



Order F24-31

## CITY OF PITT MEADOWS

Allison J. Shamas  
Adjudicator

April 23, 2024

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**Summary:** The applicant requested all minutes of City Council and committee meetings, emails, and social media messages that included any variation of her name from the City of Pitt Meadows (the City). The City disclosed the records but withheld some information under ss. 13(1) (advice and recommendations), 14 (solicitor-client privilege), and 22(1) (harm to third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator confirmed the City's decision under ss. 13(1) and 14 in full, and its decision under ss. 22(1) in part, and ordered the City to disclose the information it was not required to withhold under s. 22(1) to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 13(1), 13(2)(a), 13(2)(n), 14, 22(1), 22(2)(a), 22(2)(b), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(g), and 22(4)(e).

### INTRODUCTION

[1] The applicant submitted a request to the City of Pitt Meadows (the City) for access to records under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant requested all minutes of City Council and committee meetings, emails, and social media messages that included any variation of her name. The City disclosed the records but withheld some information under ss. 12(3)(b) (local public body confidences), 13(1) (advice and recommendations), 14 (solicitor-client privilege), 15 (harm to law enforcement), 16 (harm to intergovernmental relations or negotiations), and 22(1) (harm to third-party personal privacy) of FIPPA.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry.

## **Preliminary Matters**

### *Issues and information no longer in dispute*

[3] At the inquiry, the City advised that it no longer objected to releasing several specific pieces of information,<sup>1</sup> and withdrew its reliance on s. 15.<sup>2</sup> The City also stated that it no longer intended to rely on s. 16 unless the applicant sought access to portions of records that were outside of the scope of her request.<sup>3</sup> The applicant did not indicate in her submissions that she seeks records that are outside the scope of her access request. Accordingly, I find that s. 16 is no longer in dispute. For her part, the applicant advised that she was no longer seeking access to minutes from a City Council meeting held on September 9, 2019.<sup>4</sup>

[4] Accordingly, I will not consider ss. 15, 16, or the information the City no longer objects to releasing and the applicant no longer seeks.

## **Issues**

[5] The issues to be decided in this inquiry are:

1. Whether the City is authorized to refuse to disclose the information at issue under ss. 12(3)(b), 13(1) and 14 of FIPPA.
2. Whether the City is required to refuse to disclose the information at issue under s. 22(1) of FIPPA.

[6] 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 ss. 12(3)(b), 13(1) and 14. Section 57(2) places the burden on the applicant to prove that disclosure of any personal information would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, the public body has the initial burden of proving the information at issue is personal information.<sup>5</sup>

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<sup>1</sup> See list of records at para. 32 of the City's Manager of Administrative Service's (the Manager's) affidavit.

<sup>2</sup> See para. 5 of City's initial submission and paras. 30 of the Manager's affidavit.

<sup>3</sup> See para. 5 of City's initial submission and para. 31 of the Manager's affidavit.

<sup>4</sup> See para. 3 of applicant's response and para. 3 of City's reply, including footnote 3. Having reviewed the records at issue, I agree with the City that the reference to September 19, 2019 is a typographical error and that the correct date is September 9, 2019. These records are found at pages 13-55 of records package 4A.

<sup>5</sup> Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

## DISCUSSION

### ***Background***

[7] At the relevant time, the City had an active Facebook page through which it regularly communicated with citizens about events and issues affecting the City. The applicant, who was highly critical of City Council and specific City councillors frequently posted to the City's Facebook page, commented about City Council and Councillors, and sent questions to City Councillors by email.

[8] The applicant's online activities raised several issues that resulted in email discussions amongst members of City Council and City employees (City officials), and in some cases the City's legal counsel, or members of the public.

[9] The communications include discussions about whether the applicant and others' social media posts violated the City's social media policy and/or constituted bullying and harassment, and what action the City should take in response. They also include complaints from members of the public about the online conduct of the applicant and others, and communications related to legal advice sought by the City. It is the information in these communications that is at issue in this inquiry.

### ***Records in Dispute***

[10] The City disclosed 2578 pages of responsive records to the applicant, a significant number of which have been severed to remove the information that is in dispute. The information in dispute is found in email chains, a mailing list, and City forms.<sup>6</sup>

## SECTION 14 – SOLICITOR-CLIENT PRIVILEGE

[11] 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.<sup>7</sup> The City claims legal advice privilege.

[12] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice,

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<sup>6</sup> The records contain many duplicate copies of the email chains. The City explains that the reason for the duplication is that multiple City Council members and City employees had copies of the same email chains and the City treated each new message in the chain as a new record (see City's initial submissions, affidavit of the Manager, at para. 5).

<sup>7</sup> *College of Physicians of B.C. v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para. 26.

opinion, or analysis.<sup>8</sup> For information to be protected by legal advice privilege it must be:

1. A communication between solicitor and client (or their agent),
2. that is intended by the solicitor and client to be confidential, and
3. that entails the seeking or providing of legal advice.<sup>9</sup>

Not every communication between solicitor and client is protected by legal advice privilege. However, if the conditions set out above are satisfied, then legal advice privilege applies.<sup>10</sup>

[13] Legal advice privilege is not limited to records that communicate or proffer legal advice. It extends to communications that are “part of the continuum of information exchanged” between the client and the lawyer in order to obtain or provide the legal advice.<sup>11</sup> This “continuum of communications” includes the necessary exchange of information between solicitor and client for the purpose of obtaining and providing legal advice such as “history and background from a client,”<sup>12</sup> communications to clarify or refine the issues or facts,<sup>13</sup> and communications of an administrative nature.<sup>14</sup>

[14] Legal advice privilege also extends to information that does not satisfy the test set out above, but where disclosure of the information would reveal or allow an accurate inference to be made about privileged communications between a lawyer and their client. For example, legal advice privilege extends to internal client communications that discuss legal advice and its implications.<sup>15</sup>

### ***The City’s argument – s. 14***

[15] In support of its assertion of legal advice privilege, the City relies on the information in the records (which were produced for my review) and affidavit evidence from its Manager of Administrative Services (the Manager).<sup>16</sup>

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<sup>8</sup> *Ibid* at para. 26.

<sup>9</sup> Order F19-14, 2019 BCIPC 16 (CanLII) at para. 15.

<sup>10</sup> *R. v B.*, 1995 CanLII 2007 (BC SC) at para. 22; *Solosky v The Queen*, 1979 CanLII 9 (SCC) [Solosky] at page 13; *R. v McClure*, 2001 SCC 14 [McClure] at para. 36, *Festing v Canada (Attorney General)*, 2001 BCCA 612 at para. 92.

<sup>11</sup> *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83; *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [Camp Development] at paras. 40-46.

<sup>12</sup> *Camp Development ibid* at para. 40.

<sup>13</sup> *Camp Development ibid* at para. 40.

<sup>14</sup> *Descôteaux v Mierzewski*, 1982 CanLII 22 (SCC) at pp. 892-893.

<sup>15</sup> *Solosky Supra* note 10 at para. 12 citing *Mutual Life Assurance Co. of Canada v Canada (Deputy Attorney General)* [1988] OJ No. 1090 (Ont. SCJ). See also Order F22-34, 2022 BCIPC 38 (CanLII), at para. 41, Order F22-53, 2022 BCIPC 60 (CanLII), at para. 13, and Order F23-07, 2023 BCIPC 8 (CanLII), at para. 25.

<sup>16</sup> City’s initial submission, affidavit of Manager at para. 1.

[16] The Manager describes the s. 14 information as communications with City solicitors for the purpose of seeking and obtaining legal advice, attachments to its communications with City solicitors, and internal City communications about seeking legal advice. The City submits that the attachments are privileged both because they are part of the privileged communications between the City and its solicitors,<sup>17</sup> and because their disclosure would reveal privileged communications, including the fact that legal advice was sought and/or obtained in relation to the matters at issue in the attachments.<sup>18</sup> The City further submits that in all instances where City officials discussed seeking legal advice in their internal communications, they did in fact obtain that advice.<sup>19</sup> Finally, the Manager states that the City “at all times intended for the correspondence to and from its solicitors for the seeking and receiving of legal advice to be privileged and confidential.”<sup>20</sup>

#### ***The applicant’s response – s. 14***

[17] The applicant’s primary position is that some of the information the City withheld under s. 14 cannot be privileged because it is not about City business. Specifically, she speculates that some of the withheld information relates to individual City officials’ legal issues and to defamation matters. With respect to the defamation matters, the applicant argues only members of council not local government have a right of action in defamation. Alternatively, the applicant asks that if the City is not ordered to disclose the s. 14 records, that the records be correctly identified as not relating to City business.<sup>21</sup>

#### ***The City’s reply – s. 14***

[18] In reply, the City argues that the alleged subject matter of the legal advice is not relevant to the question of whether s. 14 applies and submits that, if it establishes that legal advice privilege attaches to the records, it is entitled to exercise its discretion to withhold those records pursuant to s. 14.

#### ***Findings and analysis – s. 14***

[19] I begin with the applicant’s argument that some of the withheld information is not about City business. These arguments are founded on the applicant’s speculation about the content of the information the City withheld under s. 14. However, the topic of the legal advice is not borne out by the facts. I can see on

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<sup>17</sup> City’s initial submission at para. 64, and see affidavit of Manager at para. 19.

<sup>18</sup> City’s initial submission at para. 65.

<sup>19</sup> In this regard, the Manager explains that while City officials’ discussions about seeking legal advice and the request for that advice are often found separately in the records, in each instance where a City official requested that the City seek legal advice or labelled an email “solicitor client privilege,” the City did in fact seek legal advice in respect of the matter discussed in the email.<sup>19</sup>

<sup>20</sup> City’s initial submission, affidavit of the Manager at para. 23.

<sup>21</sup> Applicant’s submission at pp. 3 and 4.

the face of the records that the information the City withheld under s. 14 clearly concerns City business. As for the applicant's arguments about defamation actions, the City did not withhold information related to defamation under s. 14.

[20] I find the applicant's alternative request that the substance of the records be identified if the City is not ordered to disclose them, is a request to disclose privileged information. The applicant cites no authority in support of this request. Given the well-recognized, fundamental importance of legal advice privilege to the functioning of the judicial system,<sup>22</sup> I decline to make the order the applicant requests.

[21] From my review of the records, I find that the information the City withheld under s. 14 can be broken down into three categories:

1. communications between lawyers and City officials,
2. internal City communications, and
3. attachments and forwarded email chains.

I will address each category in turn.

[22] **Communications between lawyers and City officials:** I am satisfied that the emails at issue are written communications between a solicitor and client. On the face of the records, I can see that the emails are between practicing lawyers<sup>23</sup> and City officials, and that the City had formalized solicitor-client relationships with the lawyers.<sup>24</sup>

[23] I am also satisfied that the emails were intended to be confidential. From the records, I can see that the only individuals involved were City officials and the lawyers. In addition, most of the communications are marked "confidential" and "solicitor-client privileged." In these ways, the records support the Manager's evidence that the City intended its communications to be confidential.

[24] Further, I am satisfied that the communications entail the seeking or providing of legal advice.<sup>25</sup> I find that the communications are requests for legal advice, background information relevant to the requests, discussions of legal and administrative issues related to the requests, and legal advice. Therefore, I find

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<sup>22</sup> See for example *McClure Supra* note 10 at para. 2, "solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis."

<sup>23</sup> The lawyers represent themselves as lawyers in their communications, and in her submissions, the applicant acknowledges that the City has a solicitor-client relationship with lawyers (see for example the reference to the City solicitor at pp. 7 of the applicant's response submission).

<sup>24</sup> See records package 4A at page 21.

<sup>25</sup> Order F19-14, 2019 BCIPC 16 (CanLII) at para. 15.

that the emails are either requests for and provision of legal advice or were a part of the continuum of communications necessary for the City to obtain legal advice.

[25] Accordingly, I find that the communications between the lawyers and City officials satisfy the test for legal advice privilege.

[26] **Internal City communications:** The internal City communications fall into three categories.

[27] I find that some of the withheld information is communications in which City officials expressed an intention to seek legal advice. On its own, information that reveals an intention to seek legal advice is insufficient to establish that privilege applies. Instead, there must be evidence that disclosure of the information would reveal actual confidential communications between a lawyer and their client.<sup>26</sup> In past orders, the OIPC has accepted evidence that the public body in fact sought and received legal advice about the specific legal issue in the withheld information.<sup>27</sup> I agree with that approach as the disclosure of an intention to seek legal advice in this context would reveal confidential communications that later occurred between a lawyer and client.

[28] Here, the records confirm the Manager's evidence that in each instance where a City official expressed an intention to seek legal advice, the City did in fact seek legal advice about the issue. Therefore, I find that this information is privileged because disclosing it would reveal or allow accurate inferences about the City's requests for legal advice.

[29] In other emails, City officials circulate and discuss background information and discuss sending information to the City's lawyers for the purposes of the legal advice they have been asked to give. From the records, I can see that the background information was in fact sent to the City's lawyers. Given the express requests that these communications be sent to the lawyers, I find that these communications are privileged because disclosing them would reveal what information the City communicated to its lawyers.

[30] Finally, the City withheld some information in which City officials discuss legal advice the City received from its lawyers. The courts have held that internal client discussions about the implications of legal advice provided by a lawyer are privileged because revealing these communications would reveal the substance of the privileged legal advice.<sup>28</sup> I make the same finding here.

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<sup>26</sup> Order F17-23, 2017 BCIPC 24 (CanLII) at para. 49; Order F21-63, 2021 BCIPC 72 (CanLII) at para. 40.

<sup>27</sup> Order F18-38, 2018 BCIPC 41 (CanLII) at para. 37; Order F17-23, 2017 BCIPC 24 (CanLII) at para. 50; and Order F16-26, 2016 BCIPC 28 at para. 32.

<sup>28</sup> *Bilfinger Berger (Canada) Inc. v Greater Vancouver Water District*, 2013 BCSC 1893 (CanLII) at paras. 22-24.

[31] In conclusion, while the internal City communications are not themselves direct communications between a client and a solicitor, I find that they are nonetheless privileged, because disclosing them would reveal confidential communications between the City and its lawyers.

[32] **Attachments and forwarded email chains:** Many of the emails between City officials and the lawyers include attachments and forwarded email chains, to which the lawyer was not party. These materials set out background facts and other information related to the request for legal advice and the attachments include many of the internal City emails discussed above. In addition, these materials contain information that is directly connected to the issues about which the City sought and received legal advice.

[33] I find that the attachments and forwards are protected by legal advice privilege because they are an essential part of the privileged communications to which they are attached and because disclosing them would risk revealing not only the nature of the legal advice sought by the City, but also the specific facts on which the City sought that legal advice.

#### **Conclusion – s. 14**

[34] For the reasons above, I find that the information the City withheld under s. 14 is protected by legal advice privilege, and accordingly that the City is authorized to withhold this information.

#### **SECTION 13 - ADVICE AND RECOMMENDATIONS**

[35] 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.<sup>29</sup>

[36] The City withheld several pieces of information under both ss. 13 and 14. I will consider the application of s. 13 only to the information that I have not already found that the City is authorized to withhold under s. 14.

[37] The test under s. 13 is well-established, and I will apply it below.

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<sup>29</sup> *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at para. 52.



**Section 13(1) – would disclosure reveal advice or recommendations**

[38] 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).

[39] “Recommendations” involve “a suggested course of action that will ultimately be accepted or rejected by the person being advised.”<sup>30</sup>

[40] The term “advice” has a broader meaning than the term “recommendations,”<sup>31</sup> and includes “an opinion that involves exercising judgment and skill to weigh the significance of matters of fact;”<sup>32</sup> “expert opinion on matters of fact on which a public body must make a decision for future action;”<sup>33</sup> 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.”<sup>34</sup>

[41] 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.<sup>35</sup>

*The City’s submission*

[42] The City argues that disclosure of the withheld information would reveal advice and recommendations developed by City officials for the City. It submits that the information it withheld under s. 13(1) relates to how to deal with specific matters such as compliance with City policies, organizational risk, and policy considerations related to various options. Further, it asserts that the records involve the free and frank flow of advice and recommendations to the City, and form part of its internal deliberative process. On these bases, the City submits that the withheld information is properly withheld under s.13(1).<sup>36</sup>

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<sup>30</sup> *John Doe v Ontario (Finance)*, 2014 SCC 36 [*John Doe*] at para. 24.

<sup>31</sup> *John Doe ibid* at para. 23.

<sup>32</sup> *College Supra* note 7 at para. 113; Order No. F21-15, 2021 BCIPC 19 (CanLII) at para. 59.

<sup>33</sup> *Ibid* at para. 113.

<sup>34</sup> *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [*PHSA*] at para. 94. See also *College Supra* note 7 at para. 110.

<sup>35</sup> See for example *John Doe Supra* note 30 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).

<sup>36</sup> City initial submission at para. 45.

*The applicant's submission*

[43] The applicant argues that s. 13(1) does not apply to personal commentary by City officials that is about her and unconnected to City business.<sup>37</sup>

*Findings and analysis*

[44] The s. 13(1) information is found in internal email chains in which City officials discuss various matters affecting City business. A small number of these emails include members of the public. However, in these instances, it is clear from the context available from the records that these members of the public are involved with the matter at issue.<sup>38</sup> While the City disclosed most of the information in the responsive records, it withheld drafts, suggestions, questions, critiques, opinions, and supporting facts.

[45] **Drafts:** The City withheld draft responses to email communications and social media posts.<sup>39</sup> Past orders make clear that a document does not automatically contain advice or recommendations simply because it is a draft, and that drafts are subject to the same test as any other information withheld under s. 13(1).<sup>40</sup>

[46] The drafts were written by, and circulated amongst, City officials in the context of ongoing deliberations about how the City should respond to various communications from members of the public. It is clear from the records that the drafts are suggested courses of action intended to be accepted or rejected by other City officials involved in deciding how to respond to the matters at issue. In most instances, the authors say so explicitly.<sup>41</sup> However, even in the absence of an express statement, this intention is clear. I find the drafts are recommendations within the meaning of s. 13(1).

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<sup>37</sup> Applicant's submission at page 3.

<sup>38</sup> See for example records package 4D pp. 15.

<sup>39</sup> Records package 2A pp. 6, 14, 42, 64-65, 68-72, 73-76, records package 2B pp. 22, 32, 35, 40, 43, 41, 44, 45, 46, 50, 67, 69, 71, records package 2C pp. 2, 8, 8-10, 22-23, 43, 61-63, 65-67, 69, records package 2D pp. 4-9, 26, 27, 29, 30, 38, 39, 48, 83, 84, 103, 111, 114, 122, 127, 133, 138, 141, 143, 145, 149-150, 151, 152, 153, 156, 157, 159, 161, 162, 163, 164, 165, 166, 167, 232, 230, 234-235, 237-238, 257, 261, 263-264, 264, 265-266, 266, 267, 278-279, 281-282, 296, 465, 467, 470, 488, records package 3 pp. 85-89, 131, records package 5A pp. 77, 79-81, 85-87, 88-90, 96-100, records package 5B pp. 6, 15-18, 19-22, 51, 53, 56-57, 59, 117, 133-134, 151, 190-193, 196-198, 200-203, records package 5C pp. 7-18, 19-23, 50-52, 63, 71-74, 79, 100, 102, 121-122, 125.

<sup>40</sup> *Ministry of Attorney General Records*, Re, 2000 CanLII 14392 (BC IPC) at p. 6.

<sup>41</sup> While there are many variations, examples that the City disclosed include "I am seeking your approval to respond with the above. Please advise asap if we may proceed," "Here is the proposed response, please let me know if you are comfortable with this or have any feedback," and "I propose a general response such as."

[47] **Suggestions:** The City also withheld suggestions about how it should proceed in respect of City business.<sup>42</sup> The suggestions take the form of express recommendations to take a specific course of action and lists of options. As with the drafts, it is clear on the face of the records (from both express statements and the context) that the suggestions were intended to be accepted or rejected by the recipients. I find that the suggestions are recommendations within the meaning of s. 13(1).

[48] **Questions and Critiques:** The City also withheld information in which City officials questioned and critiqued courses of action proposed by others during the course of deliberating about what actions the City should take.<sup>43</sup> What these statements share is that each embeds an alternative course of action advocated by its author. Thus, while not framed as advice and recommendations, I find that these statements are simply another means of suggesting a specific course of action.

[49] It is also clear from the format of these statements that the alternative suggestions could be accepted or rejected by the recipients. In this regard, the writers do not simply state how the City is to proceed, but instead question and raise issues with existing proposals as a means of swaying opinion and promoting their own suggested course of action. In this context, I find that the questions and critiques are recommendations within the meaning of s. 13(1).

[50] **Opinions:** The City also withheld opinions of various City officials offered during the internal email discussions described above.<sup>44</sup> In some cases, these opinions simply state the author's views on a particular approach or issue. In other cases, they are accompanied by reasons for the author's opinion. In either case, it is clear from both the opinions themselves and the context that the City

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<sup>42</sup> Records package 1 pp. 61-62, 98, records package 2A pp. 39, 51, 62, records package 2B pp. 31, 34, 38, 39, 40, 44, 48, 62, 65, records package 2C pp. 8-10, 22-23, 24-25, 43, 46-47, 61-63, 65-67, 69, 72, 76, 78, records package 2D pp. 32, 67, 81, 103, 114, 142, 145, 147, 148, 150, 151, 153, 155, 224-225, 231, 234, 244, 261, 264, 266, 267, 277, 280, 286, 327-347, 352-361, 473-481, 439, 441-449, 461, 464, 470, 473-481, 493, 496-505, 519-522, 524-535, records package 3 pp. 106, 110, 128, 131, records package 4B pp. 36, records package 4D pp. 11-15, records package 4E pp. 48-49, 113, 104, records package 5A pp. 49, 96-100, 128-130, 132-133, records package 5B pp. 8-9, 15-18, 19-22, 41-50, 59, 96, 141, 144-150, 160-161, 165, 173, 179, records package 5C pp. 24-33, 47, 50-52, 68-69, 71-74, 79, 100, 102, 105, 121-122.

<sup>43</sup> Records package 2D pp. 4-9, 73, 81, 147, 151, 240, 248, 260, 263, 265, 267, 277, records package 4B pp. 42, records package 5B pp. 176-177, records package 5C pp. 55-57, 61, 117-118, 121-122.

<sup>44</sup> Records package 1 pp. 80-81, 98-99, records package 2A pp. 20-21, 73-76, records package 2B pp. 27, 37, 38, 61, 64, 67, 69, records package 2C pp. 6, 30, records package 2D pp. 150, 152, 155, 159, 161, 164, 166, 237, 240, 260, 263, 265, 267, 327-347, 352-361, 371, 411-438, 473-481, 486, 509, records package 3 pp. 35, 85-89, 103, 123, records package 4B pp. 6, 35, 44, 55, 61, records package 4C pp. 23, records package 4E pp. 18, 29-30, 106, 110, 115, records package 5A pp. 5-6, 19, 40, 84, 96-100, records package 5B pp. 15-18, 19-22, 41-50, 56-57, 78-83, 86, 89-90, 94, 97, 144-150, 176-177, 190-193, 196-198, 200-203, records package 5C pp. 7-18, 19-23, 24, 24-33, 47, 50-52, 58-59, 68-69, 71-74, 105, 128, 131.

officials who provided their opinion used their knowledge, judgment, and skill to weigh the significance of various factors in providing the opinions. I find that the opinions constitute advice within the meaning of s. 13(1).

[51] **Supporting Facts:** While the City severed and disclosed most factual information, it withheld a small amount of information that was intertwined with the advice and recommendations described above.<sup>45</sup> This information is a line or two in length; recorded together with advice and recommendations; and forms a core aspect of the advice or recommendation it accompanies. In addition, it is clear from the structure of the emails containing this information, that the author compiled it in order to provide the background information necessary to support their advice or recommendation. For example, the author of the email uses language like: I recommend we do [recommendation], because [factual information],<sup>46</sup> or given [factual information], I [opinion].<sup>47</sup>

[52] As this information is so intertwined with and integral to the advice and recommendations to which it relates, I find that it cannot be severed without revealing the advice and recommendations themselves. For this reason, I find that s. 13(1) applies to this kind of information.

[53] I now turn to the applicant's argument that s. 13(1) does not apply to information about her that is not connected to City business. I find that the information the City withheld under s. 13(1) concerns City business, and as the City argues, involves internal deliberations about compliance with City policies, organizational risk, and policy issues. Whether or not some of these internal deliberations also relate to the applicant or her social media activities does not detract from the applicability of s. 13(1). Therefore, I find that this argument is not borne out in the facts.

[54] For the reasons above, I find that s. 13(1) applies to all the information the City withheld under s. 13.

### ***Section 13(2) – exceptions to disclosure***

[55] The next step is to decide whether the information that I have found is advice or recommendations under s. 13(1), falls into any of the categories in s. 13(2). If s. 13(2) applies to any of that information, that information cannot be withheld under s. 13(1).

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<sup>45</sup> Records package 1 pp. 80-81, records package 2B pp. 40, 44, records package 2D pp. 260, 263, 265, 267, 371, 411-438, 465, 467, 486, 509, records package 3 pp. 85-89, records package, 4C pp. 23, records package 4E pp. 16, 106, 110, records package 5A pp. 68, records package 5B pp. 41-50, 51, 141, and records package 5C pp. 24-33, 131, 162.

<sup>46</sup> See for example records package 2B at pp. 40 and 43, and 2D at pp. 465 and 467,

<sup>47</sup> See for example records package 2D at pp. 371.

[56] The City asserts that none of the exceptions in s. 13(2) apply and addresses ss. 13(2)(a) and (n) specifically. The applicant does not address s. 13(2).

*Factual material – s. 13(2)(a)*

[57] Section 13(2)(a) provides that a public body must not refuse to disclose “any factual material” under s. 13(1).

[58] 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.<sup>48</sup> Thus, where facts are an integral component of advice and recommendations, they are not “factual material” within the meaning of s. 13(2)(a).

[59] Given my findings above about the factual information, I find that it is 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 at issue is not captured by s. 13(2)(a).

*Decision that affects the rights of the applicant – s. 13(2)(n)*

[60] Section 13(2)(n) provides that a public body must not refuse to disclose “a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.”

[61] The City explains that while it withheld some information that relates to the applicant’s rights, such as discussions about how to respond to a request or inquiry from the applicant, it did not withhold any information that constitutes a decision about the applicant’s rights. In support of its position, the City highlights several examples where it withheld deliberations among City officials about issues affecting the applicant but disclosed the final decision.<sup>49</sup>

[62] Past OIPC orders establish that s. 13(2)(n) does not require disclosure of all records which relate in any way to the exercise of a discretionary power or an adjudicative function, but only those records which contain a decision or reasons for it.<sup>50</sup>

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<sup>48</sup> PHSA *Supra* note 34 at para. 94.

<sup>49</sup> See paragraph 54 of the City’s initial submission.

<sup>50</sup> Order No. 191-1997, 1997 CanLII 1518 (BC IPC) at p. 4-5; Order No. 218-1998 at p. 7; Order 00-17, 2000 CanLII 9381 (BC IPC) at p. 6; Order F08-05, 2008 CanLII 13323 (BCIPC) at paras. 5-9; Order F07-17, 2007 CanLII 35478 (BC IPC) at para. 37; and Order F20-37, 2020 BCIPC 43 (CanLII) at para. 54.

[63] Having reviewed the s. 13(1) information, I am satisfied that it does not contain a decision or the reasons for it. Rather, as I explained above, the withheld information is the suggestions, opinions and facts that formed an ongoing deliberative process. This kind of ongoing deliberative information is not the kind of information that is captured by s. 13(2)(n). Accordingly, I find that s. 13(2)(n) does not apply.

[64] Having examined the other categories in s. 13(2), I find that they do not apply.

### ***Section 13(3) – in existence for 10 or more years***

[65] The third step is to consider whether the information has been in existence for more than 10 years under s. 13(3). Information that has been in existence for more than 10 years cannot be withheld under s. 13(1).

[66] The records are recent, and none of the withheld information has been in existence for more than 10 years. I find that s. 13(3) does not apply.

### ***Conclusion – s. 13***

[67] For the foregoing reasons, I find that the City is authorized to withhold all the information that it withheld under s. 13(1).

## **SECTION 22 – UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY**

[68] Section 22 of FIPPA requires a public body to refuse to disclose personal information that would be an unreasonable invasion of a third party's personal privacy.

[69] There is some overlap between the information the City withheld under ss. 13, 14, and 22. I will only consider the application of s. 22(1) to the information I have not already determined the City is authorized to withhold under ss. 13(1) or 14.

[70] The information that remains at issue under s. 22(1) is found in email messages, a mailing list, and City forms. Many of the email messages include screenshots of Facebook posts.

[71] A brief overview of the City's approach to severance is helpful to understanding what information is in dispute under s. 22(1). When dealing with information about members of the public, the City took the approach of hiding their identities, but disclosing nearly all other information. Conversely, when dealing with City officials, the City disclosed the identities of the individuals

involved and substantive information relating to City business and withheld only information with some connection to the officials' personal lives.

[72] I find that the City withheld the following information about members of the public:

- names, initials, titles, roles, and descriptions,
- Facebook profile pictures,
- an image,
- telephone numbers, mailing addresses, and email addresses, and
- a small number of statements about how a member of the public was feeling,

and the following information about City officials:

- statements about how they were feeling and their personal circumstances,
- medical information, and
- email addresses that do not include the City's domain name.

### **Section 22(1) – personal information**

[73] As s. 22(1) only applies to personal information, the first step in the s. 22(1) analysis is to determine whether the information in dispute is personal information within the meaning of FIPPA.

[74] Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.” Information is “about an identifiable individual” when it is “reasonably capable of identifying an individual, either alone or when combined with other available sources of information.”<sup>51</sup>

[75] “Contact information” is defined in FIPPA as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”<sup>52</sup> Whether information is “contact information” depends on the context in which it appears.<sup>53</sup> The key question is whether the information, in the context in which it appears in the records, is used in the ordinary course of conducting the third party's business affairs.<sup>54</sup>

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<sup>51</sup> Order F19-13, 2019 BCIPC 15 at para. 16, citing Order F18-11, 2018 BCIPC 14 at para. 32.

<sup>52</sup> Schedule 1.

<sup>53</sup> Order F20-13, 2020 BCIPC 15 (CanLII) at para. 42.

<sup>54</sup> Order F21-69, 2021 BCIPC 80 (CanLII) at para. 42; Order F20-08, 2020 BCIPC 9 at para. 52; Order F15-33, 2015 BCIPC 36 at para. 31; Order F15-32, 2015 BCIPC 35 (CanLII) at para. 15.

[76] With the exception of one telephone number of a member of the public, and email addresses of City officials, I find that the withheld information is personal information within the meaning of s. 22(1).

[77] The City withheld the **names, initials, titles, roles, descriptions, Facebook profile pictures, and an image** of members of the public.<sup>55</sup> For the reasons set out below, I find that all this information is recorded information about identifiable individuals.

- (a) A name is the most direct means of identifying an individual.<sup>56</sup> As individuals' names and initials appear repeatedly in the records, where individuals are identified by their initials, their full names can be easily deduced.
- (b) The titles, roles, and descriptions describe the functions and activities of members of the public within specific groups and at specific events. Having reviewed the records, I find that anyone familiar with the records or the

<sup>55</sup> Information withheld from the emails themselves is found in records package 1 pp. 60, 97, 98, 100, records package 2A pp. 10, 11, 16, 18, 19, 37, 42, 48, 53, 59, 75, 76, 78, 83, records package 2B pp. 1, 3, 4, 5, 37, 41, 44, 46, 48, 58, 59, 60, 63, 66, records package, records package 2C pp. 15, 19, 27, 28, 30, 31, 32, 42, 44, 49, 63, 67, 75, records package 2D pp. 55, 56, 57, 58, 60, 155, 158, 167, 228, 229, 232, 233, 236, 238, 239, 242, 243, 244, 251, 252, 253, 254, 276, 286, 324, 325, 371, 458, 459, 460, 472, 488, records package 3 pp. 7, 26, 30, 35, 36, 37, 39, 40, 41, 47, 48, 51, 52-60, 64, 67, 82, 110, 111-113, 117, 118, 119, 126, records package 4A pp. 56, 57, 63, 67, 82, 136, 148, 164, 165, 167, 170, 176, 179, records package 4B pp. 1, 11, 13, 14, 18, 31, 32, 36, 57, 69, 74, 79, 84, 85, 89, 99-103, 104-107, 110-114, 247, records package 4C pp. 10, 17, 18-22, 23, 36, 66, 73, 77, 91, 99, 100, 106, records package 4D pp. 10, 15, 16, 17, 30, 60, 92, 96, 99, 100, records package 4E pp. 1, 10, 16, 33, 37, 38, 40, 42, 49, 52, 54, 56, 57, 104, 105, records package 5A pp. 22, 24, 29, 35, 36, 37, 49, 50, 51, 53, 54, 75-78, 82, 86, 90, 104, 136, records package 5B pp. 1, 17, 21, 41, 59, 65, 66, 67, 73, 76, 83, 94, 99, 107, 118, 123, 128, 133, 139, 147, 158, 160, 161, 162, 167, 170, 186, 187, 193, 207, records package 5C pp. 24, 34, 131, 132, 136, 143-148, 162, 170, 184. Information withheld from the social media posts is found in Records package 2A pp. 4, 5, 6, 9, 39, 40, 43-48, 50, 51, 53-59, 61, 62, 70, 72, 73, 74, 75, 76, 79-82, 84-88, records package 2B pp. 1, 2, 7-11, 17-21, 26, 33, 36, 45, 47, 48, 49, 50, records package 2C pp. 4, 5, 22, 33-40, 44, 50-54, records package 2D pp. 1-3, 10-12, 16, 18, 19, 21, 23, 24, 39, 43, 46, 48, 49-54, 55, 56, 68, 71, 76, 78, 86-98, 103, 104-112, 114, 115-120, 122, 123, 125, 127, 128, 131, 133, 134, 136, 138, 139, 142, 144, 146, 147, 153, 154, 155, 156, 157, 158, 159, 161, 162, 166, 167, 169, 170, 171-192, 285, 287, 289, 290, 292, 295, 455, 456, 492, 509, 516, 517, records package 3 pp. 16-25, 36, 37, 48, 68-81, 86, 87, 92-95, 106, 107-109, 133-135, records package 4A pp. 1-8, 57, 59-62, 64-67, 68-81, 137, 138, 150, 160, 166, 171-175, 182-191, 20-30, records package 4B pp. 2, 7, 10, 12, 15-17, 19, 33, 34, 38, 39, 59, 70-72, 75-77, 80-83, 87, 88, 99-103, 104-107, 110, 250, 251, 252, 253, 255, 256, records package 4C pp. 2, 5, 7, 8, 9, 11, 14, 25-28, 30, 31, 37-44, 67-72, 74-76, 78, 83-90, 91-101, records package 4D pp. 2-8, 18-29, 31-44, 46, 47, 52-56, 61-65, 72-75, 81-89, 92-102, 107, 108, records package 4E pp. 34-36, 37, 38, 41, 42, 43, records package 4F pp. 32, 33, records package 4G pp. 1-7, 9-14, 16-22, 25, records package 5A pp. 22, 25-28, 30-34, 35, 36, 37, 49, 50, 51, 53, 54, 78, 105, 127, 137-142, records package 5B pp. 7, 12, 13, 42-50, 57, 60-65, 68-73, 100-105, 107-111, 117-123, 125, 126, 128, 130, 131, 133-139, 141, 142, 145, 148, 149, 152, 154, 156-158, 161, 162, 163, 166, 168, 170-172, 184, 188, records package 5C pp. 25-32, 35, 37, 38, 40, 43, 107, 131-142, 163-165, 167-169, 184.

<sup>56</sup> Order F21-47, 2021 BCIPC 55 (CanLII) at para. 13.



- background circumstances discussed therein would be able to identify the affected individuals from this information.
- (c) A Facebook profile picture is the public facing image that Facebook users show to the world. As such, anyone familiar with the Facebook profiles of the affected individuals could associate the profile pictures with the user's account, and thereby the individuals.
  - (d) Finally, it is well-established that an image of a person is recorded information about them.<sup>57</sup> I agree with this approach. A person is so intimately connected to their physical image that it is reasonable to conclude that someone seeing a clear depiction of them would be able to identify them. In this case, the image clearly depicts the individual's face and clothing, rendering the individual clearly identifiable.

I also find that this information is not contact information because it relates to individuals' private lives, and therefore does not relate to the ability to contact them at their places of business. Accordingly, I find that all the information discussed above is personal information within the meaning of s. 22(1).

[78] The City also withheld **telephone numbers**,<sup>58</sup> **mailing addresses**,<sup>59</sup> and **email addresses**<sup>60</sup> of members of the public from emails, City forms, and a mailing list. As this information is accompanied by the relevant individual's name, I find that it is recorded information about identifiable individuals. Furthermore, from the records I can see that with one exception (which I will address below) this information relates to the ability to contact members of the public in their individual capacity, not in a business capacity. Therefore, I find that the information is not "contact information," and that it is, accordingly, personal information within the meaning of s. 22(1).

[79] The one exception is a telephone number of an individual who is listed as the contact for a foundation in a business directory on the City's website.<sup>61</sup> In this context, it is clear that the telephone number was published to enable the individual to be contacted at the foundation.<sup>62</sup> Accordingly, I find that the telephone number is contact information and is therefore excluded from the definition of personal information under s. 22(1).

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<sup>57</sup> Order F24-10, 2024 BCIPC 14 (CanLII) at para. 36; Order F15-42, 2015 BCIPC 45 (CanLII) at paras. 26 and 27; *British Columbia (Ministry of Public Safety and Solicitor General) v Stelmack*, 2011 BCSC 1244 at para. 510; Order P09-02, 2009 BCIPC 67292 (CanLII); and PIPEDA Report of Findings #2020-04, 2020 PCC 83156 (CanLII) at para. 63.

<sup>58</sup> Records package 3 pp. 7, records package 5B 24-40, 96.

<sup>59</sup> *Ibid.*

<sup>60</sup> See note 59 above.

<sup>61</sup> While I acknowledge that this individual also held a position with the City at the relevant time, the individual's role with the City is not relevant to my findings about his information in connection with an outside foundation.

<sup>62</sup> While I can see from the records that City officials were of the view that the contact information was no longer up to date at the time it appeared in the records, whether or not contact information is up to date does not alter the analysis.

[80] The **medical information**,<sup>63</sup> **statements about how City officials and members of the public were feeling**,<sup>64</sup> and **statements about City officials' personal circumstances**<sup>65</sup> are found in emails that name the relevant City officials. While the members of the public are not named, the emails are detailed and reveal a considerable amount of information about the affected individuals including their relationship to City officials and views about various issues affecting the City. I accept that the context could reveal their identity. Therefore, I find that this information is also personal information within the meaning of s. 22(1).

[81] Finally, I find that the **email addresses of City officials that do not include the City's domain**<sup>66</sup> are not personal information given their context and how they were used.

[82] The City argues that the personal email addresses of City officials are not “contact information” as that term is defined in FIPPA, because in most instances, the affected City officials communicated from their City-issued email accounts.

[83] A personal email address may qualify as “contact information” if the individual uses it to conduct business or to allow someone to contact them for business purposes.<sup>67</sup>

[84] I find that in each instance where the City official's personal email address has been withheld, the official was clearly using it to conduct City business. While the City is correct that the affected individuals also used their City email addresses to conduct City business, this fact does not distinguish the facts before me from cases in which the OIPC has found personal email addresses to be contact information. Accordingly, in the context of these records, I find that the personal email addresses are contact information within the meaning of s. 22(1). They are, therefore, excluded from the definition of personal information under s. 22(1).

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<sup>63</sup> Records package 2C pp. 72, records package 2D pp. 32, 35, 248, 328, 331, 333, 337, 338, 342, 347, records package 3 pp. 130, 4E pp. 116, 5C records package 57, 59, 61.

<sup>64</sup> Records package 1: 96, 97; 2A: 16; 2B: 61, 240; 2D: 15, 32, 35, 68, 71, 76, 79, 201, 272, 287, 328, 331, 333, 337, 338, 342, 347; 4A: 65, 82, 129, 148, 176, 179; 4B: 57; 4C: 73, 77; 4E: 1, 10, 33; 5A: 56, 60; 5C: 146.

<sup>65</sup> Records package 2C: 30; records package 2D: 55, 276; records package 3: 5, 130; records package 4E: 10, 33, 55, 116; records package 5B: 66, 73; records package 5C: 24, 57, 59, 61.

<sup>66</sup> Records package 1 pp. 60, 95, 98, records package 2B pp. 66; records package 2C pp. 27, 29, 31, 42, 63, 68, 70, 71; records package 3 pp. 51, 60; records package 4A pp. 81, 82, 129, 136, 148, 168, 170, 178, 179; records package 4B pp. 1, 13, 14, 35, 36, 37, 69, 109, 247, 248, 249, 4C pp. 10, 17, 36, 66, 73, 77, 81, 106; records package 4D pp. 10, 30, 45; records package 4E pp. 1, 2, 33, 50, 52, 55, 56, 104, 106, 110; records package 5A pp. 82, 87, 90, 104, 136; records package 5B pp. 18, 22, 51, 53, 193, 198, 199, 202, 203; records package 5C pp. 44.

<sup>67</sup> Order F21-35, 2021 BCIPC 43 (CanLII) at para. 164, and Order F22-13, 2022 BCIPC 15 (CanLII) at para. 65.

*Conclusion about personal information*

[85] In conclusion, I find that the personal email addresses of City officials<sup>68</sup> and one telephone number<sup>69</sup> are contact information and, therefore, not personal information, and that the rest of the information discussed above is personal information within the meaning of s. 22(1).

***Section 22(4) – circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy***

[86] The second step in the s. 22 analysis is to consider whether s. 22(4) applies to any of the “personal information.” Section 22(4) lists circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. If information falls into one of the circumstances enumerated in s. 22(4), the public body is not required to withhold the information under s. 22(1).

[87] The City argues that s. 22(4)(e) does not apply to any of the information about City officials. The applicant does not address s. 22(4).

*Third party's position, functions, or remuneration – s. 22(4)(e)*

[88] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions, or remuneration as an officer, employee, or member of a public body.

[89] Previous OIPC orders have found that s. 22(4)(e) applies to information (?) that reveals a public body employee's name, job title, duties, functions, remuneration (including salary and benefits) or position.<sup>70</sup>

[90] The personal information of City officials at issue in this inquiry is statements about how they were feeling and their personal circumstances and medical information. This information is not about the officials' position, functions, or remuneration. Therefore, s. 22(4)(e) does not apply.

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<sup>68</sup> Records package 1 pp. 60, 95, 98; records package 2B pp. 66; records package 2C pp. 27, 29, 31, 42, 63, 68, 70, 71; records package 3 pp. 51, 60; records package 4A pp. 81, 82, 129, 136, 148, 168, 170, 178, 179; records package 4B pp. 1, 13, 14, 35, 36, 37, 69, 109, 247, 248, 249; records package 4C pp. 10, 17, 36, 66, 73, 77, 81, 106; records package 4D pp. 10, 30, 45; records package 4E pp. 1, 2, 33, 50, 52, 55, 56, 104, 106, 110; records package 5A pp. 82, 87, 90, 104, 136; records package 5B pp. 18, 22, 51, 53, 193, 198, 199, 202, 203; records package 5C pp. 44.

<sup>69</sup> Records package 5B pp. 96.

<sup>70</sup> Order F20-54, 2020 BCIPC 63 (CanLII) at para. 56 and footnote 45; Order F14-41, 2014 BCIPC 44 (CanLII) at para. 22, citing Order 02-56, 2002 CanLII 42493 (BCIPC) at para. 63.

[91] I have considered the other circumstances in s. 22(4), and I find that no others apply.

***Section 22(3) – disclosure presumed to be an unreasonable invasion of third-party personal privacy***

[92] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The City argues that ss. 22(3)(a) and 22(3)(g) apply. The applicant does not address s. 22(3).

[93] Having considered the other presumptions in s. 22(3), I find that no other presumptions apply. I will consider sections ss. 22(3)(a) and (g) below.

*Section 22(3)(a) – medical, psychiatric, or psychological history*

[94] Section 22(3)(a) creates a presumption that it is an unreasonable invasion of a third party's personal privacy to disclose personal information that relates to a medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation.

[95] The medical information indicates only that a City official was at a medical care facility. It provides no information about the reasons, nature of care sought, or even if the visit related to the individual's own healthcare. In my view, this kind of information is too vague to attract the presumption in s. 22(3)(a) because it provides no information about an individual's "history, diagnosis, condition, treatment, or evaluation." This finding is consistent with past OIPC orders.<sup>71</sup> I find that s. 22(3)(a) does not apply to this information.

*Section 22(3)(g) – recommendations, evaluations, or references*

[96] Section 22(3)(g) creates a presumption that it is an unreasonable invasion of a third party's personal privacy to disclose personal information consisting of personal recommendations or evaluations, character references or personnel evaluations about a third party.

[97] In past orders, the OIPC has held that s. 22(3)(g) applies to formal evaluations of a third party such as a formal performance review, job reference, or an investigator's findings about an employee's behaviour in the context of a workplace investigation.<sup>72</sup>

[98] Past orders also make clear that s. 22(3)(g) does not capture all evaluative statements and that some degree of formality is required. In this regard, in Order F16-46, the adjudicator said that "something more formal than comments

<sup>71</sup> See for example Order F22-34, 2022 BCIPC 38 (CanLII) at para. 200.

<sup>72</sup> See for example Order F21-08, 2021 BCIPC 12 (CanLII) at para. 138,

provided in an interview setting is required to invoke s. 22(3)(g).<sup>73</sup> Similarly, in Order F22-56, the adjudicator declined to apply s. 22(3)(g) to information in an email that “d[id] not contain the kind of formal evaluative material contemplated by s. 22(3)(g).”<sup>74</sup>

[99] The City asserts that some of the withheld information falls within the scope of s. 22(3)(g) because it is evaluative statements about the conduct of identifiable third parties. The City also submits that information that would disclose the identities of the individuals who made the statements is captured by s. 22(3)(g).

[100] I see nothing in the withheld information that is the kind of formal evaluative statements to which s. 22(3)(g) typically applies. However, some of the statements of personal feelings includes the author’s views about the conduct of others. I conclude it is these statements to which the City refers. These statements are found in email communications and were not part of any formal evaluative process. I find that the statements at issue do not have the requisite formality for s. 22(3)(g) to apply. Therefore, I find that the s. 22(3)(g) presumption does not apply to any of the withheld information.

### **Section 22(2) – All Relevant Circumstances**

[101] Section 22(2) provides a non-exhaustive list of circumstances that a public body must consider when determining whether disclosure is an unreasonable invasion of a third party’s personal privacy. It is at this stage of the analysis that the presumptions under s. 22(3), may be rebutted, though there are no presumptions to rebut in this case.

[102] The City submits that ss. 22(2)(a), (b), and (c) are not relevant to the information in dispute, and that ss. 22(2)(e), (f), and (h) weigh against disclosing the personal information. The City also submits that the applicant’s knowledge and the public nature of some of the information may be relevant.

[103] The applicant does not address s. 22(2) directly but makes a number of submissions that I find to be relevant to my analysis under s. 22(2), so I will discuss them below.

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<sup>73</sup> Order F16-46, 2016 BCIPC 51 (CanLII) at para. 35. See also Order F05-35, 2005 CanLII 32547 (BC IPC) at paras. 41-42 for a similar conclusion about comments and complaints made in a workplace investigation.

<sup>74</sup> Order F22-56, 2022 BCIPC 63 (CanLII) at para. 64.

*Public scrutiny of a public body – s. 22(2)(a)*

[104] Section 22(2)(a) requires a public body to consider whether disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny.

[105] One of the purposes of s. 22(2)(a) is to make public bodies more accountable.<sup>75</sup> Therefore, for s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting the public body's activities to public scrutiny as opposed to subjecting an individual third party's activities to public scrutiny.<sup>76</sup>

[106] The applicant argues that City decisions were tainted by the personal biases of City officials. She also identifies a particular statement made by a City official, and suggests the official was acting outside of the scope of their duties as an elected official and had a personal vendetta against her.

[107] The City argues that no public interest would be served by disclosing the information in dispute because the only information it withheld under s. 22 is the names and other identifying information of members of the public, and information that is personal in nature such that it has no bearing on the activities of the City. The City disputes the applicant's allegations of bias and asserts that they are not relevant to the FIPPA matters at issue.

[108] Some of the statements about how the City officials were feeling concerns how the applicant's conduct made the relevant City official feel. For the reasons below, I find that s. 22(2)(a) is applicable to this information.

[109] The applicant does not make clear what City decisions she says were tainted by bias. However, I can see from the records that the same City officials who expressed feelings about the applicant's conduct also made decisions about whether the applicant's social media posts violated the City's social media policy, and about what actions to take in response. I accept that information that reveals how these decision makers felt about the applicant's conduct is relevant to the applicant's allegations of bias.

[110] The more difficult question is whether this kind of information is relevant to subjecting the activities of the City (rather than individual City officials) to public scrutiny. Certainly, information about the feelings of individual City officials is about the individuals who hold those feelings. However, these individuals shared their feelings with other decision makers and participated in City decisions that affected the applicant. In this context, and given the bias allegations raised by the applicant, I find that the statements about how the applicant's conduct made the

<sup>75</sup> Order F18-47, 2018 BCIPC 50 (CanLII) at para. 32.

<sup>76</sup> Order F16-14, 2016 BCIPC 16 (CanLII) at para. 40.

City officials feel are sufficiently related to the activities of the City to engage s. 22(2)(a). Therefore, I find that s. 22(2)(a) weighs in favour of disclosing City officials' statements about how the applicant's conduct made them feel.

[111] I can see no connection between s. 22(2)(a) and any of the other personal information at issue in this inquiry, and accordingly, I find that s. 22(2)(a) is not relevant to any other information.

*Public health and safety or protection of the environment – s. 22(2)(b)*

[112] Section 22(2)(b) requires a public body to consider whether the disclosure is likely to promote public health and safety or to promote the protection of the environment.

[113] I acknowledge that the records touch on the issue of bullying and harassment and that such behaviour can negatively impact individuals. However, given the specific nature of the information at issue, I can see no connection between the disputed information and public health, safety, or the environment. I find that s. 22(2)(b) is not a relevant consideration.

*Fair determination of the applicant's rights – s. 22(2)(c)*

[114] Section 22(2)(c) requires a public body to consider whether the personal information is relevant to a fair determination of the applicant's rights.

[115] Past orders establish a four-part test, each step of which must be met for s. 22(2)(c) to apply:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.<sup>77</sup>

While the applicant's statements about bullying and harassment or bias could arguably satisfy step 1 of the test, there is no information before me that could

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<sup>77</sup> Order 01-07, 2001 CanLII 21561 (BCIPC) at para. 31; Order F15-11, 2015 BCIPC 11 at para. 24; and Order F24-09, 2024 BCIPC 12 (CanLII) at para. 48.

satisfy steps 2, 3, or 4. Accordingly, I find that s. 22(2)(c) is not a relevant consideration.

*Unfair exposure to financial or other harm – s. 22(2)(e)*

[116] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm.

[117] The City submits that s. 22(2)(e) applies to the disclosure of information that would reveal the identities of members of the public who complained to the City about the online conduct of others, and who were the subject of discussions concerning whether their social media posts constituted bullying or violated the City's social media policy. It argues that revealing the identities of these individuals would expose them unfairly to harm such as harassment on social media by those who disagree with their opinions. The City's arguments relate to the names, initials, titles, roles, descriptions, and Facebook profile pictures of members of the public where they appear in City officials' emails.

[118] Past OIPC orders have held that harm under s. 22(2)(e) can include mental harm, in the form of serious mental distress or anguish, but that embarrassment, upset or having a negative reaction do not rise to the level of mental harm.<sup>78</sup>

[119] For the reasons set out below, I accept that revealing the identities of members of the public who complained to the City about others' social media posts would expose the affected individuals to serious mental distress within the meaning of s. 22(2)(e).

[120] On the face of the records, I can see that some of the social media comments were personal, vicious, and persistent and are fittingly described as verbal "attacks." For example, some individuals repeatedly attempted to connect and even cast blame on others for the actions of an individual connected to Pitt Meadows who was charged in connection with child pornography.<sup>79</sup> I can understand how these kinds of attacks, especially in a small community like Pitt Meadows, could cause mental distress or anguish.

[121] In addition, while I cannot provide details without disclosing information that is in dispute, I note that several of the statements about third parties' feelings confirm that they experienced harm from this kind of conduct.<sup>80</sup> In addition, the applicant says that the bullying and harassment that she experienced in connection with the same social media environment harmed her mental health.

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<sup>78</sup> Order F20-37, 2020 BCIPC 43 (CanLII) at para. 120; Order 01-15, 2001 CanLII 21569 (BC IPC) at paras. 49-50; and Order 01-37, 2001 CanLII 21591 (BCIPC) at para. 42.

<sup>79</sup> See for example records package 2C pp. 33-36 and records package 3 pp. 56 and 57.

<sup>80</sup> See for example records package 2D at pp. 251, 252, 416, 4A at pp. 82, 188-189.



[122] Revealing the identities of the members of the public who complained to the City about the negative online comments would reveal that these individuals disagreed with the conduct of those engaged in these kinds of online attacks. I have no evidence of the current social media climate surrounding the City activities. However, given the history, I accept that revealing the identities of these individuals would make them targets for the same kind of conduct on social media.

[123] In making this finding, I wish to be clear that not all online bullying and harassment will rise to the level of serious mental distress required by s. 22(2)(e). However, given the nature of the attacks and the evidence of mental harm experienced as a result, in this case, I find that it would.

[124] I do not, however, accept that revealing the identities of individuals who were the subject of discussions concerning whether their own social media posts constituted bullying or harassment or violated the City's social media policy engages s. 22(2)(e). While the City states that revealing this information could result in mental harm, it does not explain how, and nor can I see how on the face of the records.

[125] Therefore, I find that s. 22(2)(e) weighs in favour of withholding information that would reveal the identities of members of the public who complained to the City about others' social media posts, but not to any other information.

*Unfair damage to reputation – s. 22(2)(h)*

[126] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage a third party's reputation.

[127] The City makes the same arguments about s. 22(2)(h) as it did about s. 22(2)(e). It argues that revealing the identities of those who complained to the City about the online conduct of others, and who were the subject of discussions concerning whether their own social media posts constituted bullying or violated the City's social media policy may unfairly damage their reputation.

[128] I accept that disclosing information that would reveal the identities of individuals who were the subject of discussions about whether their social media posts constituted bullying or ran afoul of the City's social media policy may unfairly damage their reputation.

[129] In past orders, the OIPC has held that reputational damage is unfair within the meaning of s. 22(2)(h) where the affected individual did not have the opportunity to respond or to correct the record.

[130] In this case, the records contain several instances where City officials expressed their views about whether social media posts violated the City's policies or constituted bullying and harassment. I accept that revealing the identities of those who are accused of engaging in this kind of online misconduct could result in reputational harm. I see no evidence in the records that these individuals had the opportunity to respond or correct the record. As a result, the records contain only the views of City officials. As such, I find that disclosing the identities of those who were accused of engaging in online misconduct may unfairly damage their reputations.

[131] I do not, accept that revealing the identities of those who complained to the City about the online conduct of others engages s. 22(2)(h). Beyond stating that this information could result in reputational harm, the City does not explain, and the connection between these complaints and unfair reputational harm is not clear to me.

[132] Therefore, I find that s. 22(2)(h) weighs in favour of withholding the information that would reveal the identities of members of the public who were the subject of discussions concerning whether their social media posts constituted bullying or violated the City's social media policy, but not to any other information.

*Supplied in confidence – s. 22(2)(f)*

[133] Section 22(2)(f) provides that whether “the personal information has been supplied in confidence” is a factor to consider in determining whether disclosure is an unreasonable invasion of a third party's personal privacy.

[134] The City argues that s. 22(2)(f) weighs against disclosure of information that would identify members of the public who provided their opinions and comments to the City. The City asserts that it should not be required to disclose this kind of information because “it is likely that the third parties at issue supplied their name and personal contact information to the City believing that it would be held in confidence [within the meaning of] s. 22(2)(f).”<sup>81</sup>

[135] The City's argument relates to names, email addresses, and statements about how members of the public were feeling found in emails from members of the public to City officials.

[136] For s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information, and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.<sup>82</sup>

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<sup>81</sup> City's initial submission at para. 77(b).

<sup>82</sup> Order F11-05, 2011 BCIPC 5 at para. 41 citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26 regarding s. 21(1)(b).

[137] I am not persuaded that s. 22(2)(f) applies in this case. First, there is no evidence before me to suggest that the affected individuals expected confidentiality. In this regard, the records themselves contain no express indications that the affected individuals expected confidentiality, and the City provided no evidence that would establish they did. In addition, there is no evidence before me that would support a finding that there was any objectively reasonable basis for these individuals to expect confidentiality. In this regard, the City cites no relevant policies, practices, or other information that would support such a finding, arguing only that it “is likely” that they did.

[138] While the affected members of the public may prefer that the information they supplied be kept confidential, there is no evidence before me to establish that they reasonably expected it. Accordingly, I am not satisfied that the personal information was supplied in confidence, and I find that s. 22(2)(f) does not weigh in favour of withholding the personal information.

*Applicant’s personal information*

[139] Past OIPC decisions have recognized that the fact that information is also the applicant’s personal information is a factor that weighs in favour of disclosure.<sup>83</sup>

[140] The applicant argues that personal commentary by City officials that is unconnected to City business, but about her should be disclosed. She says that if City officials are using City platforms to discuss her, these communications should be disclosed. She also says that “if members of the public are trolling [her] and forwarding information from public sites [to the City], that information should also be disclosed.<sup>84</sup> Taken together, I understand these arguments to mean that the applicant believes she is entitled to her own personal information.

[141] The only personal information at issue that is about the applicant is statements about how the applicant’s actions made City officials and members of the public feel. However, while this information is about the applicant, it is also the personal information of the individuals whose feelings the statements describe. Past OIPC orders have attributed diminished weight to the fact information is about an applicant where the information is also about another individual.<sup>85</sup> I take the same approach here. Thus, while the fact that the information is about the applicant weighs in favour of disclosure, I give this factor limited weight because the information is not solely the applicant’s personal information.

[142] The remaining information is not about the applicant. While the City withheld information that would identify members of the public who posted to

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<sup>83</sup> Order F23-56, 2023 BCIPC 65 (CanLII) at para. 90.

<sup>84</sup> Applicant’s submission at pp. 4.

<sup>85</sup> Order F15-52, 2015 BCIPC 55 at para. 45, Order F22-31, 2022 BCIPC 34 (CanLII) at para. 85.

social media or provided information to the City, it did not withhold the substance of the information those individuals posted or provided under s. 22(1). In so doing, the City disclosed the information that was about the applicant. While I understand the applicant's interest in knowing the identities of the individuals who posted or wrote to the City about her, I find their identities are not the applicant's personal information. Therefore, I find that this factor does not weigh in favour of disclosing this kind of information.

### *Sensitivity*

[143] Previous OIPC orders have considered the sensitivity of the personal information at issue. Where the sensitivity of the information is high, withholding the information should be favoured.<sup>86</sup> However, where the information is of a non-sensitive nature or that sensitivity is reduced by the circumstances, then this factor may weigh in favour of disclosure.<sup>87</sup>

[144] The information that reveals third parties' personal feelings often reveals negative emotions and feelings. It is the kind of information that individuals typically choose to share only with those they trust. Given the personal and emotional content of this information, I find that it is sensitive. This finding is consistent with past orders.<sup>88</sup> I find that the sensitivity factor weighs in favour of withholding this kind of information.

### *Publicly available*

[145] Previous orders have considered the degree to which the disputed information is already known, to the applicant or the public, as a relevant circumstance under s. 22(2).<sup>89</sup> In general, it is not an unreasonable invasion of a third party's personal privacy to disclose information that is already publicly known.<sup>90</sup> However, where information is not widely known but is known only to an applicant or a small group of people this factor will carry little weight.<sup>91</sup>

[146] Both parties make arguments about the impact of the public availability of the information withheld from the social media posts.

[147] The information the City withheld from social media posts includes names, initials, titles, roles, descriptions, Facebook profile pictures, and an image of

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<sup>86</sup> Order F16-52, 2016 BCIPC 58 at para. 87.

<sup>87</sup> Order F16-52, 2016 BCIPC 58 at paras. 87-91 and 93.

<sup>88</sup> Order F23-74, 2023 BCIPC 89 (CanLII) at para. 90, Order F23-56, 2023 BCIPC 65 (CanLII) at para. 90.

<sup>89</sup> Order F21-08, 2021 BCIPC 12 at para. 192 (and the cases cited therein), Order F21-28, 2021 BCIPC 36 at paras. 53-69, and Order F22-31, 2022 BCIPC 34 (CanLII) at para. 85.

<sup>90</sup> Order F22-31, 2022 BCIPC 34 (CanLII) at para. 78.

<sup>91</sup> Order F23-83, 2023 BCIPC 99 (CanLII) at para. 82, and Order F22-31, 2022 BCIPC 34 at paras. 80-82.

members of the public. This information is attached to thousands of social media posts and comments that the City collected and circulated internally by email.

[148] In my view it is not the posts themselves, but the context in which they appear in the records that is most important here. The information at issue is in email communications that contain screenshots of and discussions about the posts. The emails connect the posts to specific City business, and often to views and decisions of City officials about the posts. As discussed in respect of s. 22(2)(h), some of these emails include discussions of whether a particular post violates City policy or constitutes bullying or harassment and thereby paint the affected individuals in a negative light.

[149] In this context, revealing the information about these posts that has been severed from the emails would reveal far more than what may have been publicly available from the social media posts. It would allow a reader to connect the affected individuals to specific City business and others' views about these posts. This kind of information is not available to the public or to the applicant.

[150] Accordingly, I find that the public availability of the posts does not weigh in favour of disclosing the information in the emails that would identify the third parties connected to them.

*Conclusion – s. 22(1)*

[151] The **personal email addresses of City officials** and **one telephone number** are not personal information within the meaning of s. 22(1). The City is not required to withhold this information under s. 22(1).

[152] As for the “personal information,” the **names, initials, titles, roles, descriptions, Facebook profile pictures**, and the **image** of members of the public connect those individuals to social media posts and emails, and to opinions about them, often in the context of discussions about online misconduct. Revealing this information would reveal significant amounts of information about the affected individuals. In addition, ss. 22(2)(e) and (h) weigh against disclosure of some of it because of the risk of mental harm and reputational damage. Conversely, no factors favour disclosure. As there are no factors favouring disclosure, I find that the applicant has not satisfied the onus, and therefore that disclosure of this information would be an unreasonable invasion of the affected third parties' personal privacy.

[153] As for the **telephone numbers, home addresses, and email addresses** of members of the public, s. 22(2)(e) weighs against disclosure of some of the email addresses because revealing this information would allow a reader to connect the affected third parties to complaints to the City about the online conduct of others. No other factors apply to this information. As above, I find that the applicant has not satisfied the onus, and therefore that disclosure of this

information would be an unreasonable invasion of the affected third parties' personal privacy.

[154] City officials' **medical information** and **statements about personal circumstances** relate to the affected individuals' personal lives. No presumptions or considerations apply to this kind of information. I find that the applicant has not satisfied the onus, and that disclosure of this information would be an unreasonable invasion of the affected third parties' personal privacy.

[155] The **statements about how members of the public were feeling** convey how the applicant's actions made the third parties feel. The sensitivity factor favours withholding this information, while the fact that it is the applicant's personal information favours disclosure (though to a limited extent since the information is also the personal information of third parties). Having considered the specific statements at issue, I find that they are more about the emotional experience of the third party than about the applicant. Therefore, balancing the sensitivity factor against the limited weight of the "applicant's information" factor, I find that disclosing this information would be an unreasonable invasion of the affected third parties' personal privacy.

[156] Some of the **statements about how City officials were feeling** is not about the applicant. In this circumstance, no factors favour disclosure, and the sensitivity factor favours withholding the information. I find that disclosure of these statements would be an unreasonable invasion of the affected third parties' personal privacy.

[157] The remaining statements about how City officials were feeling have some connection to the applicant. However, most reveal City officials' inward experiences and emotional responses to difficult circumstances. They are the sharing of feelings and venting that typically occur between friends and colleagues who are experiencing difficult circumstances. They are also separate from discussions about City business. Finally, the City disclosed the surrounding information so the substance of the matters at issue is available.

[158] In the circumstances, I find that these statements are more about the third parties than about the applicant or how City decisions were made. While s. 22(2)(a) and the fact that the information is about the applicant favour disclosure, I find that these factors are significantly diminished by the highly personal nature of the statements. Given the context and the nature of the information, I find that the sensitivity factor outweighs the two other factors, and therefore that disclosure of these statements would be an unreasonable invasion of the affected third parties' personal privacy.

[159] However, there is one statement about how a City official was feeling that includes what action that official wishes to take as a result.<sup>92</sup> The statement relates to City business and is considerably less sensitive than the other statements about feelings. Given the connection between this information and City decision making, I find that s. 22(2)(a) and the fact that the information is about the applicant outweigh the sensitivity factor. Accordingly, I find that disclosure of this statement would not be an unreasonable invasion of the affected third parties' personal privacy.

[160] Therefore, I find that the City is required to withhold all the information to which it applied s. 22(1) except the personal email addresses of City officials, the telephone number, and the statement described above.<sup>93</sup>

### **SECTION 12(3)(B) - LOCAL PUBLIC BODY CONFIDENCES**

[161] Section 12(3)(b) authorizes a local public body to refuse to disclose information that would reveal “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.”

[162] The City relied on s. 12(3)(b) to withhold the meetings minutes that are no longer in dispute,<sup>94</sup> a small amount of other information that I have found the City is authorized to withhold under ss. 13(1) and 14. As a result, I find that the City's application of s. 12(3)(b) is no longer a live issue, and I will not consider it.

### **CONCLUSION**

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

1. I confirm, in full, the City's decision to refuse access to the information withheld in the records under ss. 13(1) and 14.
2. I confirm, in part, the City's decision to refuse access to the information withheld in the records under s. 22(1).

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<sup>92</sup> The statement is found in records package 2A: 16; records package 2D: 68, 71, 76, 79.

<sup>93</sup> The information the City is not authorized to withhold under s. 22(1) is found in records package 1 pp. 60, 95, 97, 98; records package 2A p. 16; records package 2B pp. 66; records package 2C pp. 27, 29, 31, 42, 64; records package 2D pp. 68, 71; 68, 71, 76, 79; records package 3 pp. 60; records package 4A pp. 81, 82, 129, 136, 148, 168, 170, 178, 179, 181; records package 4B pp. 1, 13, 14, 35, 36, 37, 69, 109, 247, 248, 249; records package 4C pp. 10, 17, 36, 66, 73, 77, 81, 106; records package 4D pp. 30, 45; records package 4E pp. 1, 2, 33, 50, 52, 55, 56, 104, 106, 110; records package 5A pp. 82, 87, 90, 136; records package 5B pp. 18, 22, 51, 53, 96, 193, 199, 203, records package 5C pp. 44.

<sup>94</sup> See para. 3, above.

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3. I require the City to give the applicant access to the information that I have found the City is not required to withhold under s. 22(1).<sup>95</sup> The information the City is required to provide to the applicant is highlighted in green in a copy of the records that will be provided to the City with this order.
  4. The City must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records/pages described at item 3 above.

[164] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by June 5, 2024.

April 23, 2024

**ORIGINAL SIGNED BY**

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Allison J. Shamas, Adjudicator

OIPC File No.: F22-89130

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<sup>95</sup> The information the City is not authorized to withhold is listed in note 93.