



Order F26-23

VANCOUVER COASTAL HEALTH AUTHORITY

David S. Adams
Adjudicator

March 23, 2026

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Summary: An applicant requested emails and reports related to the relocation of an overdose prevention site from the Vancouver Coastal Health Authority (VCH), under the *Freedom of Information and Protection of Privacy Act* (FIPPA). VCH disclosed the responsive records, but withheld some information in them under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), 17(1) (financial or economic harm to public body), and 22(1) (unreasonable invasion of third-party privacy) of FIPPA. The adjudicator found that VCH was authorized or required to refuse to disclose all the information it withheld under s. 14 and some of the information it withheld under ss. 13(1) and s. 22(1). However, the adjudicator found that VCH was not authorized or required to refuse to disclose the remainder of the information, and ordered VCH to disclose it 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)(i), 13(2)(l), 13(3), 14, 17(1), 22(1), 22(2), 22(3)(a), 22(3)(d), 22(3)(f), and 22(4).

INTRODUCTION

[1] A journalist (the applicant) requested all emails to and from the Vancouver Coastal Health (VCH) employees responsible for overseeing the Thomus Donaghy Overdose Prevention Site (TDOPS), regarding the site's closure and transition to a new site, from January 1 to March 22, 2024, as well as any reports related to the transition.

[2] VCH disclosed responsive records, but withheld information in them under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), 15(1) (harm to law enforcement), 17(1) (harm to financial or economic interests of a public body), 21(1) (harm to third-party business interests), and 22(1) (unreasonable invasion of third-party privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review VCH's decision to withhold information. During mediation, VCH withdrew its reliance on s. 21(1). However, mediation did not settle the remaining issues, and the matter proceeded to inquiry. Both parties provided submissions, and VCH provided affidavit evidence.

Preliminary matter: Information no longer in dispute; removal of s. 15(1)

[4] VCH and the applicant jointly requested that this inquiry not consider the application of ss. 15(1) or 22(1) to any phone numbers contained in the records package.¹ As a result, I will not consider the application of those sections to those phone numbers. This also has the effect of removing s. 15(1) from the inquiry entirely, as the only information to which VCH applied that section was the phone numbers.

ISSUES AND BURDEN OF PROOF

[5] The issues I must decide in this inquiry are:

1. Whether VCH is authorized to refuse to disclose the records and information at issue under ss. 13(1), 14, or 17(1) of FIPPA; and
2. Whether VCH is required to refuse to disclose the information at issue under s. 22(1) of FIPPA.

[6] Under s. 57(1), VCH has the burden of proving that ss. 13(1), 14, and 17(1) apply.

[7] Under s. 57(2), the applicant has the burden of proving that the disclosure of personal information would not be an unreasonable invasion of third-party privacy. However, VCH has the initial burden of proving that information is personal information.²

DISCUSSION

Background³

[8] In April 2016, the province declared a public health emergency related to drug overdoses, which is ongoing. In December 2016, the Minister of Health

¹ VCH's initial submission at para 7; VCH's November 28, 2025 email to the OIPC; Applicant's November 28, 2025 email to the OIPC.

² Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

³ The information in this section is not contested and is drawn from the parties' submissions and evidence.

ordered regional health authorities, including VCH, “to provide...overdose prevention services for the purpose of monitoring persons who are at risk of overdose, and providing rapid intervention as and when necessary, as ancillary health services, in any place there is a need for these services, as determined by the level of overdoses related morbidity and mortality”. As part of its duty to comply with that order, VCH operates the TDOPS and other overdose prevention sites.

[9] Until 2024, VCH had leased a site for the TDOPS from the City of Vancouver. However, in July 2023, the City opted not to renew VCH’s lease, and between January and March 2024, VCH worked to find a new site, which it eventually secured.

Information at issue

[10] The information VCH withheld consists primarily of portions of emails, but also includes several drafts and the final version of a letter, a briefing note, several drafts of an issues note, and portions of the final issues note.

Solicitor-client privilege – s. 14

[11] Section 14 of FIPPA allows a public body to withhold information that is subject to solicitor-client privilege. VCH is withholding eight complete pages and small amounts of information on three other pages under s. 14.⁴

[12] Section 14 encompasses two kinds of privilege drawn from the common law: legal advice privilege and litigation privilege.⁵ VCH relies on legal advice privilege to withhold the records and information at issue.⁶

[13] Legal advice privilege applies to confidential communications between a solicitor and their client that entail the seeking and giving of legal advice.⁷ Not every piece of correspondence between a lawyer and client is privileged, but if these criteria are satisfied, the privilege applies.⁸

[14] Legal advice privilege also attaches to the continuum of communications made within the framework of the solicitor-client relationship, including factual information provided by a client to a solicitor, and internal client communications

⁴ Namely, the entirety of pages 7, 12-15, and 40-42 of the records, and parts of pages 62, 66, and 68.

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

⁶ VCH’s initial submission at para 40.

⁷ *R v. B*, 1995 CanLII 2007 (BC SC) [*R v. B*] at para 22; *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 at 837.

⁸ *R v. B*, *ibid* at para 25.

that comment on the legal advice received and its implications.⁹ In addition, the privilege attaches to information that would reveal, or allow an observer to draw accurate inferences about, the content of privileged communications.¹⁰

Evidentiary basis for solicitor-client privilege

[15] VCH did not provide the records and information over which it claims solicitor-client privilege for my review. Instead, it provided an affidavit from its associate general counsel (the Lawyer), who is a practicing lawyer who advises VCH on matters related to overdose prevention sites and who has reviewed the records and information VCH withheld under s. 14.¹¹

[16] While I have the power, under s. 44(1)(b) of FIPPA, to order the production of records over which a public body claims privilege, I will do so only when production is absolutely necessary to fairly decide the question of privilege.¹² I find that VCH's submissions and evidence in this inquiry are sufficient for me to decide the question of privilege, so no production order is necessary.

Parties' submissions

[17] VCH says it is authorized to withhold records and information under s. 14.¹³ The Lawyer deposes that she has reviewed the withheld records and information and that in her view, the contents are subject to solicitor-client privilege.¹⁴ She says that she and another lawyer provided the advice contained or referred to in the withheld records and information. She says the advice related to "various matters including leases, the underlying contractual relationship between VCH and its service providers, and general legal advising on the legal risks, benefits, and liabilities associated with the various options that were explored", as well as litigation surrounding the relocation of the TDOPS.¹⁵

[18] The Lawyer's affidavit also contains a table of records and information over which VCH claims privilege (the Table). In the Table, the Lawyer describes the eight completely withheld pages as email exchanges between VCH employees and either herself or another VCH lawyer, in which the employees request and receive legal advice. In the Table, the Lawyer also describes the three pages that are only partially severed as email exchanges between VCH

⁹ *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 21-24.

¹⁰ Order F22-16, 2022 BCIPC 18 (CanLII) at para 31.

¹¹ Affidavit of Lawyer at paras 1-2 and 6.

¹² *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 at para 17.

¹³ VCH's initial submission at paras 34-40.

¹⁴ Affidavit of Lawyer at para 6.

¹⁵ *Ibid* at paras 3-5.

employees (but not including either of the lawyers) that refer to either legal advice the Lawyer provided or to a request for such advice from the Lawyer.¹⁶

[19] The applicant says they are unable to comment on the applicability of s. 14 because they cannot see the withheld records.¹⁷

Analysis and conclusions

[20] First, I have no difficulty in finding that a solicitor-client relationship existed between VCH and its in-house lawyers. I accept the Lawyer's uncontested evidence on this point.¹⁸

[21] Based on the Lawyer's evidence, I find that the eight entire pages VCH withheld under s. 14 are confidential communications between a solicitor and a client that involve the seeking and giving of legal advice.¹⁹ They are therefore privileged.

[22] I find that the information VCH withheld from the other three pages does not consist of communications between a solicitor and client. However, based on the Table and the Lawyer's evidence, I find that the withheld information consists of internal communications commenting on the legal advice VCH sought and received. The withheld information therefore falls within the privileged continuum of communications and is protected by legal advice privilege.

[23] For these reasons, I find that VCH has established that the disputed records and information are subject to legal advice privilege; s. 14 therefore applies to them and VCH is authorized to withhold them.

Unreasonable invasion of third-party privacy – s. 22

[24] Section 22(1) requires a public body to refuse to disclose information whose disclosure would be an unreasonable invasion of a third party's personal privacy.

[25] VCH relies on s. 22(1) to withhold several small portions of emails.²⁰ VCH says disclosure of the information it withheld under s. 22(1) would be an unreasonable invasion of third-party privacy.²¹ The applicant says they do not seek information related to sick leave, personal leave, or employment history, but

¹⁶ *Ibid*, Exhibit A.

¹⁷ Applicant's response submission at para 20.

¹⁸ Affidavit of Lawyer at paras 2-3.

¹⁹ Pages 7, 12-15, and 40-42 of the records package.

²⁰ At pages 8, 16-17, 19, 27, 43-44, 56, and 63 of the records package.

²¹ VCH's initial submission at paras 10-16.

says that information related to the transition of a life-saving service should be disclosed.²²

[26] The analytical approach to s. 22 is well established and involves four steps:

- 1) Determine whether the information in dispute is personal information.
- 2) Determine whether any of the circumstances described in s. 22(4) apply. If they do, then disclosure is *not* an unreasonable invasion of personal privacy.
- 3) Determine whether any of the presumptions listed in s. 22(3) apply. If they do, disclosure is *presumed* to be an unreasonable invasion of personal privacy. Presumptions may be rebutted by considering all the relevant circumstances (the next step in the analysis).
- 4) Consider the impact that disclosure would have in light of all the relevant circumstances, including those listed in s. 22(2). Do the relevant circumstances weigh in favour of or against disclosure?²³

Personal information – s. 22(1)

[27] I must first decide whether the withheld information is personal information. Both “personal information” and “contact information” are defined in Schedule 1 of FIPPA:

“personal information” means recorded information about an identifiable individual other than contact information;

“contact information” means 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;

[28] Previous orders have established that information is “personal information” for the purposes of s. 22(1) if it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.²⁴

[29] Neither party made submissions expressly about whether the withheld information is personal information. However, based on my review of the information itself, I find that all of the withheld information is about identifiable individuals because it is authored by individuals whose names are not withheld,

²² Applicant’s response submission at paras 4-5.

²³ Order F21-32, 2021 BCIPC 40 (CanLII) at para 82; see also Order F15-03, 2015 BCIPC 3 (CanLII) at paras 9-11.

²⁴ Order F18-11, 2018 BCIPC 14 (CanLII) at para 32.

and refers to other named individuals. I find that none of this information is contact information. It is therefore personal information.

Not an unreasonable invasion of privacy – s. 22(4)

[30] Section 22(4) sets out circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. VCH says that none of these circumstances apply in this case.²⁵ Having reviewed the withheld information, I agree with VCH that no s. 22(4) circumstances apply.

Presumed unreasonable invasion of privacy – s. 22(3)

[31] Section 22(3) sets out circumstances in which the disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy. VCH submits that ss. 22(3)(a), (d), and (f) apply to some of the withheld information.²⁶

Medical history – s. 22(3)(a)

[32] Section 22(3)(a) provides that the disclosure of personal information which relates to medical history or treatment is presumed to be an unreasonable invasion of a third party's privacy. VCH says that "some of the redactions" relate to the medical information of a VCH employee or the employee of a third party.²⁷

[33] I find that a small amount of information on page 27 of the records package relates to a third party's medical history or treatment, and that its disclosure would therefore presumptively be an unreasonable invasion of privacy under s. 22(3)(a).

Employment history – s. 22(3)(d)

[34] Section 22(3)(d) provides that the disclosure of personal information which relates to a third party's employment or occupational history is presumed to be an unreasonable invasion of the third party's privacy. VCH says that "some of the redactions...clearly pertain to information about leaves to which a VCH employee or the employee of a third party was entitled, such as sick leaves and vacation time".²⁸ VCH relies on Orders F23-26 and F24-48 for the proposition that

²⁵ VCH's initial submission at para 11.

²⁶ *Ibid* at paras 11-15.

²⁷ *Ibid* at para 12.

²⁸ *Ibid* at para 14.

“employment history” captures information about leaves or time off to which an employee is entitled.²⁹

[35] I accept that the orders VCH cites found that s. 22(3)(d) applies to leave *entitlements*. However, other orders have found that s. 22(3)(d) is not engaged with respect to “generic details about when various individuals went on vacation or were not in the office”.³⁰ Most of the withheld information relates to third parties’ absence from the office. In my view, none of it relates to their leave entitlements. Rather, it simply sets out when they were, or planned to be, or were speculated to be, out of the office. I do not find that the s. 22(3)(d) presumption is raised with respect to any of the withheld information.

Third party’s assets and financial activities – s. 22(3)(f)

[36] Section 22(3)(f) provides that the disclosure of personal information that describes (among other things) a third party’s finances, income, or assets is presumed to be an unreasonable invasion of the third party’s privacy. VCH says that some of the withheld information relates to “the assets of a third party, namely real property and the third party’s plans with respect to that property”, so that s. 22(3)(f) applies.

[37] The only information I can see that relates to a third party’s plans with respect to real property is at page 43 of the records package. However, judging from the context on pages 44 and 46, this information appears to describe the plans of a corporate landlord. It is therefore information about the real property of a corporation. Information about a corporation’s plans for its properties is not “personal information” for the purposes of s. 22. Corporate bodies themselves do not have personal privacy rights under FIPPA.³¹ I do not find that s. 22(3)(f) is engaged with respect to any of the withheld information.

[38] To summarize, I find that s. 22(3)(a) applies to a small amount of information, but I do not find that any s. 22(3) presumptions apply to the rest of the withheld information.

All relevant circumstances – s. 22(2)

[39] Section 22(2) provides that in determining whether a disclosure of personal information would be an unreasonable invasion of a third party’s personal privacy, a public body must consider all relevant circumstances,

²⁹ *Ibid* at para 13; Order F23-26, 2023 BCIPC 30 at para 75; Order F24-48, 2024 BCIPC 56 (CanLII) at para 152.

³⁰ Order F21-32, *supra* note 23 at paras 98-101; Order F24-84, 2024 BCIPC 96 (CanLII) at para 75.

³¹ Order F17-39, 2017 BCIPC 43 (CanLII) at para 75; Order F23-108, 2023 BCIPC 124 (CanLII) at para 44.

including those set out in s. 22(2). It is at this stage of the analysis that any applicable s. 22(3) presumptions may be rebutted.

[40] VCH does not say anything about s. 22(2), except that in its view, no s. 22(2) factors rebut the applicable s. 22(3) presumptions.³²

[41] On my review of the withheld information, I do not find that any of the circumstances enumerated in s. 22(2) apply.

[42] Many OIPC orders have considered the sensitivity of personal information to be a relevant circumstance under s. 22(2). Where personal information is sensitive, that is a circumstance favouring withholding, and conversely, where personal information is not sensitive, that is a circumstance favouring disclosure.³³ With the exception of the medical information to which I found s. 22(3)(a) to apply, I find that none of the withheld information is sensitive personal information. I find this factor to weigh in favour of disclosure. As I said above, it consists of the fact that a given employee is or is not in the office at a given time, and other generic, innocuous comments. I find this lack of sensitivity is a factor that favours disclosure.

[43] In light of these findings, I find that the presumption raised with respect to the medical information has not been rebutted. However, I find that disclosure of the remainder of the withheld personal information would not be an unreasonable invasion of any third party's personal privacy.

Conclusion on s. 22(1)

[44] I found that all of the information withheld under s. 22(1) is personal information. I found that no s. 22(4) provision applies. I found that s. 22(3)(a) applies to a small amount of medical information. Weighing the relevant factors under s. 22(2), I found that the applicable presumption with respect to the medical information has not been rebutted, but that disclosure of the remaining personal information would not be an unreasonable invasion of any third party's personal privacy.

[45] Therefore, I find that VCH is required under s. 22(1) to withhold some of the information on page 27 of the records package, but is not required under s. 22(1) to withhold any other information.

Advice or recommendations – s. 13

[46] Section 13(1) allows a public body to withhold information that would reveal advice or recommendations developed by or for a public body. The

³² VCH's initial submission at para 11.

³³ Order F21-68, 2021 BCIPC 79 (CanLII) at para 94 and the orders cited therein.

purpose of the section is to prevent the harm that would occur if a public body's deliberative process were exposed to public scrutiny, and thereby to encourage the free and frank flow of advice and recommendations. The question in assessing the application of s. 13(1) is whether an assiduous, vigorous seeker of information (rather than a casual observer) could infer the contents of advice or recommendations from the information at issue.³⁴

[47] VCH withheld various kinds of information under s. 13(1): portions of emails, draft and final versions of a letter, a briefing note, drafts of an issues note and portions of the final issues note, and some financial information.

[48] The analysis under s. 13(1) involves two stages. I must first decide whether disclosure of the withheld information would reveal advice or recommendations developed by or for a public body. If it would, the next step is to determine whether any of the circumstances in ss. 13(2) or (3) apply to that information. If one or more does, the public body must not refuse to disclose that information under s. 13(1).

Advice or recommendations – s. 13(1)

[49] BC's courts and previous OIPC orders have established the following principles for interpreting s. 13(1), which I adopt:

- [The requirement that the disclosure of information must] “reveal” advice or recommendations means that s. 13(1) does not apply to information that has already been disclosed.
- “Advice” is broader than “recommendations” and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact. Advice can be an opinion about an existing set of circumstances and does not have to be a communication about future action.
- “Advice” also includes 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”. This compilation of factual information and weighing the significance of matters of fact is an integral component of an expert's advice and informs the decision-making process.
- “Recommendations” include material relating to a suggested course of action that will ultimately be accepted or rejected by the decision maker.

³⁴ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at paras 52 and 65-66.

- Section 13(1) applies not only to advice or recommendations, but also to information that would allow someone to accurately infer advice or recommendations.³⁵

[50] In addition, s. 13(1) does not automatically apply to a document merely because it is a draft. A public body may only withhold the parts of a draft that would reveal, or allow accurate inferences to be made about, advice or recommendations.³⁶

Parties' submissions

[51] VCH says the redactions it made under s. 13(1) contain advice or recommendations developed for VCH leadership by VCH staff members who have expertise in the delivery of harm reduction programs. It says the withheld information

...includes potential options for relocation, considerations as to what services should be offered at the site post-relocation, estimated costing associated with each option, and discussions regarding what recommendations should be made to VCH leadership. It includes the internal deliberations and opinions of these staff members on the aforementioned factors, the circumstances surrounding the relocation, and how these intersect with their underlying recommendations.³⁷

[52] VCH says it has released information concerning the plan it ultimately carried out, and that the release of any further information would allow a party to infer what advice or recommendations were generated for it.³⁸

[53] VCH also points to the “mosaic effect”, where the disclosure of innocuous-seeming information may be linked with other information that is already available, yielding information that is not innocuous and would be excepted from disclosure under FIPPA. It says the release of information it withheld under s. 13(1) (and s. 17(1)), combined with information available in news stories and other publicly available information, would reveal advice and recommendations developed for VCH’s executive. It provides links to several news stories in support of its position.³⁹ It also cites *1111 Seymour Residences Ltd. v. Vancouver (City)*, a decision of the BC Supreme Court in which Justice Chan dismissed the class action certification application of a group of plaintiffs who said they were harmed by the operation of the TDOPS. VCH was one of the named defendants.⁴⁰

³⁵ Order F24-33, 2024 BCIPC 40 (CanLII) at para 18 and the cases cited therein.

³⁶ Order F25-99, 2025 BCIPC 115 (CanLII) and the cases cited therein.

³⁷ VCH’s initial submission at para 32.

³⁸ *Ibid* at para 33.

³⁹ *Ibid* at paras 18-25.

⁴⁰ 2024 BCSC 2304. VCH refers to paras 11, 22, 38-44, 54, and 56-58.

[54] VCH also refers to the affidavit of its chief medical health officer (the Chief Medical Officer), who provides evidence about the limited number of locations available for an overdose prevention site. She also provides evidence about the public opposition to having such a site located nearby, which limits VCH's ability to ensure that overdose prevention sites are available where they are most needed.⁴¹

[55] The applicant says VCH has provided no evidence that the withheld information would reveal policy advice. They say VCH has merely stated that publicly available information, combined with the information redacted under s. 13(1), would reveal advice, and has provided no evidence to suggest how the advice could be inferred from this combination.⁴²

[56] In reply, VCH says disclosure to the applicant amounts to disclosure to the world. It says it has provided evidence about the limited number of sites that are available for the TDOPS and the public opposition to sites that are known to be under consideration.⁴³

Analysis

[57] For the reasons that follow, I am not persuaded that the majority of the information VCH withheld under s. 13(1) would reveal advice or recommendations. That information that I find would not reveal advice or recommendations consists of the following:

- Portions of emails in which the authors set out what they plan to do in a matter-of-fact way, instruct their staff, offer assistance, and/or request and receive brief, factual updates (such as the identity of contact people at various organizations).⁴⁴
- Email subject lines, or parts of subject lines.⁴⁵
- Draft and final versions of a letter to another public body.⁴⁶
- The names and contact details of third parties.⁴⁷
- The topic(s) of discussion with another public body.⁴⁸

[58] While the draft and final versions of the letter referred to above differ, I do not think any advice or recommendations can be inferred from the changes.

⁴¹ Affidavit of Chief Medical Officer at paras 5-9.

⁴² Applicant's response submission at para 8.

⁴³ VCH's reply submission at paras 9-18.

⁴⁴ For example, at pages 5-6, 8-11, 16-20, 45, 49, and 67 of the records package.

⁴⁵ For example, at page 58 of the records package.

⁴⁶ At pages 23-24, 53-54, and 60-61 of the records package.

⁴⁷ For example, on page 38 and 43-46 of the records package.

⁴⁸ For example, on page 39 of the records package.

[59] I do not find disclosure of any of this information would reveal advice or recommendations, either directly or by inference.

[60] I have also considered the possible application of the mosaic effect. A public body invoking its application must explain the logic that leads to the conclusion that it might apply.⁴⁹ Detailed and convincing evidence is required.⁵⁰ I have reviewed the evidence, the court case, and the news stories VCH provided, but I cannot see (and VCH does not sufficiently explain) how this information, combined with the information withheld under s. 13(1), would reveal advice or recommendations developed by or for VCH. I find that the mosaic effect does not apply with respect to any of the information VCH withheld under that section.

[61] However, there is some withheld information whose disclosure would, I find, reveal advice or recommendations. This information consists of the following:

- Brief comments in which an email's author weighs the significance of circumstances and makes a recommendation for future action.⁵¹
- Suggestions for the inclusion of some data in a briefing note.⁵²
- The briefing note itself. I find that this briefing note consists of both an express recommendation and factual information compiled by an expert using judgment and skill.⁵³
- A set of outlined scenarios that represent a menu of options for VCH's action.⁵⁴

[62] VCH has also withheld (at pages 70-74) two draft versions of an issues note that appears (with minimal redactions) elsewhere in the records package. For the most part, I find that the information in it consists of background information that would not reveal advice or recommendations. However, I find that the comments and suggested tracked changes that appear in the drafts of the document would reveal the commenters' recommendations for changes to it, so s. 13(1) applies to those comments and suggested changes.⁵⁵

[63] To summarize, I have found that only to a small amount of the information VCH withheld under s. 13(1) would reveal advice or recommendations.⁵⁶ For the

⁴⁹ Order F21-47, 2021 BCIPC 55 (CanLII) at para 17.

⁵⁰ Order F10-29, 2010 BCIPC 41 (CanLII) at para 35; Order F08-03, 2008 CanLII 13321 (BC IPC) at paras 40 and 45.

⁵¹ At pages 19 and 52 of the records package.

⁵² At pages 28-30 of the records package.

⁵³ At pages 31-37 of the records package.

⁵⁴ At pages 64-65 of the records package.

⁵⁵ For a similar finding, see Order F24-20, 2024 BCIPC 26 (CanLII) at para 78.

⁵⁶ Namely, the information withheld at pages 19 (in part), 28-30, 31-37, 52 (in part), 64-65 (in part), and 70-73 (in part) of the records package.

information I found would not reveal advice or recommendations, no further analysis is necessary; VCH cannot withhold it on the basis of s. 13(1). As for the information to which I found reveals advice or recommendations, I must next consider if ss. 13(2) or (3) apply to any of that information.

Exceptions – s. 13(2)

[64] Section 13(2) sets out the kinds of information that a public body must not refuse to disclose under s. 13(1), even if they reveal advice or recommendations. The applicant says ss. 13(2)(a), (i), and/or (l) may apply.⁵⁷ VCH denies that these sections apply, and says it is “not obligated...to release this information as it pertains to advice or recommendations that were ultimately not approved as projects by the head of the public body”.⁵⁸

Section 13(2)(a) – factual material

[65] Section 13(2)(a) provides that a public body must not refuse to disclose any factual material under s. 13(1). Many previous orders and court decisions have considered the meaning of “factual material”, which has been held to mean source materials or background facts not necessary to an expert’s advice or to the deliberative process. Those same orders and decisions make clear that s. 13(2)(a) does not apply to “factual information [that] is 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”.⁵⁹

[66] In my view, none of the information I found would reveal advice or recommendations is “factual material” within this definition. It is intertwined with the advice and recommendations given, and cannot reasonably be severed. In particular, while the briefing note contains a large amount of background material, I find that this is integral to the recommendation given. I find that s. 13(2)(a) does not apply.

Section 13(2)(i) – feasibility or technical study, including a cost estimate

[67] Section 13(2)(i) provides that a public body must not refuse to disclose a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body, under s. 13(1). The applicant says s. 13(2)(i) applies and VCH says it does not, but neither party explains its position. I find that none of the information that remains at issue is a feasibility or technical study, including a cost estimate. I therefore find that s. 13(2)(i) does not apply.

⁵⁷ Applicant’s response submission at para 19.

⁵⁸ VCH’s initial submission at para 30; VCH’s reply submission at para 20.

⁵⁹ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at paras 91-94.

Section 13(2)(l) – plan or proposal to change program

[68] Section 13(2)(l) provides that a public body must not refuse to disclose, under s. 13(1), a plan or proposal to establish a new program or activity or to change a program or activity, if the plan or proposal has been approved or rejected by the head of the public body. The applicant says s. 13(2)(l) applies because the withheld information relates to a plan to relocate the TDOPS.⁶⁰

[69] As I noted above, the withheld information consists of brief assessments of circumstances and recommendations for action. For s. 13(2)(l) to apply to information, the information must constitute a plan or proposal to establish a new program or activity or to change a program or activity. Something more formal than a brief email is required.⁶¹ While the briefing note is more formal than the email portions, without revealing the contents of the briefing note I can only say that I do not think it constitutes a plan or proposal to establish or change a VCH program or activity. On my review of the information, I do not think any of it amounts to a plan or proposal to change a program or activity.⁶² I find that s. 13(2)(l) does not apply.

Information in existence for 10 or more years – s. 13(3)

[70] All of the information which would reveal advice or recommendations dates from 2024. It has not yet been in existence for 10 years, so s. 13(3) does not apply.

Conclusion on s. 13(1)

[71] I have found that most of the information VCH withheld under s.13(1) would not reveal advice or recommendations, either directly or by inference, and so VCH cannot withhold this information under s. 13(1). I have found that a small amount of withheld information would reveal advice or recommendations, and that none of the exceptions set out in ss. 13(2) or (3) apply, so VCH is authorized to withhold that information.

Harm to financial or economic interests of a public body – s. 17

[72] Section 17(1) allows a public body to refuse to disclose information whose disclosure could reasonably be expected to harm the financial or economic interests of a public body or the government of BC. The portions of s. 17(1) that are relevant to this inquiry provide as follows:

⁶⁰ Applicant's response submission at para 19.

⁶¹ Order F17-39, *supra* note 31 at para 42.

⁶² For a similar finding, see Order 251-1998, 1998 CanLII 6191 (BC IPC) at 9.

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:

...

(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.

[73] VCH appears to take the position that if a public body can establish that one of the categories in s. 17(1)(a) through (f) applies to information, then the public body is authorized to withhold that information.⁶³ However, previous orders have established that it is not enough for a public body to show that one of the circumstances enumerated in (a) through (f) apply; it must also demonstrate that disclosure could reasonably be expected to result in financial or economic harm in accordance with the opening words of s. 17(1).⁶⁴

[74] VCH has applied s. 17(1) to most of the information to which it applied s. 13(1). I found above that VCH is authorized to withhold some information under s. 13(1); it is therefore not necessary to consider whether s. 17(1) also applies to that specific information. VCH also applied s. 17(1) to a bank account number.⁶⁵

Reasonable expectation standard

[75] Section 17(1) concerns harm that *could reasonably be expected to* result from disclosure. The Supreme Court of Canada has held that where the phrase “could reasonably be expected to” is used in access to information statutes, the required standard of proof is a middle ground between what is merely possible and what is probable. A party must provide evidence that the expectation of harm is well beyond, or considerably above, mere possibility in order to reach that middle ground.⁶⁶

Parties’ submissions

[76] VCH says the relocation of the TDOPS required negotiations between VCH and various third parties, and included the exploration of alternative locations that were ultimately not pursued. It says it is required by ministerial order to ensure that overdose prevention services are provided in locations

⁶³ VCH’s initial submission at para 41.

⁶⁴ Order F21-56, 2021 BCIPC 65 (CanLII) at para 23; Order F19-03, 2019 BCIPC 4 (CanLII) at para 22.

⁶⁵ At page 48 of the records package.

⁶⁶ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, [2014] 1 SCR 674 at paras 52-54.

where there is a need for them. It says that despite that order, because of public opposition it has faced substantial difficulty in securing locations for overdose prevention sites, and so does not publicly release the proposed location of such a site until it has been confirmed.⁶⁷

[77] VCH also says that the amount of publicly available information regarding potential overdose prevention sites and the community partner organizations who work with VCH to deliver its overdose prevention services contributes to the difficulties VCH faces in locating sites for those services. It says the release of additional information about its negotiations with potential community partners would harm its negotiating position in the event it needs to relocate the TDOPS again or open additional overdose prevention sites.⁶⁸

[78] The applicant says VCH has not shown that there would be any impact to VCH's negotiating position as a result of revealing alternative locations that have been considered for an overdose prevention site.⁶⁹

Analysis and conclusion on s. 17(1)

[79] The information at issue under s. 17(1) consists of portions of emails, including one containing a bank account number, as well as draft and final versions of a letter, drafts of an issues note, and portions of the final version of the issues note.

[80] In order to establish that s. 17(1) applies, a public body must show that disclosure could reasonably be expected to result in financial or economic harm. In this case, VCH has not provided any evidence or argument about harm to the financial or economic interests of a public body. Its arguments relate to the operational difficulties it anticipates will flow from public opposition to its overdose prevention sites.

[81] As I said above concerning the possible application of the mosaic effect to information withheld under s. 13(1), I cannot see, and VCH does not explain, how the publicly available information it provided for my review could be combined with the information withheld under s. 17(1) to give rise to a reasonable expectation of financial or economic harm.

[82] VCH has the burden of establishing that s. 17(1) applies. It has provided no evidence or argument about financial or economic harm. Reviewing the withheld information myself, I cannot see how any of it could reasonably be expected to harm the financial or economic interests of a public body. In light of this finding, it is not necessary to determine whether disclosure of the information is information about negotiations carried on by a public body (under s. 17(1)(e))

⁶⁷ VCH's initial submission at paras 43-45.

⁶⁸ VCH's initial submission at para 46; Affidavit of Chief Medical Officer at paras 6-9.

⁶⁹ Applicant's response submission at paras 11-12 and 21-22.

or could reasonably be expected to harm the negotiating position of a public body (under s. 17(1)(f)). I find that s. 17(1) does not apply to any of the withheld information.

CONCLUSION

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

1. I confirm VCH's decision to withhold records and information under s. 14.
2. I confirm, in part, VCH's decision to withhold information under s. 13(1). I have highlighted the information to which s. 13(1) applies on pages 19, 52, and 64-65 in the copy of the records which is provided to VCH with this order. VCH is also authorized to withhold the following information under s. 13(1):
 - a. the information it withheld on pages 28-30;
 - b. the information it withheld on pages 31-37; and
 - c. the comments and tracked changes on pages 70-73.
3. VCH is not authorized to withhold the remainder of the information it withheld under s. 13(1), and it must disclose that information to the applicant.
4. I confirm, in part, VCH's decision to withhold information under s. 22(1). I have highlighted the information to which s. 22(1) applies on page 27 of the copy of the records which is provided to VCH with this order.
5. Subject to item 4, VCH is not authorized or required under ss. 17(1) or 22(1) to refuse to disclose the information it withheld under those sections, and it must disclose that information to the applicant.
6. VCH 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 items 3 and 5 above.

[84] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by May 6, 2026.

March 23, 2026

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File No.: F24-97975