Order F26-75

CITY OF SALMON ARM

D. Hans Hwang
Adjudicator

August 31, 2026

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) asked the City of Salmon Arm (City) for access to information related to a wildfire interface covenant registered on the title to the applicant's property. The City disclosed some responsive records but withheld some information in them under s. 14 (solicitor-client privilege) of FIPPA. The adjudicator found the City was authorized to refuse to disclose the information in dispute under s. 14.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, s. 14.

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) asked the City of Salmon Arm (City) for access to certain information related to a wildfire covenant registered on the title to the applicant's property and City staff's communications concerning the covenant.

[2] The City provided the applicant with responsive records but withheld some information in them under ss. 12(3) (local public body confidences), 14 (solicitor-client privilege), 17(1) (harm to financial or economic interests), and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.[1]

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision to withhold the information. The OIPC's mediation resolved some of the issues.[2] However, the issues of ss. 12(3) and 14 were not resolved and proceeded to inquiry.

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[1] All section references are to FIPPA unless otherwise stated.
[2] During mediation, the City disclosed additional information to the applicant, and the applicant accepted the City's ss. 17(1)(b) and 22(1) severing of the records at issue.

[4] Both parties provided written submissions. In its submission, the City confirms that it has disclosed the information it withheld under s. 12(3)(b) and no longer relies on that section.[3]

Preliminary matter

New issues, ss. 6(1) and 25(1)

[5] In the applicant's submission, they say that the City failed to make a reasonable effort to assist them under s. 6(1) in relation to an access request they previously made.[4] The applicant also says that disclosure of the information at issue is in the public interest under s. 25(1).[5] Section 25 requires a public body to disclose information in certain circumstances without delay despite any other provision of FIPPA.

[6] Sections 6(1) and 25 are not listed as issues in the OIPC investigator's fact report or the notice of inquiry.

[7] The notice of inquiry[6] and past OIPC orders[7] state that parties may only introduce new issues at the inquiry stage if they request and receive prior permission from the OIPC to do so. The applicant did not request the OIPC's permission to add ss. 6(1) and 25(1). Also, they did not explain why they did not request permission to add these sections prior to the inquiry, and they did not identify any exceptional circumstances which would warrant a departure from the OIPC's usual approach. Accordingly, I decline to add these as issues in this inquiry and will not consider whether these sections apply to the information in dispute.[8]

An issue outside the scope of this inquiry

[8] The applicant asks the OIPC to review whether the City failed to maintain transparency and accountability contrary to its Community Charter.[9] In addition, the applicant asserts that a lawyer for the City acted inappropriately by sending them a letter for the purpose of intimidating or discouraging the applicant from continuing with the inquiry process.[10]

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[3] City's initial submission at paras 11 and 16.
[4] Applicant's response submission at pages 15 and 34.
[5] Applicant's response submission at pages 15 and 30.
[6] Notice of inquiry was provided to both parties at the start of this inquiry.
[7] See, for example, Order F16-34, 2016 BCIPC 38 (CanLII) at para 9.
[8] See, for similar reasoning, Order F15-15, 2015 BCIPC 16 (CanLII) at para 10; Decision F08-02, 2008 CanLII 1647 (BCIPC) at paras 28-30.
[9] Applicant's response submission at page 33.
[10] Applicant's response submission at pages 3-4.

[9] As an administrative decision-maker, I must only act within the jurisdiction granted to me by legislation. The applicant has not specified, and I find that I do not have, the statutory authority to make findings in this inquiry about whether the City contravened the Community Charter and whether the lawyer engaged in inappropriate conduct. Therefore, although I have read and considered the complainant's entire submissions, I will only comment on the portions relevant to the issue I must decide in this inquiry.

Mediation materials

[10] The City asks me to disregard the portions of the applicant's submission which are about mediation materials.[11]

[11] The OIPC's *Instructions for Written Inquiries* (Instructions) expressly states that the inquiry is not to be influenced by what happened during mediation and that the Commissioner will not consider mediation materials[12] at inquiry.

[12] The City says the applicant's use of mediation materials is highly inappropriate due to the without prejudice nature of the process and should not be allowed.[13]

[13] I find the parts of the applicant's submissions the City identifies contain mediation materials relating to their previous access requests to the City.[14] The applicant has not sought consent from the City to include these materials in their submissions. Consistent with the Instructions and the approach in past orders, I will not consider mediation materials in this inquiry.[15]

ISSUE AND BURDEN OF PROOF

[14] In this inquiry, I must decide whether the City is authorized to refuse access to the information in dispute under s. 14.

[15] Under s. 57(1), the City has the burden of proving that the applicant has no right of access to the withheld information.

[11] City's reply submission at paras 32-34.
[12] "Mediation material" refers generally to communications that relate to offers or attempts to resolve the matter during mediation. The Commissioner will not consider mediation materials in reaching a decision and issuing an order. To preserve the integrity of the "without prejudice" nature of the mediation process, a party may not, without the written consent of the other parties, refer to or include in its submissions any mediation materials, including any opinions or recommendations an investigator expressed during mediation. However, it is permissible to refer to information which is not mediation material, for instance an investigator's decisions about the issues and the scope of the records that will proceed to inquiry, or an investigator's decision in complaints. Parties may include information about such factual outcomes in their submissions.
[13] City's reply submission at paras 32-34.
[14] Applicant's response submission at pages 24, 28, 29 and 44.
[15] See, for example, Order F24-04, 2024 BCIPC 5 (CanLII).

DISCUSSION

Background

[16] The applicant owns a property in the City. In 2018, a wildfire interface covenant (the Covenant) was registered on the title of the applicant's property under the *Land Title Act*.[16] The Covenant requires a property owner to take appropriate precautions in accordance with the provincial program to reduce wildfire risks to life and property.[17]

[17] The applicant requested that the City discharge the Covenant and issue them a burn permit[18] free of charge. The City declined both requests.

[18] In February 2022, the applicant filed a complaint about the unethical conduct of City staff who handled the applicant's request. In March 2022, the City advised the applicant that it would amend its Fire Prevention Bylaw (the Bylaw) and issue a burn permit without charging fees. Soon after that, the applicant submitted multiple complaints to the City Mayor and Council concerning improper conduct of City staff.

[19] In June 2022, the City amended the Bylaw to remove burn permit fees for residents with wildfire covenants. In 2024, the City reconsidered the applicant's request and discharged the Covenant.

Records and information at issue

[20] The responsive records consist of approximately 1,516 pages made up of 24 sets of email chains and attachments with the information in dispute appearing on approximately 54 of those pages.

Solicitor-client privilege, s. 14

[21] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. For the purposes of s. 14, solicitor-client privilege includes legal advice privilege and litigation privilege.[19] Only legal advice privilege is at issue in this inquiry.

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[16] RSBC 1996 c 250. Section 219 of the *Land Title Act* requires a property owner to register a legal covenant in favor of a local government.
[17] This program is called "Fire Smart" (available at https://firesmartbc.ca/).
[18] Where residents want to start an open-air fire, such as for agricultural clearing, yard debris disposal, or special ceremonies, under specific safety and weather rules, they are required to obtain an official legal document or approval issued by the local government (available at https://www.salmonarm.ca/DocumentCenter/View/237/Opening-Burning-Brochure?bidId=).
[19] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para 26.

Legal advice privilege

[22] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking, formulating, or providing legal advice, opinion, or analysis. For information to be protected by legal advice privilege it must be:

- a communication between a solicitor and client (or their agent);
- that entails the seeking or providing of legal advice; and
- that is intended by the solicitor and client to be confidential.[20]

[23] Not every communication between a solicitor and their client is privileged, however, if the conditions above are satisfied, then legal advice privilege applies.[21] In addition, the scope of legal advice privilege extends beyond the actual requesting or giving of legal advice and includes the "continuum of communications" related to the legal advice. The continuum of communications includes the exchange of information between solicitor and client for the purpose of obtaining and providing legal advice as well as internal client communications about legal advice and its implications.[22] Privilege can also extend to information that would reveal or allow accurate inferences to be made about the substance of privileged communications.[23]

Parties' submissions

[24] The City applied legal advice privilege to withhold information in 24 email chains and documents attached to some of them.[24]

[25] The City provided me with the unredacted version of the records at issue for my review and a table of records containing a brief description of the information withheld under s. 14.[25] Also, to support its position, the City provided affidavits from its chief administrative officer (Administrative Officer) and a corporate officer and FOI head (Corporate Officer).

[26] The Administrative Officer is responsible for overseeing the City's operations, advising Council, and implementing the City's policies and

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[20] *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 [*Solosky*] at p. 837.
[21] *Solosky, ibid,* at p. 829.
[22] *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [Camp] at paras 42-47; *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District,* 2013 BCSC 1893 at paras 22-24
[23] Order F17-23, 2017 BCIPC 24 (CanLII) at para 41; Order F20-19 2020 BCIPC (CanLII) at paras 24-27; Order F22-16, 2022 BCIPC 18 (CanLII) at para 31; Order F24-31, 2024 BCIPC 38 (CanLII) at para 28; Order F26-58, 2026 BCIPC 71 (CanLII) at paras 46-47.
[24] City's initial submission at paras 42 and 43.
[25] Page number, the date and participants of communications and the grounds on which privilege is claimed.

programs,[26] and reviewed the records at issue and the applicant's complaint against City staff filed in 2022.[27] The Administrative Officer states that the information in dispute consists of City staff's communications to seek, receive or discuss legal advice and recommendations provided by lawyers the City retained.[28] The Administrative Officer also states that these communications were confidential and the information in dispute has never been disclosed to the public and the City has not waived privilege over information withheld in the communications.[29]

[27] The Corporate Officer is responsible for the corporate administration for the City and implementing and maintaining the City's privacy management program, responding to requests for information, and managing privacy breaches.[30] The Corporate Officer states that the information in dispute describes the information as communications between city staff and lawyers and communications between city staff.[31]

[28] The applicant questions whether the disputed records are genuinely protected by solicitor-client privilege. They say that the City misrepresented its authority to induce the property owners to enter into the Covenant, and relied on legal advice to justify its actions.[32]

[29] The City says that the applicant's assertion is not supported by evidence and legal authorities.[33] In support of its position, the City provides the Administrative Officer's affidavit evidence that the City never communicated with its lawyers for a criminal purpose or with the intention of knowingly committing a crime.[34]

Analysis and findings

[30] As set out above, the information at issue was redacted from 24 email strings and attachments. Based on my review of the records, these emails and attachments can be categorized as follows:

- Emails between two lawyers for the City (City Legal Counsel) and the City's mayor (Mayor), directors, and Administrative Officer (collectively the City Staff; and PowerPoint slides attached to some of the emails; and

[26] Administrative Officer's affidavit #1 at para 2.
[27] Administrative Officer's affidavit #1 at paras 9-14.
[28] Administrative Officer's affidavit #1 at para 15.
[29] Administrative Officer's affidavit #1 at paras 18 and 19.
[30] Corporate Officer's affidavit #1 at paras 2-3.
[31] Corporate Officer's affidavit #1 at para 23; Table of Redactions.
[32] Applicant's response submission at page 16.
[33] City's reply submission at para 80.
[34] Administrative Officer's affidavit #2 at paras 11-13.

- Emails amongst the City Staff and emails between the Mayor and the City Staff.

[31] Based on my review of the records at issue, I find that all the emails relate to the Covenants.

[32] I find that at the time of the email communications in the records here, there was a solicitor-client relationship between the City and the City Legal Counsel regarding the Covenant. I find the lawyers were acting as the City's solicitors when they were communicating with the City Staff about the matters addressed in the disputed records. I have no difficulty finding that the communications between the City Legal Counsel and the City Staff qualify as communications between solicitor and client.

[33] I find that all the emails are requests for legal advice and actual legal advice. I also find that the PowerPoint slides enclosed with the some of the emails are integral parts of legal advice the City Legal Counsel prepared for the City and disclosing these slides risks revealing the substance of the communications.

[34] I also find that emails between the City Staff discuss the same legal advice. As set out above, legal advice privilege applies to the "continuum of communications" between lawyer and client that are "part of the necessary exchange of information between solicitor and client for the purpose of providing advice"[35] and the continuum includes internal client communications about the legal advice and its implications.[36] Having reviewed the records, I am satisfied that the emails amongst the City Staff fall within the continuum of communications and that this information entails the seeking and providing of legal advice; therefore, it is privileged.

[35] Turning to whether the communications and attachments at issue were intended to be confidential, I am satisfied that the City Legal Counsel provided legal advice to the City on a confidential basis. I accept the Administrative Officer's evidence that the communications between the City and City Legal Counsel were intended to be confidential, and the City has not waived privilege over the information at issue. In addition, there is no indication in any of the materials before me to suggest that anyone other than the City Legal Counsel and the City Staff were party to any of the communications contained in the disputed records. In addition, some of the emails contain a confidentiality proviso following the signature block.[37] All of this satisfies me that everyone who was

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[35] For example, *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para 42.
[36] *Ibid.*
[37] For example, email chains between Lawyer 2 and Administrative Officer, dated January 24, March 16, and March 19, 2024 have a confidentiality proviso.

involved in the email communications and who created or reviewed the PowerPoint slides understood these records were intended to remain confidential.

[36] To summarize, I find that the withheld records are confidential communications between solicitor and client that entail the seeking and giving of legal advice and continuum of these communications.

Crime-fraud exception

[37] The applicant submits that the City obtained legal advice for the purpose of justifying its misrepresentation of authority to induce the property owners to enter into the Covenant; therefore, crime-fraud exception applies to the legal advice.[38] The City says that the applicant has not made out a *prima facie* case that the City sought legal advice to facilitate the commission of a crime.[39]

[38] The crime-fraud exception is a doctrine that holds that communications between a solicitor and client made with a view to facilitating the commission of a crime cannot be privileged.[40] The policy rationale for the exclusion is that the facilitation of wrongful conduct is not within the scope of a lawyer's professional duties.[41]

[39] Past court cases have considered circumstances to invoke the crime-fraud exception as follows.

[40] A party seeking to invoke the exception must establish a prima facie case that the exception applies.[42] To do so, more than a mere assertion or allegation is required; there must be some prima facie evidence to give colour to the charge, in light of the surrounding circumstances.[43] However, it is not necessary for the decision maker to weigh conflicting evidence and make findings of fact.[44]

[41] Where an applicant establishes a prima facie case, the decision-maker must then review the documents in question to ascertain whether the exception applies or whether the asserted privilege properly exists.[45]

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[38] Applicant's response submission at pages 21-22.
[39] City's reply submission at paras 78-80.
[40] *Descoteaux et al. v. Mierzwinski,* 1982 CanLII 22 (SCC), [1982] 1 SCR 860 at 893.
[41] *Huang v. Silvercorp Metals Inc*., 2017 BCSC 795 at para 174 and the cases cited therein.
[42] *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [*Camp Development*] at para 24.
[43] *Huang v Silvercorp Metals Inc*., 2017 BCSC 795 [*Huang*] at para 180 and *British Columbia (Director of Civil Forfeiture) v PacNet Services Ltd*., 2023 BCSC 692 (CanLII) [*PacNet*] at paras 45-49.
[44] *Huang* supra note 43 at para 180 at *PacNet* supra note 43 at para 45.
[45] *Huang* supra note 43 at para 180; *McDermott v McDermott*, 2014 BCSC 534 (CanLII) at para 78; *Camp Developments*, supra note 42 at para 24.

[42] Turning back to the circumstances of the present inquiry, I find that the applicant did not sufficiently establish their assertion that the purpose of the legal advice was to facilitate the commission of a crime or fraud and the applicant's submission offers no basis in evidence for that assertion. As a result, I find that the applicant has failed to establish that the crime-solicitor exception applies. Ordinarily an adjudicator would only review privileged information for evidence of crime or fraud if an applicant established a *prima facie* case, in this case the records are before me. For added clarity, after reviewing the records at issue, I find that there is no evidence of crime or fraud. Accordingly, I find that the disputed information is protected by legal advice and the privilege has not been rebutted.

Conclusion, s. 14

[43] I find that the emails and attachments are protected by legal advice privilege because they are confidential communications between solicitor and client that entail the seeking and providing of legal advice and internal client communications about the legal advice and its implications. For these reasons, the City may refuse to disclose the information under s. 14.

CONCLUSION

[44] For the reasons given above, under s. 58(2)(b) of FIPPA, I confirm the City's decision to refuse the applicant access to all of the information in the disputed records under s. 14 of FIPPA.

August 31, 2026

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F24-98112