



Order F26-78

CITY OF COQUITLAM

David S. Adams
Adjudicator

September 2, 2026

CanLII Cite: 2026 BCIPC 97
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 97

Summary: An applicant requested the total legal costs incurred by the City of Coquitlam (the City) in its appeal of certain orders made by the BC Utilities Commission. The City withheld the information under 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), 14.

INTRODUCTION

[1] An applicant made a request, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), for the total expenses incurred by the City of Coquitlam (the City) in the City's appeal (the Appeal) of two orders of the BC Utilities Commission (BCUC). The applicant is a former commissioner of the BCUC.

[2] The City advised the applicant that the records responsive to the request consist solely of detailed legal invoices issued by the law firm the City retained during the Appeal, and that it was withholding the requested information under s. 14 (solicitor-client privilege) of FIPPA.

[3] The applicant asked the Office of the Information and Privacy Commissioner to review the City's decision to withhold the responsive information. Mediation did not resolve the issue and it proceeded to this inquiry. Both parties provided submissions for the inquiry.

ISSUE AND BURDEN OF PROOF

[4] The issue I must decide in this inquiry is whether the City is authorized to withhold the information in dispute under s. 14 of FIPPA. Under s. 57(1), the City has the burden of proving that the applicant has no right of access to the information in dispute.

DISCUSSION

Background¹

[5] The BCUC is an independent agency of the BC government. Under the *Utilities Commission Act*,² it is responsible for, among other things, regulating BC's energy utilities. The BCUC issued an order permitting FortisBC Energy Inc. (Fortis) to abandon a decommissioned gas pipeline. The City asked the BCUC to reconsider this order, but the BCUC dismissed the bulk of the City's reconsideration application.

[6] The City appealed these orders to the BC Court of Appeal. In September 2021, the Court of Appeal dismissed the Appeal, holding that the BCUC had not exceeded its jurisdiction in making its orders.

[7] The applicant is a former BCUC commissioner who was one of the decision makers who decided one of the underlying BCUC orders.

Records and information in dispute

[8] The records that the City identified as responsive to the access request are 109 pages of detailed legal invoices which are completely withheld under s. 14.³ According to the City's evidence, there are 25 invoices in total.⁴ The applicant says that he does not want to see the actual legal invoices. He only wants to know the total legal cost the City spent on the Appeal.⁵ I will use the term "Fee Amount" to refer to the aggregate amount from the 25 invoices. The applicant says that if the City does not have a record that contains the Fee Amount, he would like the OIPC to order the City to create such a record.

[9] The City replies that if it is ordered to create a record containing the Fee Amount, its position continues to be that the total amount of legal fees is subject

¹ The facts in this section are not in dispute and are drawn from the parties' submissions and *Coquitlam (City) v. British Columbia (Utilities Commission)*, 2021 BCCA 336 [Coquitlam].

² RSBC 1996, c 473.

³ City's initial submission at paras 4-5; the City did not provide the invoices to me to review.

⁴ Affidavit of the City's Assistant City Solicitor at exhibit A.

⁵ Applicant's response submission at paras 3-6; City's reply submission at para 2.

to solicitor client privilege and the City may withhold the created record under s. 14.⁶

[10] Section 6(2) of FIPPA 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 computer hardware and software and technical expertise, and this creation would not unreasonably interfere with its operations.

[11] I note that the City does not dispute that it has the ability to create a record setting out the Fee Amount. It also seems to me that creating a record containing the Fee Amount would be a simple matter of tallying the total from each invoice and recording it on a page. I conclude that s. 6(2) applies and the City is required to create a record that contains the Fee Amount.⁷

[12] I turn next to the question of whether the City may withhold the Fee Amount under s. 14.

Solicitor-client privilege – s. 14

[13] 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” incorporates two heads of privilege drawn from the common law: legal advice privilege and litigation privilege.⁸ The City relies on legal advice privilege to withhold the Fee Amount.

Presumption of privilege over total amount of legal fees

[14] 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.⁹

[15] Information about the amount of legal fees incurred by a party is presumptively privileged. This is because the amount arises out of the solicitor-client relationship and is capable of revealing privileged information about communications between solicitor and client.¹⁰

⁶ City’s reply submission at paras 2-3.

⁷ For a similar finding, see Order F23-81, 2023 BCIPC 97 (CanLII) at paras 51-56.

⁸ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 26.

⁹ *Ibid.*

¹⁰ *British Columbia (Attorney General) v. Canadian Constitution Foundation*, 2020 BCCA 238 [CCF] at paras 60-61.

[16] The City says the Fee Amount is presumptively privileged.¹¹ The applicant does not dispute this point.¹² I find that as it is legal billing information, the Fee Amount is presumptively privileged.

Has the presumption been rebutted?

[17] 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 presumption has not been rebutted and the information is subject to legal advice privilege.¹³

[18] 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.¹⁴

[19] 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 the following non-exhaustive list of factors to consider 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.¹⁵

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

Stage of the litigation

[21] I take it to be common ground among the parties, and I find, that the Appeal has concluded. Neither party suggests it is ongoing.

[22] The City cites *Richmond (City) v. Campbell* for the proposition that whether a matter has concluded or not is an “unimportant distinction” when

¹¹ City’s reply submission at para 4.

¹² Applicant’s response submission at para 12.

¹³ Order F26-61, 2026 BCIPC 76 (CanLII) at para 60 and the court cases cited therein.

¹⁴ *Ibid* at para 61 and the court cases cited therein.

¹⁵ Order F19-47, 2019 BCIPC 53 (CanLII) at para 18 and the orders and court cases cited therein.

considering whether the disclosure of legal fees could reveal privileged communications, noting that the BC Supreme Court found that the total amount of legal fees incurred by a party could in certain circumstances reveal how much a party was willing to pay to defend itself from claims.¹⁶

[23] In Order F25-76, I rejected the argument that a distinction between an ongoing matter and one that has concluded will always be unimportant.¹⁷ I reach the same conclusion here.

[24] In *Richmond*, Justice Gray found the distinction to be unimportant in the particular context of that case. Specifically, she concluded that in the “special nature of employment harassment claims” the “cost of employment harassment litigation is an important aspect of settlement negotiations, and information about how much an employer spent to defend one claim or two claims could assist a later employment harassment claimant in negotiations”.¹⁸

[25] In this case, the Appeal ended by a final decision of the Court of Appeal, not by settlement. In my view, disclosure of the Fee Amount would not reveal anything about the City’s willingness to incur legal expenses or how important it found the Appeal. As the adjudicator in Order F23-81 noted, the amount a client pays its lawyer at the end of the day “necessarily reflects the variability and unpredictability of legal proceedings and their outcomes”.¹⁹ I find the fact that the Appeal has concluded to be a factor favouring the rebuttal of the presumption in this case.

The City’s willingness to pursue the Appeal

[26] The City submits that disclosure of the Fee Amount would allow utilities to decide whether to abandon infrastructure projects, to the detriment of the City, based on how forcefully the City pursued its position in the Appeal.²⁰ I do not think this is a realistic possibility. The City’s arguments in the Appeal are part of the public record. The amount it spent pursuing the Appeal to its conclusion will, again, reflect the variability and unpredictability of such proceedings. I cannot see what disclosure of the Fee Amount would reveal about the City’s *willingness* to pursue the Appeal.

¹⁶ City’s reply submission at para 6, citing *Richmond (City) v. Campbell*, 2017 BCSC 331 [Richmond] at para 82.

¹⁷ Order F25-76, 2025 BCIPC 89 (CanLII) at para 28.

¹⁸ *Richmond*, *supra* note 16 at paras 83-87 and 91-92.

¹⁹ Order F23-81, 2023 BCIPC 97 (CanLII) at para 32.

²⁰ City’s reply submission at paras 7-8.

Applicant's involvement in the legal matters

[27] The City also makes submissions on the applicant's status as a former BCUC commissioner who was involved in deciding one of the orders underlying the Appeal. It says his involvement and expert knowledge of the utilities industry raise at least a reasonable possibility that he could draw inferences about the City's instructions to its lawyers, its legal strategy, or other privileged information.²¹

[28] The applicant admits he has expert knowledge of the underlying BCUC orders, but says he played no role in the Appeal, so that he "could do no more having knowledge of the City's total legal fees than any other member of the public with access to the publicly available BCUC and BC Court of Appeal records".²²

[29] I cannot readily see the connection between the applicant's industry knowledge and the inferences he might be able to make about privileged communications. While I accept the City's submission that the applicant is an experienced business executive with a wealth of energy industry knowledge, the City does not explain how this knowledge might allow him to deduce the contents of privileged communications between the City and its lawyers. I accept the applicant's submission that he had no involvement with the BCUC's defence of the Appeal. I am satisfied that there is no reasonable possibility that the applicant's involvement with the underlying BCUC order and his industry knowledge will allow him to uncover privileged communications if he learns the Fee Amount.

[30] However, that is not the end of the matter. Disclosure under FIPPA is equivalent to disclosure to the world.²³ 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, might gain 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.²⁴

[31] In this case, the Fee Amount is so non-descriptive that I cannot readily see how even a party to the Appeal could use it to uncover privileged communications.

²¹ *Ibid* at paras 12-16.

²² Applicant's response submission at paras 29-33.

²³ Order 03-05, 2003 CanLII 49214 (BC IPC) at para 31.

²⁴ See, e.g., *CCF*, *supra* note 10 at para 76.

Conclusion on rebuttal of the presumption

[32] In the recent Order F26-61, the adjudicator summarized the relevant jurisprudence in this way:

There have been several orders, decisions and court cases that have considered whether the presumption of privilege was rebutted for only the total amount of legal fees paid by a public body. The presumption of privilege was found to be rebutted in one or more of the following circumstances: the information at issue was a total dollar amount with no dates relating to when the services were charged and no details about the services rendered, the legal fees were about more than one legal dispute or matter, the litigation had concluded, and the information did not reveal amounts paid to one specific lawyer.

On the other hand, the presumption of privilege was *not* rebutted for the total amount of legal fees paid by a public body when one or more of the following factors applied: the litigation was still ongoing, disclosure would have occurred at an early stage of the litigation when the parties had yet to reveal any legal strategy or instructions to counsel, the legal fees related to one specific legal dispute, and the information would be disclosed or available to individuals who were particularly well-informed about the litigation and especially well-placed to draw accurate inferences about privileged information.²⁵

[33] In this case, the Fee Amount relates to a single concluded action. It consists of a single lump sum; it has no other contextual information or details about the services rendered or the City's instructions. I am satisfied that there is no reasonable possibility that a well-informed and assiduous observer could deduce anything about the City's privileged communications with its lawyers from the Fee Amount. I cannot find that disclosure of the Fee Amount would "enable insights to be drawn...about the City's legal position, instructions to legal counsel, the tenor of those instructions, and the importance of the outcome, or not, to the City" as the City anticipates.²⁶

Conclusion on s. 14

[34] I have found that the Fee Amount is presumptively privileged, but that the presumption of privilege has been rebutted in the circumstances. The City is not authorized to refuse to disclose the Fee Amount under s. 14.

²⁵ Order F26-61, 2026 BCIPC 76 (CanLII) at paras 75-76 and the orders and cases cited therein.

²⁶ City's reply submission at para 8.

CONCLUSION

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

1. Under s. 58(3)(a), I require the City to perform its duty under s. 6(2) to create a record containing the Fee Amount.
2. The City is not authorized under s. 14 to refuse to disclose the Fee Amount. Therefore, under s. 58(2)(a), I require the City to provide the applicant with access to the record that it creates containing the Fee Amount.
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 above.

[36] Pursuant to s. 59(1) of FIPPA, the City is required to comply with the orders made above by October 19, 2026.

September 2, 2026

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

OIPC File No.: F25-00964