



Order F25-34

CITY OF VANCOUVER

D. Hans Hwang
Adjudicator

May 12, 2025

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested access from the City of Vancouver (City) to information about a meeting between the City and its advisory panel. The City provided records to the applicant but withheld some information from those records under several FIPPA exceptions. The adjudicator found that the City is authorized to withhold most of the information at issue under s. 13(1) (advice or recommendations) but it is not authorized to withhold the rest of the information under s. 17(1) (harm to financial or economic interests). The adjudicator ordered the City to give the applicant access to the information it was not authorized to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 13(1), 17(1)(d), 17(1)(e), 17(1)(f) and Schedule 1 (Definitions).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the City of Vancouver (City) provide access to records about a meeting between the City and its advisory panel.

[2] The City provided the applicant with records but withheld some information from those records under ss. 13(1) (advice or recommendations), 15(1)(l) (disclosure harmful to security of a system) and 17(1) (disclosure harmful to financial or economic interests) of FIPPA.¹ The applicant requested the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision to withhold information.

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

[3] As a result of the OIPC's review and mediation process, the applicant advised that he was no longer seeking information withheld under s. 15(1) and the City provided the applicant with access to some information that it had previously withheld in the responsive records. However, the parties were unable to resolve remaining matters at issue and the applicant requested that the remaining matters proceed to an inquiry.

[4] Both parties provided written inquiry submissions. The City requested and was given permission from the OIPC to submit parts of its evidence and submissions *in camera*, meaning for the OIPC to see, but not the applicant.²

Preliminary Matters – the Vancouver Charter

[5] The applicant's inquiry submission includes facts and arguments about the application of the *Vancouver Charter*.³ He argues that under ss. 165.1 to 165.7 of the *Vancouver Charter*, the City is required to have a meeting of the City Council open to the public.⁴ The notice of inquiry (notice) and the OIPC investigator's fact report (fact report) do not state the *Vancouver Charter* as an issue for consideration in this inquiry.

[6] The notice, which was provided to both parties at the start of this inquiry, states that parties may not add new issues to the inquiry without the OIPC's prior consent. Past OIPC orders have consistently held that parties may only introduce new issues at the inquiry stage if they request and receive prior permission from the OIPC to do so.⁵ The applicant did not seek the OIPC's permission to add the sections of the *Vancouver Charter* as an additional issue to the inquiry or explain why they did not raise this issue earlier during mediation or why they should be permitted to add this additional issue at the inquiry stage. I can see nothing in the circumstances of this case, which suggest it would be appropriate or fair to add ss. 165.1 to 165.7 of the *Vancouver Charter* to the inquiry at this late stage.

[7] In addition, in this inquiry, my task is to dispose of the issues listed in the fact report and the notice. Those issues are limited to whether certain FIPPA exceptions to disclosure apply to the information in dispute. I do not have authority under FIPPA to address the parties' disputes or complaints outside the scope of FIPPA. Therefore, although I have read all of the parties' submissions, I will only comment on those matters insofar as they relate to the FIPPA issues before me.

² OIPC's *in camera* decision letter dated March 3, 2025.

³ SBC 1953, c. 55.

⁴ Applicant's response submission at para 5.

⁵ See, for example, Order F16-34, 2016 BCIPC 38 at para 9.

ISSUES AND BURDEN OF PROOF

[8] In this inquiry, I must decide whether the City is authorized to refuse to disclose the information in dispute under ss. 13(1) or 17(1).

[9] Under s. 57(1), the City has the burden of proving that the applicant does not have a right of access to the information the City withheld under ss. 13(1) and 17(1).

BACKGROUND

[10] The City owns approximately 80 acres of land in the False Creek South neighbourhood⁶ and holds approximately 730 long-term grounds leases in the neighbourhood.

[11] The terms of the leases will terminate over the next one to three decades, and the City has worked to develop a long-term plan for development and re-development of the City-owned land in the False Creek South neighbourhood (long-term plan).

[12] As part of these efforts, the City established a panel to advise the City staff and Council about a real estate portfolio in the False Creek South (advisory panel). Around 2019, the City retained a consulting firm (consulting firm) to advise on the City's real estate portfolio and the long-term plan. From 2019 to 2021, the consulting firm worked with the City to prepare its report about the long-term plan and leases, and it provided a report to the City in October 2021 (October 2021 Report).⁷

RECORDS AND INFORMATION AT ISSUE

[13] The responsive records consist of 20 pages comprised of emails and the City staff's notes taken at a meeting with the advisory panel. The information in dispute appears on 15 of those pages.

SECTION 13(1) – ADVICE OR RECOMMENDATIONS

[14] The City withheld all of the information in dispute under s. 13(1). This section authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister. The purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative process were exposed to public scrutiny,⁸ and to

⁶ A neighbourhood in the City of Vancouver, located between the Cambie and Burrard Street bridges on the south shore of False Creek excluding Granville Island and Senakw.

⁷ "The Future of False Creek South: Advancing a Conceptual Development Plan and Addressing Lease Expires" dated October 21, 2021.

⁸ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC.

protect the free and frank flow of advice and recommendations that occurs when a public body is considering a given issue.⁹

[15] The analysis under s. 13(1) involves two stages. To determine whether s. 13(1) applies, I must first decide if disclosure of the withheld information would reveal advice or recommendations developed by or for a public body or minister. If I find the information at issue would reveal advice or recommendations under s. 13(1), then the next step is to consider if any of the categories or circumstances listed in ss. 13(2) or 13(3) apply. Subsections 13(2) and 13(3) identify certain types of records and information that may not be withheld under s. 13(1), such as factual material under s. 13(2)(a) and information in a record that has been in existence for 10 or more years under s. 13(3).¹⁰

Would disclosure reveal advice or recommendations?

[16] The first step in the s. 13 analysis is to determine whether disclosing the information at issue would reveal advice or recommendations developed by or for a public body.

[17] “Recommendations” involve “a suggested course of action that will ultimately be accepted or rejected by the person being advised.”¹¹

[18] The term “advice” has a broader meaning than the term “recommendations,”¹² and includes:

- a communication as to which courses of action are preferred or desirable,¹³
- an opinion that involves exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision for future action,¹⁴ and
- factual information that is integral to advice or recommendations because it was “compiled and selected by an expert, using [their] expertise, judgment and skill for the purpose of providing explanations

2025 at para 52.

⁹ Order 01-15, 2001 CanLII 21569 (BC IPC) at para 22.

¹⁰ For example, Order 02-38, 2002 CanLII 42472 (BC IPC) at para 135; *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para 23-24 and 46-47; *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2001 BCSC 726 at paras 103 and 113.

¹¹ *John Doe v Ontario (Finance)*, 2014 SCC 36 at para 24.

¹² *John Doe v Ontario (Finance)*, 2014 SCC 36 at para 23.

¹³ Order 01-15, 2001 CanLII 21569 at para 22.

¹⁴ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

necessary to the deliberative process of a public body, or ... the expert's advice can be inferred from the work product."¹⁵

[19] 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 to be drawn about advice or recommendations.¹⁶

[20] The City is withholding the information in dispute under s. 13(1) in the following records:

- A three-page note taken by Deputy City Manager at a meeting on May 29, 2020 and June 1, 2020 (meeting note 1);¹⁷
- A seven-page note taken by City's Strategic Business Advisory Manager at a meeting on May 29, 2020 (meeting note 2);¹⁸ and
- A five-page note taken by City's Property Endowment Fund Manager at a meeting on May 29, 2020 (meeting note 3).¹⁹

Parties' submissions

[21] The City submits that at meetings that took place on May 29, 2020 and June 1, 2020, the City staff and the advisory panel discussed the recommendations that the consulting firm provided about the long-term plan and leases of the City-owned land.²⁰ The City submits that the purpose of the meetings was to foster the City's decision making process within the City's business role as land owner, rather than its legislative role as regulator. It submits that neither the consulting firm nor the advisory panel had any decision-making authority at the meetings.²¹ The City also submits that considering the sensitive nature of the subject matters discussed, the meetings were intended to be confidential.²²

[22] The City submits the information in dispute contains discussions and consideration about the long-term plan and leases of the City-owned land including:

¹⁵ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII) at para 94.

¹⁶ See for example *John Doe v Ontario (Finance)*, 2014 SCC 36 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).

¹⁷ Pages 3-5 of the records.

¹⁸ Pages 6-13 of the records.

¹⁹ Pages 14-19 of the records.

²⁰ City's initial submission at para 39.

²¹ City's initial submission at paras 66-68.

²² City's initial submission at paras 63, 64 and 68.

- Nature, composition and phasing of the land development plan;
- Reports to the City Council and Council decisions;
- Financial implications of the long-term plan and leases;
- The City's role as landowner; and
- The City's ability to attract and negotiate with future potential development partners.²³

[23] The City submits the advisory purpose of the information, together with confidential and sensitive nature of it, supports its position that the withheld information is protected under s. 13(1).²⁴

[24] The City provided affidavit evidence from the Deputy City Manager. She explains that the consulting firm provided analysis and recommendation to the City about the issue of landowner development planning and lease management and negotiations for the City. She says that the purpose of the May 29, 2020 meeting was for the advisory panel and the City staff to evaluate the advantages and disadvantages of the proposed recommendations on the long-term plan and lease management.²⁵ The City also provided affidavit evidence from the City's Senior Manager who explains that the purpose of the May 29, 2020 meeting was to have a confidential and frank discussion with the advisory panel about analysis and recommendations by the consulting firm.²⁶

[25] The applicant disputes that the City is authorized to withhold the information under s. 13(1). I understand the applicant to be saying that some of the advice or recommendations the City received from its third-party expert advisors were already disclosed to the public in the October 2021 Report. While the applicant does not address subsections under s. 13(2), what he submits suggests that s. 13(2)(m) may apply to the disputed information.²⁷ This section says that a public body must not refuse to disclose information that the public body has cited publicly as the basis for making a decision.

[26] In reply to the applicant's argument, the City distinguishes between the advisory panel which conducted the May 29 and June 1, 2020 meetings and the City's third-party expert advisors such as Civic Agencies which provide an option to the public to virtually join upcoming meetings. According to the City, the advisory panel did not host any meetings open to the public, so the notes related to these meetings do not contain information that was disclosed to the public. It also says the appointments to the advisory panel and terms of references were

²³ City's initial submission at para 60.

²⁴ City's initial submission at para 57.

²⁵ Deputy City Manager's Affidavit #1 at paras 10 and 37.

²⁶ Senior Manager's Affidavit #1 at para 18.

²⁷ Applicant's response submission at para 10. Section 13(2)(m) reads information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy.

approved *in camera* by the City Council²⁸ and the advisory panel meetings were intended to be confidential.²⁹

Analysis and findings

[27] For the reasons that follow, I find that disclosing the information in dispute would reveal the advisory panels' advice and recommendations to the City.

[28] The three meeting notes relate to discussions the City had with the advisory panel at the May 29, 2020 meeting and June 1, 2020 meeting.³⁰ The information in meeting note 1 is organized under the following headings: issues, order of things, an advisory panel member's comments, and the way forward. The City disclosed the information under the issues heading and it withheld most of the information under other headings. As for meeting notes 2 and 3, the City withheld some phrases and sentences but disclosed the titles of the notes and the initials of the meeting participants and some of their opinions.

[29] I can see from the notes that the disputed information consists of the advisory panel members' discussions. They discussed the consulting firm's recommendations about the long-term plan and lease of the City-owned land. Following the discussions, the panel members developed opinions on what the City needs to consider in preparing and managing the long-term plan and leases. They also provided advice for the City on how to manage and negotiate leases of City-owned land and explained possible consequences the City may face.

[30] For example, the withheld information includes information that is about the advisory panel members' assessment of risks and obstacles and steps for the City to take in developing the long-term plan. Also, the disputed information includes the panel members' professional opinions about the City's development plan, impacts to the community subsequent to implication of the plan and what the City Council needs to consider to prevent risk.³¹ I find the notes are comprised of the City's internal communications with the advisory panel members about how best to approach the issues the City was considering. This information, in my view, consists of the advisory panel's advice and recommendations to the City about the long-term plan and leases of the City-owned land.

[31] Therefore, I find that disclosing the disputed information in the meeting notes would reveal advice and recommendations developed by or for the City.

²⁸ City's reply submission at paras 16-17.

²⁹ City's reply submission at para 18.

³⁰ Pages 3-5 of the records.

³¹ Pages 5, 8, 9, 11, 12, 13 and 17 of the records.

[32] However, I find the City has not demonstrated that disclosing some of the information it withheld from meeting notes 2 and 3 would reveal advice or recommendations.

[33] For example, in meeting note 2, the City applied s. 13(1) to a factual statement made by a panel member about community feedback on the City's approach to the leaseholder's interest.³² This statement does not contain any advice or recommendation. Also, a panel member's statement that they agree with another panel member's opinion does not reveal the opinion or any advice or recommendations.³³ Lastly, the City withheld the date of the next scheduled meeting from meeting note 3. I do not see, and the City has not demonstrated, how disclosing that information would reveal advice or recommendation.³⁴ I find that s. 13(1) does not apply to this information.

Sections 13(2) and (3)

[34] Section 13(2)(a) states that a public body must not refuse to disclose "any factual material." 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.³⁵ Thus, where facts are compiled and selected by an expert as an integral component of their advice, they do not constitute "factual material" within the meaning of s. 13(2)(a).

[35] Some of the information I found above would reveal advice or recommendations if disclosed contains or refers to background facts. However, I find that in each case these facts were compiled by the advisory panel, and either form a part of the advice and recommendations the panel members discussed and offered to the City or are otherwise intermingled with the advice and recommendations and would reveal that advice or recommendations if disclosed.³⁶ Therefore, I find that s. 13(2)(a) does not apply to any of the information I found above would reveal advice or recommendations.

[36] In addition, I do not agree with the applicant that the City has publicly cited the information in dispute as a reason for making any decision. Contrary to what the applicant submits, information disclosed to the public in the October 2021 Report is not the advisory panel's advice or recommendations provided to the City in the May 29, 2020 meeting. I am not persuaded that the information in

³² Page 8, line 12a of the records.

³³ Page 12, line 46 of the records.

³⁴ Page 19 of the records.

³⁵ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at paras 52-53.

³⁶ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at paras. 52-53; Order F18-41, 2018 BCIPC 44 at para 34.

dispute under s. 13(1) was cited publicly by the City as the basis for making a decision or formulating a policy. Therefore, I find that s. 13(2)(m) does not apply.

[37] The last step is to consider whether the “information in a record that has been in existence for 10 or more years.” Section 13(3) says that information in a record that has been in existence for 10 or more years cannot be withheld under s. 13(1). The three records at issue here were created in 2020. They have not been in existence for more than 10 years. As a result, I find that s. 13(3) does not apply.

Summary and conclusion on s. 13(1)

[38] To summarize, I found that s. 13(1) applies to most of the information in dispute. Furthermore, given my findings respecting ss. 13(2) and (3), I conclude that s. 13(1) authorizes the City to withhold the information that I have found reveals advice and recommendations.

SECTIONS 17(1) – HARM TO FINANCIAL OR ECONOMIC INTEREST OF PUBLIC BODY

[39] The City applied s. 17(1) to the information it withheld under s. 13(1). Given my findings under s. 13(1), there is no need for me to also consider whether s. 17(1) applies to the information I found the City is authorized to withhold under s. 13(1). Therefore, I will consider the application of s. 17(1) only to information I found the City is not authorized to withhold under s. 13(1).³⁷

[40] Section 17(1) authorizes a public body to refuse to disclose information that, if disclosed, could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia.

[41] Subsections 17(1)(a) to (f) are examples of information that, if disclosed, could result in harm under s. 17(1). Subsections 17(1)(a) to (f) are not stand-alone provisions. Thus, even if information fits within those subsections, a public body must also prove that disclosure of that information could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy.³⁸

[42] Furthermore, information that does not fit under subsections (a) to (f) may still fall under the opening words of s. 17(1) as information that, if disclosed,

³⁷ Pages 8, 12 and 19 of the records.

³⁸ Order F19-03, 2019 BCIPC 4 (CanLII) at paras 22-23; Order F20-56, 2020 BCIPC 65 (CanLII) at para 35.

could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy.³⁹

[43] The City is withholding the information in dispute under ss. 17(1)(d), 17(1)(e), and 17(1)(f),⁴⁰ which state as follows:

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

...

(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

(e) information about negotiations carried on by or for a public body or the government of British Columbia;

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

[44] The standard of proof for s. 17(1) is a reasonable expectation of probable harm, which is “a middle ground between that which is probable and that which is merely possible.” In order to meet that standard, a public body “must provide evidence ‘well beyond’ or ‘considerably above’ a mere possibility of harm.”⁴¹ The evidence must be detailed enough to establish specific circumstances for the contemplated harm to be reasonably expected to result from disclosure of the information.⁴²

[45] A public body must also demonstrate that the release of the information itself would give rise to a reasonable expectation of harm.⁴³ There must be a clear and direct connection between the disclosure of information and the harm that is alleged.⁴⁴

³⁹ Order F14-31, 2014 BCIPC 34 (CanLII) at para 41.

⁴⁰ City’s initial submission at para 85.

⁴¹ *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

⁴² Order 02-50, 2002 CanLII 42486 (BCIPC) at para 137.

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

⁴⁴ Order F19-10, 2019 BCIPC 12 (CanLII) at para 31; Order F07-15, 2007 CanLII 35476 (BCIPC) at para 17.

Parties' submissions

[46] The City submits that disclosure of the information could reasonably be expected to harm its financial or economic interests because it has not yet negotiated a lease renewal of the City-owned land with the leaseholders and it is still proceeding with development planning.⁴⁵ In support of its position, the City provided affidavit evidence from the Deputy City Manager. She explains that the City is considering various land development partnership models and the information in dispute includes discussions about the partnership models.⁴⁶ She explains that disclosing the disputed information would reveal the City's strategy and preliminary decisions and certain options that the City could choose to pursue in the future.⁴⁷

[47] The applicant submits that the City's arguments on harm to the economic interest are highly speculative and much of the information in dispute has already been revealed in the October 2021 Report and open Council discussion.⁴⁸

Analysis and findings

[48] The information that remains in dispute under s. 17(1) is as follows:

- Community feedback on the City's approach to the leaseholder's interest;⁴⁹
- A panel member's statement that they agree with another panel member's opinion;⁵⁰ and
- The date of the next meeting.⁵¹

[49] For the reasons that follow, I am not persuaded by the City's arguments that ss. 17(1) and 17(1)(d), (e) or (f) apply to any of that information.

[50] It is not apparent to me how disclosing community feedback, the date of the next meeting and the fact someone agrees with someone else could reasonably be expected to cause any of the s. 17 harms the City raises. The City's evidence and submissions do not adequately explain or show a connection between disclosure of this information and harm under ss. 17(1), 17(1)(d), (e) or (f). In conclusion, I find that the City has not established that disclosing this information could result in a risk of harm under s. 17 that is well beyond or

⁴⁵ City's initial submission at paras 87-90.

⁴⁶ Deputy City Manager's affidavit #1 at paras 52-53.

⁴⁷ Deputy City Manager's affidavit #1 at para 56.

⁴⁸ Applicant's response submission at para 11.

⁴⁹ Page 8, line 12a of the records.

⁵⁰ Page 12, line 46 of the records.

⁵¹ Page 19 of the records.

considerably above a mere possibility in the way the Courts have said is required to meet the standard of proof.⁵²

[51] Furthermore, I have considered the OIPC order that the City has cited in support of its position, but the information that remains at issue here is materially different from the information that was at issue in that order.⁵³ That order does not persuade me that ss. 17(1), 17(1)(d), (e) or (f) apply to the information described above.

Conclusion on s. 17(1)

[52] I find that the City has not met its burden of proving that s. 17(1) applies to the information that remains in dispute, which is the information I found the City was not authorized to refuse to disclose under s. 13(1) (i.e., community feedback, the date of the next meeting and the fact someone agrees with another person). Therefore, the City is not authorized to refuse to disclose the information under s. 17(1).

CONCLUSION

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

1. Subject to item 3 below, I confirm the City's decision to refuse to disclose the information withheld under s. 13(1) of FIPPA.
2. The City is not authorized to refuse to disclose the information withheld under s. 17(1) of FIPPA.
3. In a copy of pages 8, 12 and 19 that will be provided to the City with this order, I have highlighted in green the information that the City is not authorized to refuse to disclose under ss. 13(1) or 17(1). The City must give the applicant access to the highlighted information.
4. The City must provide the OIPC registrar of inquiries with a copy of its cover letter and the records it provides to the applicant in compliance with item 3 above.

⁵² *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

⁵³ City's initial submission at para 83, citing Order F15-68.

[54] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **June 24, 2025**.

May 12, 2025

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F23-92691