



Order F23-57

CITY OF PORT COQUITLAM

Allison J. Shamas
Adjudicator

August 2, 2023

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Summary: The applicant requested meeting minutes and communications containing information about the process and history of how a parking lot development in the City of Port Coquitlam (the City) became a condominium development. The City disclosed responsive records but withheld information under ss. 12(3)(b) (local public body confidences), 13(1) (advice and recommendations), 14 (solicitor-client privilege), and 17(1) (harm to the financial or economic interests of a public body) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator determined that the City was authorized to withhold some information under ss. 12(3)(b) and 13(1), but not under ss. 14 and 17(1). The adjudicator ordered the City to give the applicant access to the information the City was not authorized to refuse to disclose under ss. 12(3)(b), 13(1), 14 and 17(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 12(3)(b), 13(1), and 17(1); *Community Charter*, SBC 2003 c. 26 ss. 90(1), 92(a)(b), and 93(a).

INTRODUCTION

[1] The applicant requested meeting minutes and communications containing information about the process and history of how a property in the City of Port Coquitlam (the City) that he referred to as the McAllister parking lot development became a condominium development called the Quarry Rock Development. In its initial response to the applicant, the City withheld the responsive records in their entirety citing the Community Charter¹ which permits city council meetings to be conducted in the absence of the public.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision.

¹ *Community Charter*, SBC 2003 c. 26, s. 90(1).

[3] Soon after the request, the City provided a revised response to the applicant. In its revised response, the City disclosed the responsive records but advised the applicant that it was withholding some information under ss. 12(3)(b) (local public body confidences), 13(1) (advice and recommendations), 14 (solicitor-client privilege), 17(1) (harm to the financial or economic interests of a public body), and 21(1) (harm to third-party business interest) of FIPPA.²

[4] Mediation did not resolve the matter and it proceeded to inquiry.

[5] Section 56(4)(b) of FIPPA authorizes the OIPC to accept submissions in the absence of the public and other parties to an inquiry. The process is referred to as accepting materials *in camera*. In the instant inquiry, the OIPC allowed the City to file parts of its submissions and affidavit evidence *in camera*.

[6] The applicant participated in the inquiry but chose not to provide a submission.

Preliminary Matter

Section 21(1) Not in Issue

[7] While the Notice of Inquiry lists s. 21(1) as an issue to be determined, the City did not mark any of the records as withheld under s. 21(1) or address s. 21(1) in its submissions. The applicant did not make a submission. Neither party explained the reason for the omission of s. 21(1). In the circumstances, I conclude s. 21(1) is not in issue, and I will not consider it further.

ISSUES

[8] The issues to be decided in this inquiry are whether the City is authorized to refuse to disclose the information at issue under ss. 12(3)(b), 13(1), 14, and 17(1) of FIPPA. Section 57(1) of FIPPA places the burden on the City to prove that the applicant has no right of access to the information withheld under all four sections.

² While the City initially stated that it was withholding information under s. 23, in subsequent correspondence the City advised the applicant that it was withholding information under s. 21, not s. 23 of FIPPA.

DISCUSSION

Background

[9] The property that is the subject of the request is located at 2251 McAllister Avenue in downtown Port Coquitlam (the McAllister Property). The McAllister Property was owned by the City. In or about December of 2019 the City sold the McAllister Property to Quarry Rock Developments to construct a condominium development.

[10] The applicant seeks information about the process and history of how the McAllister Property parking lot development became a condominium development.

[11] The Community Charter is provincial legislation that establishes the statutory framework for all municipalities in British Columbia except the City of Vancouver. The Community Charter provides for council and council committee meetings to be conducted in the absence of the public in specified circumstances.

[12] The information requested by the applicant is found in records related to a series of City council committee meetings that the City asserts were conducted in the absence of the public in accordance with the Community Charter. The meetings took place between January of 2018 and April of 2020. During the meetings, the council committees discussed other City business in addition to the McAllister Property.

Records and Information in Dispute

[13] There are 212 pages of responsive records in this inquiry, and the City severed information from just under half. While the City severed information from a significant number of pages, the severance was limited, and the City disclosed most of the information in the records.

[14] The records relate to City Council committee Meetings that the City asserts were conducted in the absence of the public (Meetings). The information in dispute is found in the agendas and minutes of the Meetings (Agendas and Minutes) and reports, presentations, and a letter of intent that the City asserts were reviewed at the Meetings (Materials).

Section 12(3)(b) - Local public body confidences

[15] Section 12(3)(b) is a discretionary exception that allows a public body to refuse to disclose information that would reveal the substance of deliberations of a meeting of elected officials or a governing body if there is statutory authority to hold the meeting in the absence of the public.

[16] 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 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.

[17] It is well-established that three conditions must be met in order for a public body to withhold information under s. 12(3)(b):

1. The public body must have statutory authority to meet in the absence of the public;
2. The meeting must have taken place in the absence of the public; and
3. The information would, if disclosed, reveal the substance of deliberations at the meeting.³

Statutory authority to meet in the absence of the public

[18] The City submits that its statutory authority to meet in the absence of the public is found in s. 90(1) of the Community Charter. The relevant sections of the Community Charter are follows:

Meetings that may or must be closed to the public

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;

(b) personal information about an identifiable individual who is being considered for a municipal award or honour, or who has offered to provide a gift to the municipality on condition of anonymity;

(c) labour relations or other employee relations;

...

(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;

³ See for example Order 00-14, [2000] B.C.I.P.C.D. No. 17; Order F13-10, 2013 BCIPC 11 at para. 8; Order F15-56, 2015 BCIPC 59 (CanLII) at para. 25; Order F18-17, 2018 BCIPC 20 (CanLII) at para. 38; and Order F20-10, 2020 BCIPC 12 (CanLII) at para. 8.

...

(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;

(l) discussions with municipal officers and employees respecting municipal objectives, measures and progress reports for the purposes of preparing an annual report under section 98 [annual municipal report];

Requirements before meeting is closed

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.

Application of rules to other bodies

93 In addition to its application to council meetings, this Division ... also applies to meetings of the following:

(a) council committees;

[19] In order to establish that it had statutory authority to meet in the absence of the public, the City must establish that it satisfied each of the applicable statutory requirements in the Community Charter. For the reasons that follow, I am satisfied that the City has done so.

[20] In support of its position that it met the statutory requirements, the City relies on affidavit evidence from its Manager of Legislative Services and Corporate Initiatives (the Legislative Manager). The Legislative Manager deposes that their responsibilities include overseeing the preparation and distribution of City council meeting agendas and ensuring that accurate minutes of City council and council committee meetings are prepared.⁴ In this role, the Legislative Manager states that they attend all City council and City council committee meetings.⁵ In light of the Legislative Manager's responsibilities, it is clear that they have first hand knowledge about the conduct of and substance of

⁴ Affidavit of the Legislative Manager at para. 3.

⁵ Affidavit of the Legislative Manager at para. 10.

discussions at the Committee meetings and the accuracy of meeting minutes. I find their evidence on these topics persuasive.

[21] Section 90(1) sets out the bases on which a meeting may be closed. Having reviewed the content of the Minutes, I find that the matters considered at the Meetings relate to bases listed in s. 90(1). This finding is sufficient to satisfy s. 90(1) of the *Community Charter*.

[22] Section 92 establishes the requirements to close a meeting. For some of the Meetings, the Legislative Manager provides direct evidence to establish that the City met those requirements. For those Meetings, the Legislative Manager deposes that before meeting in the absence of the public, the responsible City council committee passed a resolution at an open meeting to conduct the remainder of the meeting in the absence of the public.⁶ The bases on which those Meetings are to be closed is recorded in the open minutes.⁷ From my review of the corresponding Minutes it is clear that the matters considered at the Meetings relate to the s. 90(1) bases referenced in the corresponding open minutes. I am satisfied that these facts satisfy s. 92 of the *Community Charter*.

[23] For other Meetings the City did not provide the corresponding open minutes to establish that it met the requirements of s. 92. However, in those instances I find that the context is satisfactory. All the Meetings were conducted by the same City committees. They are all marked “closed” and “confidential,” and the Legislative Manager expressly states that these Meetings were closed to the public.⁸ Finally, from the Minutes I can see that the content of the Minutes relate to bases on which meetings may be conducted in the absence of the public under s. 90(1). Considering these facts together, I find that it is more probable than not that all the Meetings were closed in the same manner, and thus that the City fulfilled the requirements of s. 92 in respect of all the Minutes.

[24] Finally, s. 93(a) lists the entities to which the *Community Charter* provisions regarding meetings apply. The Meetings were conducted by three City Council committees (the Committee or collectively the Committees). The Legislative Manager deposes that all three Committees are “council committees” within the meaning of s. 93(a) of the *Community Charter*.⁹ Based on this

⁶ Affidavit of the Legislative Manager at paras. 17, 23, 27, 36, 43, 49, 55, 61, 65, 75, and 81.

⁷ The minutes of the open parts of the meetings are exhibits J - T of the Legislative Manager's affidavit.

⁸ Affidavit of Legislative Manager at paras. 29, 51, 57, 67, 77.

⁹ In this regard, the Manager deposes that the three committee are standing committees established in accordance with s. 141 of the *Community Charter* which provides that:

(1) The mayor must establish standing committees for matters the mayor considers would be better dealt with by committee and must appoint persons to those committees.

(2) At least half of the members of a standing committee must be council members.

(3) Subject to subsection (2), persons who are not council members may be appointed to a standing committee.

evidence, I accept that all three are “council committees” within the meaning of s. 93(a), and thus entities to which the meeting provisions apply.

[25] Accordingly, I find that the City established that it had statutory authority to meet in the absence of the public.

Meetings in fact took place in the absence of the public

[26] The Minutes expressly state that the Meetings were “closed.” The Legislative Manager deposes that the Minutes are an accurate record of what took place during the Meetings. Again, I accept the Legislative Manager’s evidence in this regard. Based on the above, I am satisfied that the City in fact held the Meetings in the absence of the public.

Would disclosure of the information at issue reveal the substance of deliberations at the meetings?

[27] The OIPC’s case law provides considerable guidance about the meaning of the phrase “substance of deliberations” in s. 12(3)(b). In a frequently cited decision, former Commissioner Loukidelis offered the following definitions:

“substance” is not the same as the subject, or basis, of deliberations. ...
‘[S]ubstance’ 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.¹⁰

[28] OIPC decisions have drawn a distinction between information that would reveal only the “topic of deliberations”, which is not protected, and that which would reveal the substance of deliberations, which is protected. In Order No. 331-1999, Former Commissioner Loukidelis held that s. 12(3)(b) does not apply to information that reveals only the topic of deliberations because the topic alone does not reveal what was discussed or decided.¹¹ The same reasoning has been applied by numerous other OIPC Commissioners and adjudicators to find that information about the topic of deliberations is not captured by s. 12(3)(b).¹²

[29] Other OIPC orders hold that s. 12(3)(b) does not apply to information that would reveal only the “basis of deliberations” such as “the material which stimulated the discussion.”¹³ In Order No. 326-1999 former Commissioner

¹⁰ Order 00-11, 2000 CanLII 10554 (BC IPC), p. 5.

¹¹ Order No. 331-1999, 1999 CanLII 4253 (BC IPC).

¹² See for example Order 04-04, 2004 CanLII 34258 (BC IPC) at para. 81; Order F12-11, 2012 BCIPC 15 (CanLII) at para. 15; and F19-18, 2019 BCIPC 20 (CanLII).

¹³ Order No. 114-1996, <https://www.oipc.bc.ca/orders/295> at pp. 5.

Flaherty considered the application of s. 12(3)(b) to information in a consultant's report prepared at the request of city council. At the meeting, City council reviewed the report, and directed the consultant to conduct further research.¹⁴ On these facts, Commissioner Loukidelis determined that s. 12(3)(b) did not apply because it was not possible to determine from the report what the deliberations of council were. He explained:

Council members may have debated the [report] vigorously, with many different views being expressed and various possible courses of actions being suggested. The [report] itself is silent about this. Its disclosure tells us nothing about what was said at the council table, much less what was decided. We simply do not know and cannot tell from the [report] – which was prepared by outside consultants - what the deliberations of council were.¹⁵

[30] Similarly, in Order No. 113-1996 former Commissioner Flaherty declined to apply s. 12(3)(b) to source documents considered at a closed meeting that revealed only policy visions and options that were available for discussion. The former Commissioner explained that “there is a critical distinction, ... between revealing the “basis” for deliberations and protecting the “substance” of deliberations.”¹⁶

[31] Adopting the reasoning in these early cases, numerous OIPC adjudicators have determined that s. 12(3)(b) does not apply to materials considered at a closed meeting where it is not possible to conclude what council members “thought, said or decided” regarding the material being considered.¹⁷

[32] However, whether information considered at a closed meeting would reveal the basis or the substance of deliberations, is a fact specific determination. In Order 03-22,¹⁸ former Commissioner Loukidelis determined that s. 12(3)(b) applied to information in a draft memorandum that was discussed by city council at a closed meeting because the withheld information revealed “not only the subject of deliberations, [but also] provide[d] detailed background information and interpretation that [was] in effect a guide for the discussions between staff and [c]ouncil members during the meeting.”¹⁹

[34] Similarly, in Order F15-56²⁰ an OIPC adjudicator took a similar approach to a report and letter that a city council considered at a closed meeting. Finding

¹⁴ 1999 CanLII 4353 (BC IPC) at pp. 4.

¹⁵ 1999 CanLII 4353 (BC IPC) at pp. 4.

¹⁶ <https://www.oipc.bc.ca/orders/293> at para. 5. For a similar statement of the principle, see Order F12-11, 2012 BCIPC 15 (CanLII) at para. 12.

¹⁷ Order F19-18, 2019 BCIPC 20 (CanLII) at para. 33; Order F18-17, 2018 BCIPC 20 at para 45; Order F12-11, 2012 BCIPC 15 at para. 14. See also Orders F11-04 and F10-18, 2011 BCIPC 4 (CanLII) at para. 38.

¹⁸ 2003 CanLII 49200 (BC IPC).

¹⁹ Order 03-22, 2003 CanLII 49200 (BC IPC) at para. 15.

²⁰ 2015 BCIPC 59 (CanLII).

that the report was “entirely and directly related to the matter before council for decision, and that it contain[ed] specific details directly tied to the recommendation,”²¹ the adjudicator was satisfied that s. 12(3)(b) applied to the information in the report and letters “because disclosing either would allow someone to accurately infer the substance of council’s deliberations.”²²

[35] Finally, numerous past OIPC adjudicators and Commissioners have held that ancillary information such as the identity of attendees and when they left the meeting is not captured by s. 12(3)(b)²³ because such information could not reveal the substance of deliberations.

The City’s Submission

[36] According to the City, the withheld information outlines a “years-long, continuous and integrated deliberative process related to land management and development of [the McAllister Property]”²⁴ as well as an ongoing deliberative process around other confidential City business.

[37] The City asserts that the Minutes accurately reflect the Committees’ substantive deliberations²⁵ and that disclosure of the information in the Minutes would disclose the substance of the Committees’ deliberations, or at least allow accurate inferences about those deliberations.²⁶

[38] Similarly, the City argues that the information withheld from the Agendas outlines the substance of the Committees’ deliberations by setting out the subject matter to be considered at these meetings.²⁷

[39] The City asserts that the materials considered by the Committees at the Meetings are captured by s. 12(3)(b) because they would permit accurate inferences to be drawn with respect to the substance of the meetings. Citing Orders 03-22 and F15-56, and distinguishing Order No. 326-1999 all of which are discussed above, the City argues that the information in the Materials is entitled to protection because it is entirely and directly related to the matters that were before the Committees, integral to the Committees’ deliberations, and its disclosure would reveal the information, recommendations, advice, and options the Committees considered during deliberations. On these bases, the City argues that the information would permit accurate inferences to be drawn about the substance of deliberations. Finally, the City emphasizes that the Materials

²¹ Order F15-56, 2015 BCIPC 59 (CanLII) at para. 39.

²² *Ibid* at para. 39.

²³ See for example Order 00-14, 2000 CanLII 10836 (BC IPC); Order 02-19, 2002 CanLII 42444 (BC IPC); Order 04-04, 2004 CanLII 34258 (BC IPC) at para. 81; Order F05-13, 2005 CanLII 11964 (BC IPC); Order F15-20, 2015 BCIPC 22 (CanLII); and Order F18-17, 2018 BCIPC 20 (CanLII) para. 47.

²⁴ City initial submissions at para. 42.

²⁵ City initial submissions at para. 45.

²⁶ City initial submissions at para. 45. See also Affidavit of Legislative Manager at paras. 29, 51, 57, 67, 77).

²⁷ City initial submissions at para. 46.

must be considered within the “deliberative continuum,”²⁸ and that “to treat them as isolated records would be to ignore the fact that they formed an integral part of the Committees’ ongoing (confidential) deliberative process and would frustrate the purpose of the statutory protection.”²⁹

[40] In support of its arguments under s. 12(3)(b), the City relies on the evidence of the Legislative Manager who addresses the substance of discussions at the Meetings and explains how the associated records relate to the discussions.

Findings and Analysis

[41] The City withheld information from Agendas, Minutes, and Materials under s. 12(3)(b). Each of the records before me relates to a specific Meeting. In the analysis below, with the exception of “headings” which I will consider at the end of the analysis, I categorized the information based on the type of record in which it is found. Further, in considering whether s. 12(3)(b) applies, I considered the information within the context of the Meeting to which it relates and the context of the Committees’ deliberations as a whole.

Minutes

[42] I accept the Legislative Manager’s evidence that the Minutes reflect an accurate record of the Meetings, and I find that the City is authorized to withhold some, but not all the information it withheld from the Minutes under s. 12(3)(b). I will begin with the information the City is authorized to withhold.

[43] The City withheld information that records formal motions and how individual Committee members voted.³⁰ The OIPC has repeatedly held that s. 12(3)(b) captures motions passed at closed meetings,³¹ and information that would reveal what council members thought, said or decided regarding the material being considered.³² Consistent with the OIPC’s case law, I find that revealing both the formal motions and how individual committee members voted on those motions would directly reveal the substance of the City’s deliberations at the Meetings. The City is authorized to withhold this information under s. 12(3)(b).

²⁸ City initial submissions at para. 51.

²⁹ City initial submissions at para. 51.

³⁰ Records at pages 14, 17, 19, 99, 100-101, 106-107, 109, 127-128, 140, 147, 150, 198-199, and 210-211.

³¹ See for example Order 00-14, 2000 CanLII 10836 (BC IPC); Order 03-09, 2003 CanLII 49173 (BC IPC) at paras. 23 and 24; Order 04-04, 2004 CanLII 34258 (BC IPC) at paras. 80 and 81; Order F15-56, 2015 BCIPC 59 (CanLII) at para. 40; F16-03, 2016 BCIPC 3 (CanLII) at para. 13; Order F18-17, 2018 BCIPC 20 (CanLII) at para. 46; Order F19-18, 2019 BCIPC 20 (CanLII) at para. 31; Order F22-21, 2022 BCIPC 23 (CanLII) at para. 35.

³² Order F19-18, 2019 BCIPC 20 (CanLII) at para. 33; Order F18-17, 2018 BCIPC 20 at para 45; Order F12-11, 2012 BCIPC 15 at para. 14. See also Orders F11-04/F10-18, 2011 BCIPC 4 (CanLII) at para. 38.

[44] The City also withheld information that records discussions about next steps³³ and issues related to matters before the Committees.³⁴ In most cases the discussions are intermingled with the resulting decisions, and it is clear on the face of the Minutes that the discussions led directly to decisions. In one instance the discussions relate to a decision-making process that was ongoing throughout the Minutes. However, in all cases a review of the records makes clear that the discussions at issue were part and parcel of the Committee’s decision-making processes. In my view, this information is plainly the “essential or material part of ... discussions conducted with a view to making a decision or following a course of action”³⁵ that is captured by s. 12(3)(b), and I find that revealing it would directly reveal the substance of the City’s deliberations at the Meetings. Accordingly, the City is authorized to withhold this information under s. 12(3)(b).

[45] The City is not authorized to withhold the balance of the information it withheld from the Minutes under s. 12(3)(b). The City withheld information that reveals only that a topic was raised or discussed during the Meetings.³⁶ This information provides no insight into the content of the discussions or what was said or decided about the topics. As set out above, previous OIPC orders have consistently held that s. 12(3)(b) does not apply to information that reveals only the topic of deliberations because the topic alone does not reveal what was discussed or decided.³⁷ In my view, this reasoning is directly applicable to the information at issue, and I find that the City is not authorized to withhold it under s. 12(3)(b).

[46] The City also withheld a report to council on the status of a matter.³⁸ The Minutes record what was reported, but not the Committee’s discussion of the report. The matter does not arise again in the records, and the City does not explain how the information relates to its deliberations. As the information does not reveal, or even relate to the Committee’s discussions, I find that the City has failed to establish that disclosing this information would reveal (or lead to accurate inferences about) the substance of deliberation. The City is not authorized to withhold this information under s. 12(3)(b).

[47] Finally, the City withheld information about Committee members’ comings and goings from Meetings.³⁹ I see no way that this kind of information relates to,

³³ Records at page 209.

³⁴ Records at page 118.

³⁵ Order 00-11, 2000 CanLII 10554 (BC IPC), p. 5.

³⁶ Records at pages 16, 19, 104, 105, 109, and 128.

³⁷ Order No. 331-1999, 1999 CanLII 4253 (BC IPC). See also Order 04-04, 2004 CanLII 34258 (BC IPC) at para. 81; Order F12-11, 2012 BCIPC 15 (CanLII) at para. 15; and F19-18, 2019 BCIPC 20 (CanLII).

³⁸ See for example Order 00-14, 2000 CanLII 10836 (BC IPC); Order 02-19, 2002 CanLII 42444 (BC IPC); Order 04-04, 2004 CanLII 34258 (BC IPC) at para. 81; Order F05-13, 2005 CanLII 11964 (BC IPC); Order F15-20, 2015 BCIPC 22 (CanLII); and Order F18-17, 2018 BCIPC 20 (CanLII) para. 47.

³⁹ Records at page 127.

³⁹ Records at page 17.

or could reveal, the substance of deliberations. Consistent with past OIPC orders in which OIPC Commissioners and adjudicators ruled that similar information, such as the identity of attendees and when they left a meeting,⁴⁰ is not captured by s. 12(3)(b), I find that the City is not authorized to withhold the times that individual committee members left and returned during Meetings under s. 12(3)(b).

Agendas

[48] The Agendas set out issues to be discussed at the Meetings. Again, I find that the City is authorized to withhold some but not all information withheld from the Agendas.

[49] The City withheld formal motions and recommendations from the Agendas.⁴¹ Both the motions and recommendations are detailed and specific, and clearly prepared to be put to a vote. Furthermore, the corresponding Minutes record that the motions were in fact put to a vote and that the Committees passed motions at the Meetings to accept the recommendations.

[50] While the motions and recommendations alone do not reveal how the Committees decided, they do reveal the specific proposition before Committee members, and thus the issue that framed their deliberations. Given their detail and specificity, I find that revealing the motions and recommendations would allow accurate inferences about the specific issues that the Committees discussed at the Meetings, and thus reveal the substance of the Committees' deliberations. Accordingly, the City is authorized to withhold the motions and recommendations under s. 12(3)(b).

[51] However, the City is not authorized to withhold the remaining information it withheld from the Agendas under s. 12(3)(b). The remaining information reveals only the topic of the matter that would be put before the Committee.⁴² This information reveals only the topic of deliberations in the most general sense. It is well-established that information that reveals only the topic of deliberations is not captured by s. 12(3)(b), and I find that the City is not authorized to withhold this information under s. 12(3)(b).

Materials

[52] The City also withheld information from the Materials under s. 12(3)(b). The bulk of these records relate to the sale of the McAllister Property. However,

⁴⁰ See for example Order 00-14, 2000 CanLII 10836 (BC IPC); Order 02-19, 2002 CanLII 42444 (BC IPC); Order 04-04, 2004 CanLII 34258 (BC IPC) at para. 81; Order F05-13, 2005 CanLII 11964 (BC IPC); Order F15-20, 2015 BCIPC 22 (CanLII); and Order F18-17, 2018 BCIPC 20 (CanLII) para. 47.

⁴¹ Records at pages 34, 125, 144, and 203.

⁴² Records at pages 1, 2, 15, 34, and 97.

one report relates to various City business that was ongoing at the City at the time.⁴³

[53] Many of the Materials plainly state that they were prepared for a closed meeting. I find that most of the information the City withheld from the Materials would reveal or allow accurate inferences about the substance of deliberations at the Meetings.

[54] The information that the City is authorized to withhold includes detailed status reports, recommendations, preferences, and background information.⁴⁴ This information is detailed and specific. The corresponding Minutes make clear that the information is entirely and directly related to the matters before the Committees and in some cases appears to have influenced the Committees' decisions. While I cannot describe the contents of the Materials without disclosing the withheld information, I am satisfied the information at issue guided the Committees' deliberations on several complex issues that were discussed and decided on at the Meetings. In this respect, many of the motions passed at the Meetings relate directly to the information and recommendations described above. Given the connection between this information and the deliberations at the Meetings, I see no way to disentangle the two.

[55] I agree with the City that this information is most akin to that considered in Orders 03-22 and F15-56. It provides much more than the basis for deliberations or options available, and instead offers a detailed guide for precisely how the Committees ought to, and did in fact, consider the matters at issue. I find that the City is authorized to withhold this information.

[56] The City is also authorized to withhold dollar amounts and timelines for compliance found in a proposed letter of intent related to the McAllister Property.⁴⁵ The Legislative Manager states that the Committee weighed and considered the proposed sale price and timeline for the sale of the McAllister Property at a Meeting on May 24, 2019. A report which the Legislative Manager states the Committee considered at the Meeting provides detailed information about the letter of intent, including its financial implications.⁴⁶ The corresponding Minutes reflect that the Committee passed a motion to authorize a City officer to finalize and sign the letter of intent at the Meeting.⁴⁷ Based on the foregoing, I accept that the Committee weighed and considered the proposed sale price and timeline in deciding whether to finalize the proposed letter of intent at the May 14, 2019 meeting. Accordingly, I accept that revealing the dollar amounts and timelines for compliance would reveal what council members discussed

⁴³ City initial submissions at para. 47.

⁴⁴ Records at pages 6-8, 27, 28-32, 38-45, 65, 69, 73-75, 93, 130-131, 132-133, 135-137, and 152-157.

⁴⁵ Records at pages 77, 80, 81, and 159-160.

⁴⁶ The report titled "Sale of 2251 McAllister Avenue and Purchase of Future Commercial Space" is found at pages 72 - 76 of the Records.

⁴⁷ Records at page 88.

regarding the letter of intent. Consistent with past OIPC decisions,⁴⁸ I find that the City is authorized to withhold this information.

[57] However, I find that the City is not authorized to withhold the balance of the information it withheld from the Materials under s. 12(3)(b). Some of the remaining information reveals that City committees other than the Committees directed City staff to take certain steps.⁴⁹ As the directions and authorizations were made outside of the Meetings and by other City committees, they are not the product of deliberations at the Meetings. On this basis, I find that revealing the directions and authorizations would not reveal the substance of deliberations within the meaning of s. 12(3)(b).

[58] Nor are they sufficiently detailed to allow accurate inferences about the Committees' deliberations. The directions and authorizations are simply too general and big picture. They are not detailed enough to operate as a guide to deliberations, nor do they contain details that reveal the deliberations about any specific recommendation. Instead, in my view, the statements are the kind of information that past OIPC decision makers have found is not captured by s. 12(3)(b) because it reveals only the basis for deliberations. I find that the City is not authorized to withhold this information under s. 12(3)(b).

[59] Finally, the City withheld information that reveals only the topic of the matters before the Committees.⁵⁰ The information provides no information about the content of the discussions or what was said or decided about the matter. As set out above, previous OIPC orders have consistently held that s. 12(3)(b) does not apply to information that reveals only the topic of deliberations because the topic alone does not reveal what was discussed or decided.⁵¹ In my view, this reasoning is directly applicable to the information at issue, and I find that the City is not authorized to withhold it under s. 12(3)(b).

Headings

[60] The City withheld some of the headings in the records. For the reasons set out below, I find that the City is not authorized to withhold the heading information.

⁴⁸ Order F19-18, 2019 BCIPC 20 (CanLII) at para. 33; Order F18-17, 2018 BCIPC 20 at para. 45; Order F12-11, 2012 BCIPC 15 at para. 14. See also Orders F11-04 and F10-18, 2011 BCIPC 4 (CanLII) at para. 38.

⁴⁹ Records at pages 2, 29, and 30.

⁵⁰ Records at pages 2, 6, 7, 8, 28, 29, 31, 32, 38, 40, 42, and 63.

⁵¹ Order No. 331-1999, 1999 CanLII 4253 (BC IPC). See also Order 04-04, 2004 CanLII 34258 (BC IPC) at para. 81; Order F12-11, 2012 BCIPC 15 (CanLII) at para. 15; and F19-18, 2019 BCIPC 20 (CanLII).

⁵¹ See for example Order 00-14, 2000 CanLII 10836 (BC IPC); Order 02-19, 2002 CanLII 42444 (BC IPC); Order 04-04, 2004 CanLII 34258 (BC IPC) at para. 81; Order F05-13, 2005 CanLII 11964 (BC IPC); Order F15-20, 2015 BCIPC 22 (CanLII); and Order F18-17, 2018 BCIPC 20 (CanLII) para. 47.

[61] Some of the headings are generic descriptions of sections within the records such as “Reports” or “Discussion.”⁵² There is no substance to these headings, and they reveal no deliberations. I find that the City is not authorized to withhold them under s. 12(3)(b).

[62] Other headings reveal the name of the matter, but nothing about the substance of what was discussed under the heading,⁵³ or the name of the matter together with a brief reference issue that was before the Committee with respect to the matter.⁵⁴ While these headings do reveal a minimal amount of substantive information, they provide no information about the content of the discussions or what was said or decided about the issues. Again, these headings reveal only the topic, not the substance of deliberations because they do not reveal what was discussed or decided. I find that the City is not authorized to withhold this information under s. 12(3)(b).

Conclusion – Section 12(3)(b)

[63] I find that the City is authorized to withhold some, but not all the information it withheld under s. 12(3)(b).

[64] There was considerable overlap in the City’s application of ss. 12(3)(b), 13(1), 14, and 17(1) to the records. Where I have determined that the City is authorized to withhold information under s. 12(3)(b), I will not determine whether any other provisions apply.

Section 17(1) - Harm to the Financial Interests of a Public Body

[65] Section 17(1) permits a public body to withhold information that, if disclosed, could reasonably be expected to harm the financial or economic interests of the public body. The relevant provisions of s. 17(1) provide as follows:

17 (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body, ... including the following information:

...

(e) information about negotiations carried on by or for a public body ...;

(f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body...

⁵² Records at pages 16, 32, 40, 42, 43, 45, 75, 133, 156, and 157.

⁵³ Records at pages 1, 14, 17, 20, 34, 40, 42, 99, 127, 144, 152, 153, 198, 209, and 210.

⁵⁴ Records at pages 1, 15, 16, 17, 20, 97, 100, 105, 106, 125, 140, 147, and 150.

Interpretation and Standard of Proof - ss. 17(1), 17(1)(e), 17(1)(f)

[66] The approach to s. 17(1) has been set out in numerous OIPC orders. Subsections (a) to (f) provide a non-exhaustive list of the kinds of information that, if disclosed, could reasonably be expected to harm the financial or economic interests of a public body.⁵⁵ However, it is not enough that the information is captured by one of the circumstances set out in ss. 17(1)(a) – (f). In order to succeed, a public body must also establish that disclosure could reasonably be expected to result in financial or economic harm to a public body.⁵⁶

[67] In terms of the standard of proof for s. 17(1), it is settled law that where the phrase “could reasonably be expected to” appears in access to information statutes, a public body must establish a “reasonable expectation of probable harm.”⁵⁷ The Supreme Court of Canada describes the standard as “a middle ground between that which is probable and that which is merely possible.”⁵⁸ It “refers to an expectation for which real and substantial grounds exist when looked at objectively”⁵⁹ and requires a risk of harm that is “well beyond the merely possible or speculative.” However, the harm “need not be proved on the balance of probabilities.”⁶⁰

[68] It is the release of the information itself which must give rise to a reasonable expectation of harm.⁶¹ The public body must provide evidence to establish “a direct link between the disclosure and the apprehended harm and that the harm could reasonably be expected to ensue from disclosure.”⁶²

[69] Finally, in assessing the harm that could result from disclosure, as in past OIPC’s decisions, my analysis proceeds on the basis that disclosure of the information to the applicant should be treated as disclosure to the world.⁶³

⁵⁵ Order F21-56, 2021 BCIPC 65 (CanLII) at para. 21; Order F14-31, 2014 BCIPC 34 (CanLII) at para. 41; Order F08-22, 2008 CanLII 70316 (BC IPC) at para. 43; and Order F10-39, 2010 CanLII 77325 (BC IPC) at para. 32.

⁵⁶ Order F21-56, 2021 BCIPC 65 (CanLII) at para. 23; and Order F19-03, 2019 BCIPC 4 (CanLII) at para. 22.

⁵⁷ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 [*Ontario (Community Safety)*] at para. 54.

⁵⁸ *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 201.

⁵⁹ *Merck Frosst ibid* para. 204.

⁶⁰ *Ontario (Community Safety)* *supra* note 57 at para. 54.

⁶¹ *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para. 43.

⁶² *Merck Frosst supra* note 58 at para. 219.

⁶³ See for example Order 03-33, 2003 CanLII 49212 (BC IPC), at para. 44, Order F11-12, 2011 BCIPC 15 at para. 73.

The City's Submission

[70] The City withheld information under ss. 17(1)(e) and (f). The City asserts that the withheld information relates to its negotiations and argues that disclosing the withheld information could reasonably be expected to harm its negotiating position in ongoing and future matters, and thus its financial interests, because the information would offer deep insight into its confidential negotiations and negotiation strategy.

[71] With respect to the McAllister Property, the City states that while the terms of the sale and parties involved are public knowledge, it withheld details of negotiations “because a prospective purchaser of City lands could use this information to its advantage in negotiating future deals, thus harming the City’s financial and economic interests.”⁶⁴

[72] Addressing other City business, the City explains that disclosure of the disputed information would be particularly detrimental to its current or future negotiating position in other matters. In support of its position, the City provides information about the stage of negotiations of each matter and in some cases reasons why disclosure could reasonably be expected to harm its financial interests in the circumstances. As the details were accepted *in camera*, I cannot say more without revealing *in camera* materials.⁶⁵

[73] In support of its arguments, the City relies on the affidavit evidence of its Manager of Planning (the Planning Manager). The Planning Manager explains that they are responsible for planning, land use, and supporting land management including the purchase and sale of lands. Their evidence echoes the City’s arguments.

Findings and Analysis

[74] What remains in dispute under s. 17 is fragments of information related to miscellaneous City matters, scattered throughout the records. While in many cases the City provided persuasive arguments about the information it withheld under s. 17(1), those arguments do not directly address the specific information that remains in dispute. Accordingly, while I accept the Planning Manager’s first-hand evidence about the circumstances surrounding the City’s negotiations regarding City property, I am not persuaded that the City is authorized to withhold any of the information that remains in dispute under s. 17(1).

[75] **Headings and Topics:** Most of the information that remains in dispute is headings that provide generic descriptions of sections of the headings (for

⁶⁴ City initial submissions at para. 92.

⁶⁵ The *in camera* information is found in the City’s initial submissions at paras. 10 – 13.

example “Reports” or “Discussion”)⁶⁶ and brief statements or headings that reveal only the topic of the matter at issue.⁶⁷ It is not clear from the records how the generic headings or topic information could engage s. 17(1). The City has neither asserted that, nor explained how revealing the headings or topics could result in financial or economic harm. Accordingly, I do not accept that it would. I find that the City is not authorized to withhold this information under s. 17(1).

[76] **Generic Actions:** In some instances, the City withheld the topic of a matter together with an action taken by City staff and the Committees in relation to City business.⁶⁸ The information contains no details, and accordingly all that can be gleaned from this information is that City staff and Committees took the action. In addition, the actions revealed in the withheld information are the kind of routine acts that the public would expect City staff and Committees to take on a regular basis in fulfilling their respective responsibilities – actions like providing updates or reviewing reports.

[77] The City argues that revealing the withheld information could harm its negotiating position by revealing information that a third party could use in future or ongoing negotiations. This argument does not seem to apply to the general information discussed above. In any event, I do not accept that this information could offer “deep insight” into the City’s negotiations or its negotiation strategy, or otherwise benefit any current or future party in its negotiations with the City. It is simply too generic to raise even a reasonable expectation of probable harm and accordingly, I find that the City is not authorized to withhold this information under s. 17(1).

[78] **Views on Resolution:** The City also withheld information that reveals how a matter was resolved together with a statement about the negotiator’s views about the resolution.⁶⁹ The information does not, however, reveal the specific matter at issue or the substance of the resolution. I do not discount that the parties’ views about a resolution could, in different circumstances, engage s. 17(1). However, in this case, the statement is a general platitude that is routinely used when a matter is resolved in the manner described in the withheld information. Due to the generic connotation the words have taken on through repeated usage, I find that the statement reveals nothing about the participants’ actual views.

[79] As with the generic information discussed above, it is not clear on the face of the records that the information engages s. 17(1). Similarly, as it does not identify the matter at issue with any specificity or reveal any substantive

⁶⁶ Records at pages 16, 32, 40, 42, 43, 45, 75, 133, 156, and 157.

⁶⁷ Records at pages 6, 7, 8, 14, 19, 20, 28, 29, 31, 32, 34, 38, 40, 42, 99, 100, 101, 104, 106, 125, 127, 140, 144, 147, 150, 152, 153, 198, 209, 210.

⁶⁸ Records at pages 1, 2, 15, 16, 17, 64, 64, 97, 105, and 109.

⁶⁹ Records at page 128.

information about the nature of the resolution or parties' views about that resolution, I do not accept the City's argument that revealing this information could offer any insight into the City's negotiations or negotiation strategy, or otherwise reasonably be expected to harm the City's financial or economic interests. For these reasons, I find that the City is not authorized to withhold this information under s. 17(1).

[80] The Planning Manager asserts that revealing the approved purchase price could reasonably be expected to harm the City's negotiating position and its financial interests⁷⁰ given the current circumstances applicable to the Leigh Property (which I cannot detail without disclosing *in camera* information). I accept the Planning Manager's evidence about the background circumstances. However, as set out above, in order to succeed the City must establish a link between "disclosure and the apprehended harm,"⁷¹ and in this case, the City has not explained how revealing the 2020 purchase price could reasonably be expected to result in harm to the City's financial or economic interests in 2023.

[81] There is a missing link in the City's evidence. The Planning Manager gives evidence about the circumstances of the Leigh Property and asserts that as a result of these circumstances, revealing the purchase price would harm the City's negotiating position. Presumably that harm relates to the information being used in ongoing or future negotiations. However, neither the Planning Manager nor the City explain the mechanism for that harm, that is specifically how the harm could reasonably be expected to occur.

[82] The records do not fill in the gap. Like the City's evidence, the mechanism of harm is not apparent from the records. The approved purchase price information is from 2020. The real estate market is not static, and it has changed significantly between 2020 and 2023. It is not at all clear on the face of the records (or the City's limited evidence) what relevance the 2020 approved purchase price could have on the City's current or future negotiations, or how a third party could use that information to the City's detriment.

[83] Finally, I note that past OIPC orders have consistently refused to accept that information that reveals historic price information could reasonably be expected to harm a public body's negotiating position without evidence to connect the price information to the harm asserted.⁷²

⁷⁰ Affidavit of Planning Manager at para. 11.

⁷¹ *Merck Frosst supra* note 55 at para. 219.

⁷² For cases in which the OIPC considered facts similar to those set out above and held that historic price information does not engage s. 17(1) see for example Order 00-41, [2000] B.C.I.P.C.D. No. 44, at p. 8; Order 03-15, 2003 CanLII 49185 (BC IPC) at paras. 24 - 27; Order F07-15, 2007 CanLII 35476 (BC IPC) at para. 24; Order F08-22, at paras. 48 – 56; and Order F21-56, 2021 BCIPC 65 (CanLII) at paras. 57 – 67. Conversely, for examples of the kind of evidence required to establish that historic price information would engage s. 17(1), see for

[84] In the instant case, the City has failed to provide any objective basis on which to accept that disclosure of the 2020 price information could reasonably be expected to harm its negotiating position. Therefore, I find that the City is not authorized to withhold the price information under s. 17(1).

[85] **Proposal:** Finally, the City withheld a statement that provides general information about a proposal from a proponent and the City's process for considering the proposal.⁷³ Due to its generality, the information reveals little about the proposal and nothing about the substance of the City's consideration of the proposal.

[86] The Planning Manager provided detailed evidence about the state of negotiations in respect of the project, and I accept that evidence. Again, having considered the Planning Manager's evidence (which was accepted *in camera*), I accept that the background circumstances and current state of negotiations place the City in a vulnerable position with respect to release of information about the City's past negotiations in respect of the matter. However, vulnerability alone does not establish harm.

[87] Again, in order to engage s. 17(1), the City must offer some link between disclosure of the information at issue and the financial or economic harm complained of. Here, the City asserts that a third party could use the withheld information in current or future negotiations with the City to the City's detriment. However, as with the purchase price information, the City failed to explain how the information could be used by a third party to obtain a better deal or to harm the City's bargaining position. Again, the mechanism of harm is missing from the City's evidence.

[88] The information itself does not assist the City. It is simply too general to provide any information that is, on its face, relevant to negotiations. I can see no way that this information could be used by any third party in negotiations with the City, and the City has not explained how it could. Accordingly, I find that the City is not authorized to withhold the proposal information under s. 17(1).

Conclusion – s. 17(1)

[89] For the reasons set out above, I find that the City has not established that s. 17(1) applies to any of the information that remains in dispute.⁷⁴

example Order F10-34, 2010 BCIPC 50 (CanLII) at paras. 22 – 26; and Order F15-68, 2015 BCIPC 74 (CanLII) at paras. 20 – 31 and 52.

⁷³ Records at page 1 (item at subparagraph (2)).

⁷⁴ Records at pages 1, 2, 15, 16, 17, 64, 64, 97, 104, 105, 109, 127, 128, 205.

Section 13 – Advice and Recommendations

[90] Section 13(1) allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body. The purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.⁷⁵

[91] The test under s. 13 of FIPPA is well-established. First, I must determine whether disclosing the information at issue would reveal advice or recommendations developed by or for a public body under s. 13(1). If it would, the next step is to decide whether the information falls into any of the categories in s. 13(2) or whether it has been in existence for more than 10 years under s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, it cannot be withheld under s. 13(1). In this case the disputed records do not go back 10 years so s. 13(3) is not in issue.

Section 13(1) – Would disclosure reveal advice or recommendations

[92] “Recommendations” involve “a suggested course of action that will ultimately be accepted or rejected by the person being advised.”⁷⁶

[93] The term “advice” has a broader meaning than the term “recommendations,”⁷⁷ and includes “an opinion that involves exercising judgment and skill to weigh the significance of matters of fact;”⁷⁸ “expert opinion on matters of fact on which a public body must make a decision for future action;”⁷⁹ and “factual information compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.”⁸⁰

[94] Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences about the advice or recommendations.⁸¹

⁷⁵ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para 52.

⁷⁶ *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 24 [*John Doe*].

⁷⁷ *John Doe*, *ibid* at para. 23.

⁷⁸ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII) [*College*] at para. 113; Order F21-15, 2021 BCIPC 19 (CanLII) at para. 59.

⁷⁹ *College*, *ibid* at para. 113.

⁸⁰ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [*PHSA*] at para. 94. See also *College*, *supra* note 78 at para. 110.

⁸¹ See for example *John Doe*, *Supra* note 76 at para 24; Order 02-38, 2002 CanLII 42472 (BCIPC), Order F10-15, 2010 BCIPC 24 (CanLII) and Order F21-15, 2021 BCIPC 19 (CanLII).

Findings and Analysis

[95] The City withheld a staff update from the Minutes of a Committee meeting under s. 13(1). The update provides background information together with a proposal regarding next steps in respect of a City project.⁸² The proposal suggests a course of action and is framed in a way that asks the Committee to accept or reject it. I find that the proposal falls squarely within the definition of a recommendation under s. 13(1). The related background information has clearly been compiled for the purpose of providing the explanations necessary for the Committee to evaluate and make a decision about the proposal and related issues. I find that the background information qualifies as advice within the meaning of s. 13(1).

[96] The City has not established that disclosing the balance of the information would reveal advice or recommendations. The City withheld several brief statements or headings that reveal only the topic of the matters before the Committees.⁸³ It did not, however, explain how this topic information is captured by s. 13(1). The OIPC has repeatedly recognized that s. 13(1) does not apply to information that reveals only the topic,⁸⁴ and I can see no way that the topic information could reveal or allow accurate inferences about advice or recommendations. It is far too general. I find that the City is not authorized to withhold this information under s. 13(1).

[97] The City also withheld information that reveals that a City Committee discussed a recommendation related to a matter.⁸⁵ The information reveals nothing about the content of the “recommendation,” and it contains no facts on which the recommendation was based. Instead, it reveals only the topic in the most general sense and the fact that a recommendation was made. Section 13(1) does not apply to information that reveals only the topic.⁸⁶ I find that the City is not authorized to withhold this information under s. 13(1).

⁸² Records page 127.

⁸³ Records at pages 6, 14, 18-29, 31-32, 34, 38, 40, 42, 63, 75, 99, 100, 125, 127, 152-153, and 199.

⁸⁴ See for example Order F19-27, 2019 BCIPC 29 (CanLII) at para. 29 in which an adjudicator found that topics, headings and lists of discussion matters for future meetings did not qualify as advice or recommendations; Order F18-41, 2018 BCIPC 44 at para. 15, in which an adjudicator found that the general topics for an upcoming meeting did not qualify as advice or recommendations; Order F17-42, 2017 BCIPC 46 at paras. 75-76 in which another adjudicator found that the topics for a conference call did not qualify as advice or recommendations; Order F18-43, 2018 BCIPC 46 at paras. 65 and 70, in which an adjudicator found that information that identified the topics addressed in a report, Cabinet submissions and presentations did not qualify as advice or recommendations.

⁸⁵ Records at page 16.

⁸⁶ See note 85.

[98] Finally, several generic headings that describe sections in the Materials within the records such as “Reports” or “Discussion.”⁸⁷ These headings provide no substantive information, and they reveal nothing about any advice or recommendations developed by or for the City. I find that the City is not authorized to withhold this information under s. 13(1).

Section 13(2)

[99] The second step in the s. 13 analysis is to consider whether any of the information that I found would reveal advice or recommendations falls within s. 13(2). Section 13(2) sets out various kinds of records and information that the head of a public body must not refuse to disclose under s. 13(1).

[100] Neither party made any submissions under s. 13(2). The only subsection that I consider to be relevant to consider is s. 13(2)(a) which provides that a public body must not refuse to disclose “any factual material” under s. 13(1). However, for the reasons set out below, I find that s. 13(2)(a) does not apply.

[101] The term “factual material” is not defined in FIPPA. However, in distinguishing it from “factual information” which may be withheld under s. 13(1), the courts have interpreted “factual material” to mean “source materials” or “background facts in isolation” that are not necessary to the advice provided.⁸⁸ Where facts are compiled and selected by an expert as an integral component of their advice, then it is not “factual material” under s. 13(2)(a).⁸⁹

[102] The background information that I found is “advice” was a part of a staff update during a Committee Meeting. It is two short pieces of information together with a proposal regarding next steps. It was clearly compiled for the purpose of informing and advising the Committee about the accompanying proposal. As a result, it not the kind of distinct source material or isolated background facts that courts have found is “factual material.” Accordingly, I am satisfied that the background information I have found is advice is not “factual material” under s. 13(2)(a).

[103] As no other subsections of s. 13(2) are relevant to the withheld information, I find that s. 13(2) does not apply.

⁸⁷ Records pages 16, 32, 40, 42, 43, 45, 75, 133, 156, and 157.

⁸⁸ *PHSA supra* note 80 at para. 94.

⁸⁹ *PHSA supra* note 80 at para. 94.

Conclusion – s. 13

[104] I find that the City is authorized to withhold some,⁹⁰ but not all the information that remained in dispute under s. 13(1).⁹¹

Section 14 – Solicitor-Client Privilege

[105] Section 14 provides 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.⁹² The City claims legal advice privilege applies to the withheld information.

Legal Advice Privilege

[106] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion, or analysis.⁹³ 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.⁹⁴

[107] Not every communication between client and solicitor is protected by solicitor-client privilege. However, if the conditions set out above are satisfied, then legal advice privilege applies.⁹⁵

[108] Legal advice privilege extends to more than the individual document that communicates or proffers legal advice. It includes communications that are “part of the continuum of information exchanged”⁹⁶ between the client and the lawyer in order to obtain or provide the legal advice. The “continuum of communications” involves 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

⁹⁰ Records at page 127.

⁹¹ The information the City is not authorized to withhold is found at pages 6, 14, 16, 18-29, 31-32, 34, 38, 40, 42, 63, 75, 99, 100, 125, 127, 152-153, and 199 of the records.

⁹² Order F22-64, 2022 BCIPC 72 (CanLII) at para. 15.

⁹³ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para. 26.

⁹⁴ *Solosky v. The Queen*, 1979 CanLII 9 (SCC) [Solosky] at page 837, and *R. v. B.*, 1995 CanLII 2007 (BC SC) [R v. B] at para. 22.

⁹⁵ *R. v. B.*, *supra* note 10 at para. 22; *Solosky*, *supra* note 94 at page 13; *R. v. McClure*, 2001 SCC 14 at para. 36, *Festing v. Canada (Attorney General)*, 2001 BCCA 612 at para. 92.

⁹⁶ *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83. See also *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at paras. 40-46 [Camp Developments].

facts.⁹⁷ It also covers communications at the other end of the continuum, after the client receives the legal advice, such as internal client communications about the legal advice and its implications.⁹⁸ Finally, in *British Columbia (Attorney General) v. Lee*⁹⁹ the Court of Appeal emphasized that severance of some of the communications in the continuum can only occur when there is no risk of revealing the privileged information.

The City's Submission

[109] The City submits that the key question to consider in assessing an assertion of privilege under s. 14 is whether the communication is made for the purpose of seeking or providing legal advice, opinion or analysis. Applying this analysis, it asserts that the information it withheld under section 14 is privileged because it would reveal legal advice received by the City, as well as legal advice sought by the City and direction provided by the City to legal counsel in the confidential setting of a closed meeting.

Findings and Analysis

[110] While the City applied s. 14 to various kinds of information,¹⁰⁰ what remains in dispute as a result of my determinations under s. 12(3)(b) are the headings to that information.¹⁰¹

[111] Six of the headings are generic descriptions of subsections of reports such as “Background” or “Discussions.” These headings provide no substantive information, and they reveal nothing about the legal advice sought or received by the City, or direction provided by the City to legal counsel. I find that the City is not authorized to withhold this information under s. 14.

[112] One other heading references a topic and indicates that the City obtained an update on that topic. The reference to the topic is broad and the heading provides no substantive information about what was discussed in the update. Due to the lack of specificity, I find that the heading reveals nothing about the legal advice sought or received by the City, or direction provided by the City to legal counsel.

[113] As I can see from the records that the heading relates to information that pertains to a legal matter, I also considered whether the heading could be severed

⁹⁷ *Camp Developments*, *supra* note 96 at para. 40.

⁹⁸ *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras. 22-24.

⁹⁹ 2017 BCCA 219 at para. 51.

¹⁰⁰ The information to which the City applied s. 14 is found at pages 32, 45, 75 and 99 of the records.

¹⁰¹ The information that remains in dispute is found at pages 32, 45, 75 and 99 of the records.

from that information record without risk of revealing the underlying information.¹⁰² In this case, the reference to the topic broad and encompasses far more than the legal issue, and furthermore, the fact that an update was provided reveals next to nothing. Again, in my view, due to the generality of the heading there is no risk that revealing the heading could risk revealing the underlying information. I find that the City is not authorized to withhold this information under s. 14.

Conclusion – s. 14

[114] For the reasons set out above, I find that the City has not established that s. 14 applies to any of the heading information that remains in dispute.¹⁰³

CONCLUSION

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

1. I confirm the City's decision, in part, that it is authorized to withhold the information it withheld from the records under ss. 12(3)(b) and 13(1), subject to item 2 below.
2. I require the City to give the applicant access to the information that I have found it is not authorized to withhold under ss. 12(3)(b), 13(1), 14 and 17(1). The information that the City is required to disclose, I have highlighted in green in a copy of records that accompanies the City's copy of the instant order.
3. The City must concurrently provide the OIPC registrar of inquiries with a copy of its cover letter and the information identified in item 2 above when it sends the information to the applicant.

[116] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by September 15, 2023.

August 2, 2023

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File No.: F21-87134

¹⁰² The City applied s. 14 to the underlying information. As I have already determined that the City was authorized to withhold this information under s. 12(3)(b), I have not considered whether it is also captured by s. 14. However, for the purpose of considering the impact of severance, I have assumed that the underlying information is also captured by s. 14.

¹⁰³ The information that remains in dispute is found at pages 32, 45, 75 and 99 of the records.