable settled its lawsuit against a number of defendants, and the remaining defendants sought access to the amounts of those settlements under Nova Scotia’s *Civil Procedure Rules*. Sable claimed the amounts were protected by settlement privilege. Supreme Court of Canada Justice Abella summarized the basis for settlement privilege as follows:

Settlement negotiations have long been protected by the common law rule that “without prejudice” communications made in the course of such negotiations are inadmissible.... The settlement privilege created by the “without prejudice” rule was based on the understanding that parties will be more likely to settle if they have confidence from the outset that their negotiations will not be disclosed.<sup>28</sup>

[41] While the Court found that settlement negotiations have long been protected by the common law rule of settlement privilege and the records were subject to that particular privilege, there is no mention in the decision of solicitor client privilege and any relationship it may have to settlement privilege. Certainly, it did not find that settlement privilege is a type of solicitor client privilege.

[42] In *Imperial Oil*, the Alberta Court of Appeal examined s. 27(1)(a) of Alberta’s *Freedom of Information and Protection of Privacy Act*, which states that

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<sup>25</sup> Exhibits G through AA.

<sup>26</sup> City’s initial submissions, paras. 58-63.

<sup>27</sup> *Sable Offshore*, 2013 SCC 37; *Magnotta Winery*, 2010 ONCA 681; *Imperial Oil*, 2014 ABCA 231 (Leave to appeal dismissed February 19, 2015).

<sup>28</sup> *Sable Offshore*, supra at para. 13.

a public body may refuse to disclose information that is “subject to *any type of legal privilege*, including solicitor client privilege or parliamentary privilege” [emphasis added]. Section 14 in BC’s FIPPA does not include such broad and inclusive language. BC’s FIPPA provides an express statutory exemption for solicitor client privilege but, unlike in Alberta, does not include other types of legal privilege.

[43] In *Magnotta Winery*, the Ontario Court of Appeal dealt with s. 19 of Ontario’s *Freedom of Information and Protection of Privacy Act*, which stated that “a head may refuse to disclose a record that is subject to solicitor-client privilege or that was *prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation*” [emphasis added]. The Court found that what it called the “second branch” of s. 19 emphasized above is not limited to litigation privilege and absent clear and explicit statutory language it should not be taken as excluding information that at common law is protected by settlement privilege. Section 14, however, does not include this same language, so this case does not persuade me that s. 14 includes information protected by settlement privilege.

[44] In my view, none of the decisions referenced by the City stand for the proposition that settlement privilege is a type of solicitor client privilege. Further, the City asserts that BC Courts and the Commissioner have found that s. 14 includes settlement privilege;<sup>29</sup> however, it did not identify the cases where that was decided. My review of BC Orders does not support the City’s submission that s. 14 includes settlement privilege. For example, in Order No. 67-1995 former Commissioner Flaherty wrote:

With respect, I do not think that the settlement document privilege has any distinct status under the Act. The Legislature specifically incorporated solicitor-client privilege in section 14. In general, I prefer not to incorporate various rules of civil courts into the freedom of information regime, unless they are specifically recognized in the Act.<sup>30</sup>

[45] Further, in Order 01-06, former Commissioner Loukidelis found no support for the proposition that settlement privilege is a type or aspect of legal advice or litigation privilege. He concluded that the s. 14 exemption does not apply to such information:

My authority to authorize or require a public body to refuse access is statutory. It is not open to me to read an exception to the right of access into a section of the Act or to create an exception. As Assistant Commissioner Mitchinson put it, in Order PO-1732-F, [1999] O.I.P.C. No.162, at para. 61, the Act “contains an exhaustive list of the exemptions which are available to an institution should it wish to deny access to a particular record.” It would, in

<sup>29</sup> City’s initial submissions, para. 62.

<sup>30</sup> Order No. 67-1995, p. 8.

my view, be an error for me to interpret s. 14 as incorporating ‘settlement privilege’.<sup>31</sup>

[46] I agree with the approach previously taken in Orders 01-06 and No. 67-1995 that s. 14 of FIPPA does not provide a disclosure exemption for information that is protected by settlement privilege.

[47] In conclusion, I find that the City is not authorized under s. 14 to refuse to disclose the remaining information in dispute, which is the meeting attendees’ names, the date and time of the meetings, the date the minutes were adopted and signed and who certified the minutes as correct.

## **CONCLUSION**

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

1. Subject to paragraph 2 below, the City is authorized under s. 12(3)(b) of FIPPA to refuse access to the requested information.
2. The City is not authorized under s. 12(3)(b) or s. 14 of FIPPA to refuse access to the information that has been highlighted in a copy of the records that accompanies the City’s copy of this Order.

[49] I require the City to give the applicant access to the information in paragraph 2 above, by June 6, 2015, and to provide the Registrar of Inquiries with a copy of its cover letter and the records sent to the applicant.

May 4, 2015

## **ORIGINAL SIGNED BY**

\_\_\_\_\_  
Elizabeth Barker, Senior Adjudicator

OIPC File: F13-54902

<sup>31</sup> Order 01-06, 2001 CanLII 21560 (BC IPC), p.5.