



Order F24-42

DISTRICT OF NORTH SAANICH

Alexander Corley
Adjudicator

May 21, 2024

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a property owner (applicant) requested records related to building permits and a rezoning application for a specific property from the District of North Saanich (District). In response, the District provided responsive records but withheld a small amount of information from them under ss. 12(3)(b) (local public body confidences) and 14 (solicitor-client privilege) of FIPPA. The adjudicator determined that the District was authorized to withhold most of the information in dispute. However, the adjudicator also determined that the District had waived its privilege over some of the information in dispute under s. 14 and that a small amount of the information in dispute under s. 12(3)(b) did not fall within the scope of that section. The adjudicator ordered the District to provide the information the District was not authorized to withhold to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 12(3)(b) and 14; *Community Charter*, [SBC 2003] c. 26, ss. 89, 90, and 92.

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a property owner (applicant) requested access to a variety of records related to building permits and a rezoning application from the District of North Saanich (District).

[2] The District provided responsive records to the applicant but advised the applicant that it was withholding some information and records pursuant to ss. 12(3)(b) (local public body confidences), 13(1) (advice or recommendations), 14 (solicitor-client privilege), 15(1)(d) (disclosure harmful to law enforcement), 17(1)(b) (disclosure harmful to the financial interests of a public body), and 22(1)

(unreasonable invasion of privacy) of FIPPA.¹ The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the District's decision to withhold information and records.

[3] Mediation by the OIPC did not resolve the issues between the parties and the applicant requested that the matter proceed to an inquiry. However, after the close of mediation, the District ceased relying on ss. 13(1) and 17(1)(b) to withhold any information and released additional information to the applicant. Therefore, ss. 13(1) and 17(1)(b) are not at issue in this inquiry.

Preliminary Matters

Information no longer in dispute

[4] The District's disclosures to the applicant were organized into two packages of records, one related to building permits and one related to a rezoning application. In their submission in this inquiry, the applicant says they are no longer seeking the release of any information severed from the building permits package. Further, regarding the rezoning application package, the applicant says they are seeking only the release of specific information withheld by the District pursuant to ss. 12(3)(b) and 14.²

[5] Concurrently with providing its reply submission in this inquiry, the District re-evaluated how it had applied ss. 12(3)(b) and 14 to the rezoning application package and provided additional information to the applicant.

[6] Based on all of this, I find that the only information which remains in dispute is the information severed under ss. 12(3)(b) or 14 in the subset of the rezoning application records delivered to the applicant and the OIPC alongside the District's reply submission in this inquiry (records). Therefore, I will consider only those records and those sections of FIPPA in this inquiry.³

¹ I note that the District initially provided only some of these records to the applicant. The applicant requested that the OIPC review the adequacy of the District's search for records pursuant to FIPPA s. 6(1). The District then undertook a further search and provided more records to the applicant, citing additional FIPPA exemptions for withholding information from those records. This dispute between the parties was resolved without proceeding to an inquiry in OIPC File F22-89099 and the adequacy of the District's search for records is not an issue in this inquiry.

² Applicant's Response Submission at para. 8 and the table included therein referencing the rezoning application package at pp. 22-35, 43-46, 76-77, 95-103, 117-140, 157-158, 381, 402-459, 467-495, 518-532, 534-536, 544-563, 589, 708-709, 720-723, 726-728, and 737-739.

³ The applicant also requests that I review pp. 60-63 and 78-81 of the rezoning application package to confirm that they are duplicative of pp. 43-46 of that package. I confirm that I have reviewed pp. 60-63 and 78-81 of the rezoning application package and I find that they are true duplicates of pp. 43-46 of that package.

ISSUE

[7] In this inquiry I must decide whether the District is authorized, by ss. 12(3)(b) or 14, to withhold the information in dispute.

[8] Section 57(1) of FIPPA says the District has the burden of proving that the applicant has no right to access the information in dispute.

DISCUSSION

Background

[9] The District is a regional municipality located north of Victoria, British Columbia, adjacent to the Town of Sidney and the Corporation of the District of Central Saanich.⁴

[10] The applicant owns property within the District and the records relate to a rezoning application for that property that was previously received and rejected by the District's municipal council (Council).

[11] The applicant says that Council's rejection of the rezoning application caused them hardship, including forfeiture of an application fee, and that they are requesting access to the records to assist them with preparing a further application regarding the same property.

Information in dispute

[12] The District provided an unredacted copy of the records to the OIPC for purposes of this inquiry. From my review of the records, I can see that many are e-mails, some with attachments, among District employees, between District employees and lawyers, or between District employees and the applicant. There are also meeting minutes and agendas for Council meetings; materials provided to Council during Council meetings; and notes taken by District councillors during Council meetings.

Solicitor-client privilege, s. 14

[13] Section 14 authorizes a public body to refuse to disclose information that is subject to solicitor-client privilege. The term "solicitor-client privilege" in s. 14 encompasses both legal advice privilege and litigation privilege.⁵ The District relies on legal advice privilege to withhold all the information in dispute under

⁴ For a map of the territory governed by the District, see "Schedule 1 to the Letters Patent of the [District]," available at: https://geobc-basemapping.github.io/North_Saanich.pdf

⁵ *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 26.

s. 14 and does not claim litigation privilege. I use the terms “solicitor-client privilege” and “legal advice privilege” interchangeably in the rest of this order.

Legal advice privilege

[14] Legal advice privilege applies to communications that:

1. Are between solicitor and client;
2. Entail the seeking or giving of legal advice; and
3. Are intended by the parties to be confidential.⁶

[15] Not every communication between a solicitor and their client is privileged; however, if the conditions above are satisfied, legal advice privilege applies.⁷

[16] Furthermore, it is not only the direct communication of advice between solicitor and client that may be privileged. The “continuum of communications” related to the advice, that would reveal the substance of the advice, also attracts the privilege.⁸ The “continuum of communications” includes the necessary exchange of information between solicitor and client for the purpose of obtaining legal advice, such as when a client furnishes information to assist their solicitor in providing legal advice.⁹ It also includes communications at the other end of the continuum, such as internal client communications about received legal advice and its implications.¹⁰

[17] Concerning attachments to e-mails, solicitor-client privilege does not necessarily apply to all attachments.¹¹ However, attachments may, depending on their content, be privileged on their own, independent of being attached to an email which is itself privileged. Further, an attachment may be privileged if it constitutes an integral part of the communication to which it is attached and disclosure of the attachment would reveal, or allow accurate inferences to be drawn about, privileged information contained in that communication.¹² The party claiming privilege over an attachment must provide some basis for that claim.¹³

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

⁷ *Solosky*, *ibid* at 829 and 837.

⁸ *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 [*Bilfinger*] at paras. 22-24. See also *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at paras. 32-33.

⁹ See *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [*Camp*] at para. 40 where the court found that “[i]t is [the] chain of exchanges or communications [between lawyer and client] and not just the culmination of the lawyer’s product or opinion that is privileged.”

¹⁰ *Bilfinger*, *supra* note 8 at paras. 22-24.

¹¹ *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 [*Finance*] at para. 110.

¹² Order F20-08, 2020 BCIPC 9 at para. 27 and Order F18-19, 2018 BCIPC 22 at paras. 36-40.

¹³ *Finance*, *supra* note 11 at para. 111.

Parties' positions on legal advice privilege

[18] The District says that the information it has withheld under s. 14 falls into two distinct categories. First, it says that some of this information is contained in communications directly between the District and its lawyers which were made for the purpose of the District seeking legal advice and receiving the requested legal advice.¹⁴ Second, it says that the remainder of this information is contained in “summaries of privileged communications” between the District and its lawyers which were exchanged internally between District employees and, in some cases, Council. The District submits that all of these communications were intended to be confidential and that where the communications contain attachments, those attachments relate directly to and would reveal the substance of the legal advice the District sought and received from its lawyers.

[19] The applicant says they accept that s. 14 authorizes the District to claim privilege over communications between the District and its legal counsel which contain legal advice but asks that I review the information in dispute to confirm that the District has properly applied s. 14 to it. The applicant says they are particularly concerned about the District relying on s. 14 to withhold information from internal communications between District employees.

Analysis

[20] Having reviewed the information in dispute under s. 14, I find that the records containing it fall into two broad categories: emails between the District and individuals identified as lawyers (lawyer communications);¹⁵ and internal communications between District employees and, in some cases, Council (internal communications).¹⁶ I also find that some of these records are emails containing attachments.¹⁷

[21] Therefore, I will consider whether the lawyer communications and the internal communications meet the three-part test for legal advice privilege set out above¹⁸ or, alternatively, fall within the “continuum of communications” between the District and its legal counsel and are privileged on that basis.

¹⁴ The District’s initial submission references it requesting and receiving legal advice from two different law firms, but it is clear from reviewing the records that only the communications between the District and one of those firms are still in dispute under s. 14.

¹⁵ Records at pp. 22-35, 117-118, 120-129, 131-133, 135-140, 381, 402-404, 406-417, 419, 424-430, 434-435, 440-448, 453-459, 467-469, 474-476, 481-491, 518, 524-525, 527-528, 530-531, 534-535, 544-546, 550-553, 556-559, 708, 722, 726, 737, and 739. I note that much of this information is duplicative, with different versions of the same e-mail chains appearing multiple times.

¹⁶ Records at pp. 22, 29, 45, 419, 436, 447, 449, 467, 476, 491, 563, and 589.

¹⁷ The attachments are found at pp. 24-28, 31-35, 124-127, 135-140, 413, 424-429, 440-446, 453-459, and 481-487 of the records.

¹⁸ At para. 14 of this Order.

Lawyer communications

[22] I accept that the District was in a solicitor-client relationship with the individuals identified in the records as lawyers at the time the lawyer communications were sent and received. The District submits that this is the case and I have no evidence or argument before me challenging this submission. Moreover, it is clear from the content of the lawyer communications that the District and the lawyers each conducted themselves as though they were in a solicitor-client relationship across the period covered by the records.

[23] Turning to whether the lawyer communications concerned the seeking and giving of legal advice, I find that they did. These communications are “question-and-answer” discussions between the District and its lawyers where a representative of the District requests advice on how to approach a given matter or provides an update regarding the matter to the lawyers and the lawyers respond with the requested advice or seek clarification regarding the District’s request. Where individual emails do not involve the District directly requesting advice and the lawyers directly providing that advice, it is clear to me that the emails fall within the continuum of communications as that concept is explained above.¹⁹

[24] Further, I have no reason to doubt the District’s submission that the lawyer communications were each intended by the parties to be confidential at the time those communications occurred. There is no indication that the information in the lawyer communications was shared with anyone other than the lawyers and the District employees or councillors involved with the matters on which the District sought and received legal advice.

[25] Based on the above, I find that the District has demonstrated that the information it has withheld from the lawyer communications is subject to legal advice privilege.

[26] Finally, I find that in each case the attachments to the lawyer communications are integral to the communications to which they are attached and relate to, and would reveal, information the District has withheld under s. 14 from those communications.²⁰ Given this, I find that the information withheld from the attachments is privileged as releasing it to the applicant would reveal privileged information contained in the lawyer communications.²¹

¹⁹ See *Camp*, *supra* note 9 at para. 40 where the court found that “[i]t is [the] chain of exchanges or communications [between lawyer and client] and not just the culmination of the lawyer’s product or opinion that is privileged.”

²⁰ Records at pp. 24-28, 31-35, 124-127, 135-140, 413, 424-429, 440-446, 453-459, and 481-487.

²¹ Order F20-08, *supra* note 12 at para. 27 and Order F18-19, *supra* note 12 at paras. 36-40.

Internal communications

[27] Examining the internal communications, I find that all of them fall within the continuum of communications and are privileged on that basis. Each of these communications either involves a District employee requesting that another District employee reach out to the lawyers for legal advice on a given matter,²² or a District employee circulating advice received from the lawyers to other District employees or councillors.²³

[28] Internal client communications discussing whether and when to request legal advice from the client's lawyers clearly fall within the continuum as long as that legal advice was ultimately sought, which I find it was here.²⁴ So too do internal communications where a representative of a client shares received legal advice with other representatives involved in the matters related to which the legal advice was sought, as I find occurred in the majority of the internal communications.²⁵

[29] Three of the internal communications are emails containing attachments.²⁶ In each case, I find that the attachments were originally attached to one of the lawyer communications and stayed on the email chain when those lawyer communications were internally forwarded by District employees. In the context in which they appear in the records, it is clear to me that releasing the attachments would reveal the substance of legal advice the District sought and received from its lawyers. Therefore, I find that the attachments to the internal communications are privileged.

[30] Based on the above, I find that legal advice privilege applies to all of the information the District has withheld from the internal communications pursuant to s. 14.

Waiver of privilege

[31] The parties do not address whether the District waived privilege over any of the information in dispute under s. 14. However, for the reasons that follow, I find it necessary to briefly discuss waiver in this case.

[32] Privilege may be waived expressly or impliedly. Express waiver occurs when the holder of the privilege is aware of the privilege and demonstrates a clear intention that the privilege should no longer apply. Implied waiver occurs when there is no demonstrated intention to waive privilege, but fairness and

²² See records at pp. 419, 436, 449, 476, and 491.

²³ See records at pp. 22, 29, 45, 447, 467, 563, and 589.

²⁴ Order F19-07, 2019 BCIPC 9 at para. 20, citing Orders F17-23 and F16-26.

²⁵ See *Bilfinger*, *supra* note 8 at paras. 22-24.

²⁶ Records at pp. 22, 29, and 447.

consistency require disclosure of the privileged material.²⁷ A finding that waiver applies must be based on clear and unambiguous evidence that privilege has been waived.²⁸

[33] A small amount of the information in dispute under s. 14 is contained in a staff report which District employees prepared for consideration at a Council meeting (staff report).²⁹ As a municipal council governed by the *Community Charter* [*Charter*],³⁰ Council is required, in general, to hold meetings and consider information in the presence of the public.³¹ However, the *Charter* sets out certain circumstances where Council may hold a meeting *in camera* (that is, in the absence of the public).³² I can see that the staff report is marked for consideration by Council *in camera*, and that Council held a meeting where they discussed the staff report the minutes and agenda of which are also marked *in camera*.³³ Given this, I do not find that there is any evidence that Council publicly considered the information withheld from the staff report under s. 14. Therefore, I find that the District has not waived privilege over that information.

[34] However, I do find that the District has been inconsistent in severing some of the records, to the effect that the District has applied s. 14 to withhold some information from the records that it has already revealed elsewhere in the records.³⁴ The District does not address or explain this inconsistent severing in its submissions. I find that when the District disclosed this information to the applicant during this inquiry it did so with knowledge that privilege applied to it, as evidenced by its decision to claim privilege over the same information elsewhere in the records, and waived that privilege. Therefore, the District cannot rely on s. 14 to withhold the information already disclosed to the applicant where it appears elsewhere in the records.³⁵

²⁷ See Order F23-53, 2023 BCIPC 61 at para. 71, citing *S & K Processors Ltd. v. Campbell Ave. Herring Producers Ltd.*, 1983 CanLII 407 (BCSC) at para. 6.

²⁸ See *Maximum Ventures Inc. v. de Graaf et al.*, 2007 BCSC 1215 at para. 40.

²⁹ Records at pp. 43-46.

³⁰ SBC 2003, c. 26.

³¹ See *Charter* at s. 89.

³² See *Charter* at ss. 90 and 92.

³³ See records at pp. 76-77 and 95-96.

³⁴ For clarity, the communications the information has been severed from and the communications where the information is revealed are true duplicates appearing at different places in the records.

³⁵ The information I find the District has waived its privilege over was withheld from pp. 411, 417, 419, 436, 449, 476, 491, 518, 524-525, 528, 531, 535, 546, 553, and 559 of the records.

Conclusion, s. 14

[35] For the reasons given above, I have found above that legal advice privilege applies to all of the information the District has withheld from the records pursuant to s. 14 and I confirm that the District is authorized to withhold most of that information. However, I have also found that the District waived its privilege over a small amount of information and cannot rely on s. 14 to withhold that information from the applicant.³⁶

Local public body confidences, s. 12(3)(b)

[36] The District relies on s. 12(3)(b) to withhold information which it submits would reveal what occurred at Council meetings which took place on September 28 and October 19, 2020, and which, the District says, were held *in camera*.

[37] Under s. 12(3)(b), the head of a local public body may refuse to disclose information that would reveal “the substance of deliberations of a meeting of [the local public body’s] elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under [FIPPA] authorizes the holding of that meeting in the absence of the public.”

[38] The purpose of s. 12(3)(b) is to protect the full and frank exploration of all issues, despite how controversial they may be, by allowing a local public body’s governing body to engage in certain discussions in the absence of the public.³⁷

[39] Past orders have established three conditions that a local public body must meet before relying on s. 12(3)(b) to withhold information from an applicant. The local public body must show that:

1. The local public body’s governing body has statutory (legal) authority to meet in the absence of the public;
2. The meetings in question were, in fact, held in the absence of the public; and
3. The information at issue would, if disclosed, reveal the substance of the governing body’s deliberations at those meetings.³⁸

[40] Past orders have also established that the phrase “substance of deliberations” covers discussions conducted with a view to making a decision or

³⁶ I have highlighted the information I find the District has waived privilege over in a copy of the records delivered to the District alongside this order.

³⁷ See Order F11-04, 2011 BCIPC 4 at para. 29 and Order 04-04, 2004 CanLII 34258 (BC IPC) at para. 72.

³⁸ See, for example, Order F13-10, 2013 BCIPC 11 at para. 8, citing Order 00-14, [2000] B.C.I.P.C.D. No. 17.

following a course of action.³⁹ The phrase also clearly covers the substantive content of motions passed during *in camera* meetings.⁴⁰ However, the phrase only covers what was actually said during a meeting and not background materials which stimulated the discussion,⁴¹ unless disclosing those background materials would allow someone to draw accurate inferences about what was said or discussed during the meeting.⁴²

[41] There is no dispute that the District is a municipality and therefore meets the definition of a “local public body” in FIPPA⁴³ or that Council is the District’s “governing body.” Therefore, I find that the District may, in principle, rely on s. 12(3)(b) to withhold certain Council-related information from the records if it demonstrates that information meets the test set out above.

[42] Most of the information the District initially withheld under s. 12(3)(b) has been released to the applicant and is no longer in dispute. The District maintains that it is authorized to withhold a small amount of information from six pages of the records pursuant to s. 12(3)(b).⁴⁴

Was Council authorized to hold the meetings in camera?

[43] As a municipality, the District is subject to the *Charter* and Council is required, by s. 89 of the *Charter*, to hold its meetings in the presence of the public unless a meeting, or a part of a meeting, meets the conditions set out in ss. 90 and 92 of that statute.

[44] Section 90 of the *Charter* lists the reasons Council may hold a meeting or part of a meeting *in camera*. Under s. 92 of the *Charter*, before going *in camera* Council must pass a public resolution stating both that the meeting or part in question will be closed to the public, and which subsections of s. 90 authorize it to close the meeting.⁴⁵

[45] The District submits that the information it has withheld under s. 12(3)(b) was considered by Council at *in camera* meetings which took place on September 28 and October 19, 2020. The District says that Council had the authority to hold those *in camera* meetings under s. 90 of the *Charter*. However, the District does not address whether Council passed public resolutions explaining its basis for going *in camera* at those meetings, as required by s. 92 of the *Charter*.

[46] Examining the public record of Council’s past regular and special meetings, I can see that Council held public meetings on September 28 and

³⁹ Order 00-11, 2000 CanLII 10554 (BC IPC).

⁴⁰ See, for example, Order F16-03, 2016 BCIPC 3 at para. 13, citing Order 03-09, 2003 CanLII 49173 (BC IPC) and Order F15-20, 2015 BCIPC 22.

⁴¹ Order F11-04, *supra* note 37 at paras. 29 and 35.

⁴² Order F12-11, 2012 BCIPC 15 at para. 14.

⁴³ At Schedule 1.

⁴⁴ Records at pp. 76, 95-97, 102, and 158.

⁴⁵ See, for example, Order F23-91, 2023 BCIPC 107 at paras. 28-29.

October 19, 2020. I can also see from the minutes of those public meetings that at each meeting Council passed a resolution indicating that it would take the remainder of the meeting *in camera* and stating its reasons for doing so. In the case of the September 28 meeting, Council said it was relying on ss. 90(1)(c), (g) and (i) of the *Charter* to go *in camera*.⁴⁶ In the case of the October 19 meeting, Council said it was relying on ss. 90(1)(e) and (g) of the *Charter* to go *in camera*.⁴⁷ For ease of reference, I will reproduce those sections of the *Charter* here:

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:

...

(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;

...

(g) litigation or potential litigation affecting the municipality; [or,]

...

(i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose[.]⁴⁸

[47] From reviewing the agendas and minutes of the allegedly *in camera* portions of the meetings, I can see that the matters discussed during those portions clearly fall within these subsections of s. 90(1) of the *Charter*.⁴⁹ As noted above, I can also see that Council passed public resolutions stating its intention to take the September 28 and October 19, 2020, meetings *in camera* and its justification for doing so, in compliance with s. 92 of the *Charter*.⁵⁰

[48] Taking all of this together, I find that Council had statutory authority to meet *in camera* to discuss the material the District has withheld under s. 12(3)(b).

⁴⁶ Minutes of Council's Special Meeting of September 28, 2020 at item 14 (available at <https://northsaanich.civicweb.net/Portal/MeetingInformation.aspx?Org=Cal&Id=642>).

⁴⁷ Minutes of Council's Regular Meeting of October 19, 2020 at item 15 (available at <https://northsaanich.civicweb.net/Portal/MeetingInformation.aspx?Org=Cal&Id=649>).

⁴⁸ The District's submissions only reference s. 90(1)(g) of the *Charter* as a basis for Council taking the meetings *in camera*. However, taking all of the evidence together, I am satisfied that Council actually took the meetings *in camera* based on all of ss. 90(1)(c), (e), (g), and (i).

⁴⁹ I also note that the agenda for each meeting includes direct reference to the subsection of s. 90(1) of the *Charter* relied on by Council to consider each item *in camera*.

⁵⁰ See notes 46 and 47, *supra*.

Were the meetings actually held in camera?

[49] The District submits that the relevant portions of the meetings in question were actually held *in camera*. Further, I can see that the agendas and minutes for those portions, and materials considered by Council during those portions are all stamped “*in camera*.”⁵¹ The applicant does not question whether the relevant portions of the meetings were held in the absence of the public and I have no evidence or argument before me challenging the District’s submission on this point.

[50] Therefore, I find that the *in camera* portions of Council’s September 28 and October 19, 2020, meetings were held in the absence of the public.

Would the information reveal the substance of Council’s deliberations?

[51] Having reviewed the information in dispute under s. 12(3)(b), it is clear to me that the majority of it is contained in motions passed by Council during the *in camera* portion of its September 28, 2020, meeting.⁵² As noted above, prior orders have accepted that revealing the contents of motions passed at *in camera* meetings would reveal the substance of the deliberations which took place during those meetings.⁵³ I agree with this approach and find that the information contained in Council motions would reveal the substance of Council’s deliberations if disclosed.

[52] Further, some of the other information withheld under s. 12(3)(b) is directly related to the content of the motions passed by Council during the *in camera* portion of its September 28, 2020, meeting. For clarity, this information is contained in the agenda items related to the motions passed by Council,⁵⁴ and in handwritten notes taken by a councillor which directly relate to one of those motions.⁵⁵ In each case, I find that releasing this information would reasonably allow someone to infer the content of the Council motions. Therefore, I also find that releasing this information would reveal the substance of Council’s deliberations during the *in camera* portion of its September 28, 2020, meeting.

[53] However, I do not see how releasing the other information in dispute under s. 12(3)(b) would reveal the substance of Council’s deliberations. To reiterate a point made above,⁵⁶ background materials which stimulated *in camera* deliberations are not covered by s. 12(3)(b) unless the content of those materials

⁵¹ See, for example, records at pp. 76, 95-97, 102, and 158.

⁵² Records at pp. 95-97.

⁵³ Order F16-03, *supra* note 40 at para. 13, citing Order 03-09, *supra* note 40 and Order F15-20, *supra* note 40. See also Order F22-51, 2022 BCIPC 58 at para. 35.

⁵⁴ Records at p. 76.

⁵⁵ Records at p. 102.

⁵⁶ At para. 40 of this Order.

would reveal the substance of the deliberations which actually took place at an *in camera* meeting.⁵⁷

[54] I find that a small amount of the information in dispute under s. 12(3)(b) is contained in the agenda for the *in camera* portion of Council's October 19, 2020, meeting.⁵⁸ Having reviewed this information, I find that it reveals only that Council received information in relation to a specific matter that it considered *in camera*. Moreover, I find that it does not reveal the substance of that information or anything related to how Council weighed or considered the information in any ensuing deliberations. Therefore, I find that releasing this information would not reveal the substance of Council's *in camera* deliberations.

Section 12(4)

[55] The applicant raises s. 12(4), which says that the head of a public body may not rely on s. 12(3) to withhold any information that has been considered in a meeting open to the public. However, the applicant's arguments concerning s. 12(4) relate to information which I find is no longer in dispute under s. 12(3)(b). Examining just the information remaining in dispute under s. 12(3)(b) at this stage, I have no evidence before me indicating that it has been publicly considered by Council. Therefore, I find the applicant has not demonstrated that s. 12(4) applies in this case.

Conclusion, s. 12(3)(b)

[56] I have found that Council was authorized by ss. 90(1) and 92 of the *Charter* to hold the relevant portions of its September 28 and October 19, 2020, meetings *in camera*. Further, I have found that those portions of the meetings were, in fact, held in the absence of the public and that releasing most of the information the District has withheld under s. 12(3)(b) would reveal the substance of Council's deliberations during those portions of the meetings. However, I have also found that releasing a small amount of the information in dispute under s. 12(3)(b) would not reveal the substance of Council's deliberations and the District may not rely on s. 12(3)(b) to withhold that information from the applicant.⁵⁹

⁵⁷ See Order F11-04, *supra* note 37 at paras. 29 and 35 and Order F12-11, *supra* note 42 at para. 14.

⁵⁸ Records at p. 158.

⁵⁹ I have highlighted the information the District is not authorized to withhold under s. 12(3)(b) in a copy of the records delivered to the District alongside this order.

CONCLUSION

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

1. Subject to item 2, below, I confirm that the District is authorized to refuse to disclose the information in dispute under ss. 12(3)(b) and 14.
2. The District is not authorized by ss. 12(3)(b) or 14 to withhold the information I have highlighted in yellow on pages 158, 411, 417, 419, 436, 449, 476, 491, 518, 524-525, 528, 531, 535, 546, 553, and 559 of the copy of the records provided to the District alongside this order. The District must disclose the highlighted information on those pages to the applicant.
3. The District must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the pages described at item 2 above.

[58] Pursuant to s. 59(1) of FIPPA, the District is required to comply with this order by **July 3, 2024**.

May 21, 2024

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

OIPC File No.: F22-88917