



Order F26-77

CITY OF RICHMOND

David S. Adams
Adjudicator

September 1, 2026

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Summary: An applicant requested the total legal fees incurred by the City of Richmond (the City) in the City's appeals of certain orders and decisions of the BC Utilities Commission. The City refused to disclose this information, relying on s. 14 (solicitor-client privilege) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that s. 14 did not apply and ordered the City to disclose the information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 6(2) and 14.

INTRODUCTION

[1] This inquiry arises from a pair of access requests made to the City of Richmond (the City) under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for the total legal costs the City incurred in respect of each of two appeals to the BC Court of Appeal involving decisions of the BC Utilities Commission (BCUC).

[2] The applicant who made the access requests is a former commissioner of the BCUC. The City advised him that it was withholding all information related to legal fees under s. 14 (solicitor-client privilege) of FIPPA. The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the City's decision to withhold information under s. 14.

[3] Mediation by the OIPC did not resolve the issue and it proceeded to inquiry. Both parties provided written submissions for the inquiry. The City also provided two affidavits from its staff solicitor (the Staff Solicitor).

ISSUE AND BURDEN OF PROOF

[4] The issue in this inquiry is whether the City may withhold information under s. 14 of FIPPA. Under s. 57(1), the City bears the burden of proving that s. 14 applies to the information at issue.

DISCUSSION

Background¹

[5] The BCUC is an independent agency of the BC Government. Under the *Utilities Commission Act* (the UCA),² the BCUC is responsible for, among other things, regulating BC's energy utilities. The City appealed the following two decisions made by the BCUC:

1. An order issued by the BCUC about FortisBC Energy Inc. (Fortis) involving a sewer, drainage and water main upgrade project planned by the City (the BCUC Order Appeal);³ and
2. A decision made by the BCUC that local government corporations that are wholly owned and operated by municipalities and regional districts are public utilities within the meaning of the UCA (the Municipal Inquiry Appeal).⁴

I will refer to these two matters together as the Appeals.

[6] As mentioned previously, the applicant is a former BCUC commissioner. He was one of three decision-makers who authored the BCUC order that formed the basis for the BCUC Order Appeal. He publishes a blog focusing on BC's energy sector.

[7] The disputes that led to the BCUC Order Appeal and Municipal Inquiry Appeal are complex. I will attempt only the following very brief overview of them.⁵

The BCUC Order Appeal

[8] The City undertook a new drainage, sewer, water main, and sanitary sewer upgrade project, which required it to request that Fortis alter its gas distribution piping at certain locations. The City and Fortis were unable to agree on the terms on which Fortis would do this work, so the City applied to the BCUC for an order requiring Fortis to do the work and specifying the terms on which it was to be done.

¹ The information in this section is drawn from the parties' submissions and the relevant Court of Appeal judgments and is not in dispute.

² RSBC 1996, c 473.

³ *City of Richmond v. British Columbia Utilities Commission*, 2024 BCCA 16 [BCUC Order Appeal Decision].

⁴ *Richmond (City) v. British Columbia (Utilities Commission)*, 2026 BCCA 139 [Municipal Inquiry Appeal Decision].

⁵ Readers looking for more detail may consult the relevant Court of Appeal judgments, which contain excellent summaries of the facts.

[9] The BCUC issued an order directing Fortis to do the required work, but included a term related to the limitation of Fortis's liability for the work. The City requested that the BCUC reconsider its order on the limitation of liability, but the BCUC largely left the order in place and affirmed its own jurisdiction to make the order. The City then filed the BCUC Order Appeal, but in January 2024, the BC Court of Appeal dismissed the City's appeal.

The Municipal Inquiry Appeal

[10] In 2019, the BCUC launched an inquiry (the Municipal Inquiry) into the regulation of municipal energy utilities. In 2022, it issued a final report which decided that local government corporations (LGCs) that are wholly owned and operated by municipalities are "public utilities" within the meaning of the UCA and therefore subject to regulation by the BCUC. However, the BCUC also decided that such LGCs are exempt from the application of the UCA, subject to a requirement to make an annual report to the BCUC on terms specified by the BCUC.

[11] The City and several other municipalities appealed this decision, launching the Municipal Inquiry Appeal, but in April 2026, the BC Court of Appeal upheld the BCUC's decision and dismissed the appeal.

Information at issue

[12] The information at issue in this inquiry consists of the total legal costs incurred by the City in each of the two Appeals (the Fee Amounts).

[13] The City has in its custody certain legal invoices that together contain the Fee Amounts sought by the applicant.⁶ The City says it understands that the legal invoices themselves are not sought by the applicant and are not at issue in this inquiry, and that only the Fee Amounts are at issue.⁷

Creation of a record – s. 6(2)

[14] The City says the Fee Amounts themselves are not set out in any existing record in its custody or under its control. However, it acknowledges that s. 6(2) of FIPPA may require it to create such a record.⁸

[15] Section 6(2) requires a public body to create a record if it can be created from a machine-readable record that is in its custody or control, using its normal

⁶ Affidavit #1 of Staff Solicitor, Exhibit B. The City provided me with summaries of the invoices on an *in camera* basis.

⁷ City's reply submission at paras 12-13.

⁸ *Ibid* at paras 14-15.

computer hardware and software and technical expertise, and this creation would not unreasonably interfere with its operations.

[16] Although s. 6(2) is not listed as an issue in the Notice of Inquiry, the City was clearly alive to the issue and made submissions on it. Based on those submissions and those of the applicant, I do not think there is any disagreement between the parties on this point. I do not think it would unfairly surprise the City if I were to order it to create a record containing both Fee Amounts. I interpret the City's submissions to mean that it is not disputing that it can easily create such a record, since it already has the necessary legal invoices. I conclude that it is required to do so under s. 6(2).⁹

Solicitor-client privilege – s. 14

[17] Section 14 of FIPPA allows a public body to refuse to disclose information that is subject to solicitor-client privilege. The term "solicitor-client privilege" covers both legal advice privilege and litigation privilege.¹⁰ The City relies on legal advice privilege to withhold the Fee Amounts.

Presumption of privilege over total amount of legal fees

[18] Legal advice privilege applies to communications between a solicitor and their client that are intended to be confidential and that relate directly to the seeking and giving of legal advice.¹¹

[19] Information about the amount of legal fees incurred by a party is presumptively privileged. This is because it arises out of the solicitor-client relationship and is capable of disclosing privileged information about communications between solicitor and client. The presumption may be rebutted, but the onus is on the applicant to do so.¹²

[20] The City says the Fee Amounts, as legal billing information, are presumptively privileged.¹³ The applicant does not dispute this point.¹⁴ I find that the Fee Amounts for both Appeals are subject to a presumption of privilege. I will therefore consider whether the presumption has been rebutted with respect to the Fee Amount corresponding to each Appeal.

⁹ For a similar finding, see Order F23-81, 2023 BCIPC 97 (CanLII) at paras 51-56.

¹⁰ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII) at para 26.

¹¹ *Ibid.*

¹² *British Columbia (Attorney General) v. Canadian Constitution Foundation*, 2020 BCCA 238 [CCF] at paras 60-61 and 85.

¹³ City's initial submission at paras 13-19.

¹⁴ Applicant's response submission at paras 16-18.

Has the presumption been rebutted?

[21] The presumption of privilege may be rebutted if it is determined that disclosure of the information at issue will not violate the confidentiality of the solicitor-client relationship by directly or indirectly revealing any communication protected by legal advice privilege. If, on the other hand, there is a reasonable possibility that an “assiduous inquirer”, aware of background information, could use the requested information to deduce or otherwise acquire privileged communications, then the information is protected by legal advice privilege.¹⁵

[22] The burden is on the applicant, as the party seeking the release of the presumptively privileged information, to prove through evidence or argument that there is no reasonable possibility that disclosure of the withheld information would reveal privileged communications or information.¹⁶

[23] In considering whether the presumption of privilege over a total amount of legal fees has been rebutted, each case will turn on its own unique circumstances. However, past OIPC orders and BC’s courts have laid out some non-exhaustive factors to assist decision makers in making this determination: the nature of the legal matters to which the billing information applies, the stage of the litigation (if the legal matters involve litigation), the inquirer’s involvement in the legal matters, the nature and level of detail of the billing information, and the length of time covered by the billing information.¹⁷

[24] I now turn to consider how the factors that are relevant in this case operate with respect to the Fee Amounts.

[25] **Stage of the litigation:** For the following reasons, I find that both the BCUC Order Appeal and the Municipal Inquiry Appeal have concluded and are not ongoing.

[26] I will consider the BCUC Order Appeal first. The City says that “live legal matters” remain between it and the BCUC. It concedes that the BCUC Order Appeal has itself concluded, but says that issues concerning the pipeline relocation work that was the subject of the underlying BCUC order remain outstanding. The City also says it continues to receive legal advice respecting its rights and obligations, and that it may bring a further application to the BCUC for an order requiring Fortis to complete the outstanding work.¹⁸

¹⁵ Order F26-61, 2026 BCIPC 76 (CanLII) at para 60 and the court cases cited therein.

¹⁶ *Ibid* at para 61 and the court cases cited therein.

¹⁷ Order F19-47, 2019 BCIPC 53 (CanLII) at para 18 and the orders and court cases cited therein.

¹⁸ City’s initial submission at para 27.

[27] The applicant says both Appeals are complete, and this fact supports a finding that an observer could not deduce privileged communications from the Fee Amounts, as might have been the case if either of the Appeals were ongoing.¹⁹ He also says the relationship between the City's contemplated further actions and the two Appeals is "too distant and indistinct" to support a reasonable possibility that an observer could infer the contents of privileged communications from the Fee Amounts.²⁰

[28] In reply, the City says it still requires Fortis to complete work on gas mains under Fortis's operation, in respect of which negotiations are ongoing. It makes *in camera* submissions concerning future actions it and Fortis may take concerning the relocation work still to be done.²¹ I cannot say much about these submissions without revealing their substance, but while I have carefully considered them, they do not persuade me that the disclosure of the relevant Fee Amount is capable of revealing privileged communications that the City had with its lawyers in the BCUC Order Appeal, or communications that the City is currently having with its lawyers about a dispute closely related to that Appeal.

[29] I do not think the existence of outstanding issues between Fortis and the City regarding the upgrade project, or the possibility that the City may apply to the BCUC for a further order related to Fortis's work, raise a reasonable possibility that an observer could deduce privileged communications from the disclosure of the Fee Amounts. The BCUC Order Appeal related to a discrete issue (the jurisdiction of the BCUC to impose a limitation of liability clause) and that issue has been finally decided. The City does not say it is still alive and I have no evidence that the City has sought leave to appeal the Court of Appeal's decision. Instead, the City asks me to consider possible future actions it or other parties may take regarding the upgrade project. These actions do not seem to me to have anything to do with the BCUC Order Appeal. I do not find that these events, including the matters raised in the City's *in camera* submissions, raise a reasonable possibility that the disclosure of the Fee Amount associated with the BCUC Order Appeal would reveal privileged communications.

[30] As for the Municipal Inquiry Appeal, the applicant says it is now complete, pointing to the Court of Appeal's April 2026 ruling.²² The City says in reply that there remain "live legal issues which stem directly from" the Municipal Inquiry Appeal. It makes an *in camera* submission in this respect.²³

¹⁹ Applicant's response submission at paras 23-33.

²⁰ *Ibid* at paras 28-29.

²¹ City's reply submission at paras 24-28 and 33-34; Affidavit #2 of Staff Solicitor at paras 3-9.

²² Applicant's response submission at paras 31-33.

²³ City's reply submission at paras 29-34; Affidavit #2 of Staff Solicitor at paras 15-17.

[31] While the Municipal Inquiry itself may still be ongoing,²⁴ the Municipal Inquiry Appeal, which was the subject of the applicant's request, has concluded. Nothing in the City's submissions or evidence persuades me otherwise.

[32] The City refers to *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner)* for the proposition that even where it is publicly known that a public body was vigorously defending itself and had likely already incurred substantial legal fees, the difference between, say, an \$8 million expenditure and a \$20 million expenditure might permit an assiduous inquirer to deduce matters of privileged communication.²⁵ However, in *Attorney General*, the fee amounts sought were *interim* costs incurred to date in an ongoing piece of litigation, which the BC Supreme Court found were capable of revealing "matters of instruction to counsel, strategies being employed or contemplated, the likely involvement of experts, and the [public body's] state of preparation".²⁶ I do not think such inferences are possible for these concluded Appeals.

[33] I find that both Appeals have concluded, and that this factor favours the rebuttal of the presumption of privilege over the Fee Amounts.

[34] **Applicant's knowledge of and involvement in the Appeals:** The City submits that the applicant, as one of the commissioners who authored the BCUC Orders, should be treated as having as much information as a party to the litigation would have, and that moreover, the applicant can be expected to disseminate the information if he receives it under FIPPA.²⁷ The applicant counters that he was not involved in the BCUC's defence of either Appeal, that his involvement was limited to the underlying BCUC processes, and that he "could do no more with the City's summary legal billing information than any other member of the public with access to the publicly available BCUC and BC Court of Appeal Records".²⁸

[35] While I accept that the applicant may have detailed knowledge of the matters underlying the Appeals, I cannot see how this knowledge, combined with the Fee Amounts, would allow him to infer any privileged communications, and the City does not explain how it might.

²⁴ There is a contemplated second stage of the Municipal Inquiry, which will involve different kinds of entities from those dealt with in the Municipal Inquiry Appeal: *Municipal Inquiry Appeal Decision*, *supra* note 4 at para 19.

²⁵ City's reply submission at paras 20-21, citing *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 1132 [*Attorney General*] at para 62; affirmed on appeal: *CCF*.

²⁶ *Attorney General*, *ibid* at para 62.

²⁷ City's reply submission at paras 35-38.

²⁸ Applicant's response submission at paras 34-42.

[36] That is not the end of the matter, however. Disclosure under FIPPA is equivalent to disclosure to the world.²⁹ Disclosure to the world means that if I order the Fee Amounts to be disclosed, members of the public, including the parties to the Appeals and other knowledgeable observers, will have access to them. Accordingly, I have also considered the matter from the standpoint of an assiduous and well-informed observer, such as one of those parties.

[37] In my view, such an approach is required by *CCF*. In *CCF*, the access applicant was not one of the parties to the litigation whose costs were at issue. Nevertheless, since those costs would be in the public domain if disclosed under FIPPA, the Court of Appeal found it necessary to consider whether one of those parties could use that information to draw inferences about privileged communications. As the Court put it:

If the total amount of fees is disclosed it will be in the public domain and known by the plaintiffs. One must ask whether there is a reasonable possibility that the plaintiffs, equipped with all of their knowledge of the litigation, including matters that remain confidential as between the parties, would be able to draw inferences about solicitor-client communications with the assistance of the information about the legal costs. This is so even if other assiduous observers, without that knowledge, could not draw those inferences. Even if it were reasonably possible for only the plaintiffs to draw the necessary inferences, privilege risks being breached.³⁰

[38] **Level of detail of the information and number of legal matters:** As I noted above, the information at issue consists of the total legal costs incurred by the City in each of the two Appeals. Each of the two Fee Amounts therefore relates to a single, discrete legal matter. Moreover, each Fee Amount is a single lump sum, without any dates or descriptions associated with it.

[39] The applicant says the Fee Amounts do not contain detailed billing information (such as itemized descriptions of work completed and time allocated to a matter), but only the total the City spent in each of the Appeals. He says there is no general rule that such total costs will always reveal what a public body was willing to spend on litigation and what it communicated to its lawyers about that willingness. He says the absence of detailed billing information in the Fee Amounts should weigh heavily toward a finding that there is no reasonable possibility of the Fee Amounts revealing privileged information.³¹

[40] The City replies that while the Fee Amounts may be only a summary of costs, this “does not automatically rebut the presumption of privilege”, citing *Corp. of the District of North Vancouver v. BC (The Information and Privacy*

²⁹ Order 03-05, 2003 CanLII 49214 (BC IPC) at para 31.

³⁰ *CCF*, *supra* note 12 at para 76.

³¹ Applicant’s response submission at paras 47-50.

Commissioner).³² However, that case involved the disclosure of *interim* legal costs in the course of ongoing litigation, which the BC Supreme Court found would “result in the disclosure of important detail in relation to its retainer and...prejudice its right to communicate with counsel in confidence...”³³ Here, by contrast, the Fee Amounts represent only what the City spent at the end of the day once the Appeals were concluded.

[41] The City also relies on Order F13-03 for the proposition that even where dollar amounts can be disclosed in isolation, there is a reasonable possibility that the dollar amounts alone would reveal privileged communications.³⁴

[42] However, in that order, the adjudicator identified several factors supporting a finding that the amounts could enable the access applicant in that case to infer privileged advice: the amounts were set out in monthly accounts rather than aggregated; the applicant worked for the public body whose spending was at issue during the time the relevant disputes played out, and in fact handled those disputes on behalf of the public body; the applicant operated a website about the public body’s processes and decisions; and the adjudicator concluded that the “size of fees and disbursements covering a particular time period, or discernible patterns in billings, would allow inferences to be made about the privileged communication”.³⁵

[43] None of these factors (save the applicant’s operation of a website) apply here: the Fee Amounts are divorced from any time periods and represent only the total the City spent on the Appeals. I cannot see how the Fee Amounts would disclose any “patterns in billings” at all.

[44] The City also relies on *Richmond (City) v. Campbell* for the proposition that disclosure of a total fee amount may reveal how vigorously a matter was defended and how much a defendant may be willing to spend on legal fees before settling a claim.³⁶

[45] However, I also find *Richmond* to be distinguishable. In *Richmond*, the BC Supreme Court found that the disclosure of the total amount of legal fees incurred by the public body in two employment harassment claims that were eventually settled could reveal the public body’s instructions to its lawyers about how much it was willing to pay in defence of the claims. A relevant factor in the Court’s decision was that “[it] is notorious that the cost of litigation is an important

³² City’s reply submission at paras 39-41, citing *Corp. of the District of North Vancouver v. BC (The Information and Privacy Commissioner)*, 1996 CanLII 521 (BC SC) [*North Van*] at paras 48-49.

³³ *North Van*, *ibid* at paras 2 and 47.

³⁴ City’s reply submission at para 41.

³⁵ Order F13-03, 2013 BCIPC 3 (CanLII) at paras 5, 9, and 16.

³⁶ City’s reply submission at para 40, citing *Richmond (City) v. Campbell*, 2017 BCSC 331 [*Richmond*].

factor for considering settlement” and that the “cost of defending employment harassment claims is a particularly significant element in resolving such claims”.³⁷ In this case, however, the Appeals were not settled but ended with final decisions from the Court of Appeal. The City initiated both Appeals; it was not defending itself against a claim. I cannot see how the Fee Amounts would reveal anything about the City’s instructions to its legal counsel or its *willingness* to spend money on legal fees.

[46] In Order F23-81, the adjudicator made the following observation, with which I agree and which I find to be directly applicable in this case:

I cannot see how disclosing the total amount spent by the [public body] would reveal whether the [public body] instructed their counsel to incur that expense or reveal any other privileged communication it had with its counsel. The amount a client pays their lawyer at the end of the day necessarily reflects the variability and unpredictability of legal proceedings and their outcomes.³⁸

[47] In my view, the lump sum, non-descriptive nature of the Fee Amounts makes it very unlikely that anyone could infer from them whether the City instructed its counsel to take a certain step in either of the Appeals, or any other privileged communication. I agree with the applicant that the absence of any detailed information in the Fee Amounts favours the rebuttal of the presumption of privilege.

[48] **Length of time covered by billing information:** The City submits that the Fee Amounts cover a period of approximately two years. It says this is a short time in which to incur litigation expenses, and this fact could result in the Fee Amounts being linked to identifiable steps in the Appeals.³⁹

[49] While I accept that in some cases the length of time represented by a lump sum of costs incurred by a party may permit inferences about privileged communications, I do not think that is a realistic concern here. The Fee Amounts are not tied to any specific steps taken by the City in the Appeals. Knowing that the City incurred the Fee Amounts over a period of approximately two years, without more, would not in my view allow an observer to infer anything about privileged communications.

[50] **Conclusion on rebuttal of the presumption of privilege:** The City rightly points out that the standard required to rebut the presumption of privilege is “appropriately high” and “very strict”.⁴⁰ Nevertheless, in this case I am satisfied

³⁷ *Richmond*, *ibid* at paras 83-87 and 91.

³⁸ Order F23-81, *supra* note 9 at para 32.

³⁹ City’s reply submission at paras 42-43.

⁴⁰ City’s initial submission at para 14, citing *CCF*, *supra* note 12 at para 83 and *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 1132 at para 51.

that this high standard is met and that there is no reasonable possibility that disclosure of the Fee Amounts could reveal privileged communications.

[51] In Order F25-76, I found that the total amount a public body had spent on a single concluded dispute (a hard-fought piece of constitutional litigation) would not reasonably allow an assiduous inquirer to infer any of the public body's privileged communications.⁴¹ I find the facts in this case to be very similar. The Fee Amounts each relate to a single complex appeal. Each appeal has now concluded. I am not satisfied that the possible future actions described by the City are sufficiently related to the Appeals as to make them in any sense ongoing. Meanwhile, the Fee Amounts provide almost no detail that would allow anyone to infer privileged communications.

[52] To summarize, the Fee Amounts for the Appeals both reflect complex, hard-fought litigation occupying several years. Given the summary nature of the information and the fact that both Appeals have concluded, I am satisfied that an assiduous and well-informed observer, knowing the Fee Amounts and other public information about the Appeals, would not reasonably be able to deduce the contents of privileged communications between the City and its lawyers. The presumption of privilege over the Fee Amounts with respect to both Appeals is therefore rebutted.

Conclusion on s. 14

[53] I have found that the Fee Amounts in respect of each Appeal are presumptively privileged. However, I have found that the presumption has been rebutted in each case because there is no reasonable possibility that an assiduous and well-informed inquirer could use either of the Fee Amounts, which are non-descriptive lump sums, to infer the contents of privileged communications. Accordingly, the City is not authorized under s. 14 to refuse to disclose the Fee Amounts.

CONCLUSION

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

1. Under s. 58(3)(a) of FIPPA, I require the City to perform its duty under s. 6(2) to create a record containing the information requested by the applicant.
2. The City is not authorized under s. 14 to refuse to disclose the information in dispute. Therefore, under s. 58(2)(a), I require the City to provide the applicant with access to the record that it creates under s. 6(2).

⁴¹ Order F25-76, 2025 BCIPC 89 (CanLII) at paras 46-47.

3. Under s. 58(4), the City is required to provide the OIPC's registrar of inquiries with evidence that it has complied with items 1 and 2 noted above.

[55] Pursuant to s. 59(1) of FIPPA, the City is required to comply with the orders that I have made above by October 16, 2026.

September 1, 2026

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File No.: F25-00883