



Order F26-86

CITY OF PORT MOODY

Carol Pakkala
Adjudicator

October 6, 2026

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Summary: An applicant requested access to workplace investigation records under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The City of Port Moody (City) provided responsive records but withheld information in them under various sections of FIPPA. The adjudicator found the City was authorized to withhold some of the information it withheld under s. 13(1) and ordered it to disclose the remainder.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 13(1), 13(2)(a), 13(2)(n), and 13(3).

INTRODUCTION

[1] An individual (applicant) requested access to workplace investigation records held by the City of Port Moody (City). The applicant requested the full investigation report (Report) as well as all correspondence and notes about the investigation.

[2] The City provided the applicant with some responsive records but withheld information in them under ss. 13(1) [advice or recommendations] and 22(1) [harm to personal privacy] of the *Freedom of Information and Protection of Privacy Act* (FIPPA).¹

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision.

[4] The OIPC's investigation and mediation process partially resolved this matter, and the applicant no longer disputes the withholding of information under

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

s. 22(1).² The s. 13(1) issue then proceeded to this inquiry in which both parties provided written submissions.

ISSUES AND BURDEN OF PROOF

[5] The issue I must decide in this inquiry is whether s. 13(1) authorizes the City to withhold the information at issue.

[6] Section 57 provides that the City has the burden of proving it is authorized to withhold the information at issue under s. 13(1).

DISCUSSION

Background

[7] The City is a municipal government responsible for providing local governance, public infrastructure, community planning, protective services, recreation, parks, and other services for its residents and businesses.

[8] The applicant, while working for the City,³ made a workplace complaint about bullying and harassment. The City hired an external investigator (Investigator) to investigate his complaint and issue a report (Report). The City provided the applicant with a letter confirming the outcome of the investigation, but they did not provide him with the Report.

Records and Information at Issue

[9] The records responsive to the access request are 79 pages, all of which the City provided for my review in this inquiry. However, the only information remaining at issue is the Report which the City withheld in its entirety. The Report is 19 pages long.

Preliminary matters

Line-by-line severing

[10] The applicant says the City is improperly withholding the Report as an exempt record rather than reviewing it line-by-line as required by s. 4(2).⁴ The City says, “[a] line-by-line review of the report for disclosure would be in violation of both the Terms of Reference and the City's commitment to the integrity and

² OIPC Investigator's Fact Report at para 4.

³ From the information before me, I could not easily discern the applicant's current employment status with the City. This fact is not relevant to the issues in this inquiry.

⁴ Applicant's submission, p. 4.

confidentiality of the investigative and deliberative processes.”⁵ The applicant says that private confidentiality agreements cannot override statutory disclosure rights.⁶

[11] The applicant is correct that s. 13 does not allow a public body to withhold an entire record without reviewing the information within it. Section 13 authorizes a public body to withhold “information”, not “records”. Further, s. 4(2) requires that if information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

[12] The City is withholding the entire Report under s. 13(1). While I can see that the City did consider the application of s. 22(1) line-by-line to the information within the Report, it is not clear that it did the same regarding the application of s. 13(1). The City is required to do a line-by-line review of the Report before withholding any information in it under s. 13(1).

[13] The City provided the full Report for my review in this inquiry. I have reviewed the applicability of s. 13(1) to each line of it.

Advice or recommendations – s. 13

[14] Section 13 authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body, subject to certain exceptions. The relevant provision reads as follows:

- 13** (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.
- (2) The head of a public body must not refuse to disclose under subsection (1)
- (a) any factual material,
 - ...
 - (n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.
- (3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

[15] The purpose of s. 13 is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that

⁵ City's initial submission, p. 4.

⁶ Applicant's submission, p. 8.

would occur if the deliberative process of decision and policy making were subject to excessive scrutiny.⁷

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

[17] “Advice” and “recommendations” have distinct meanings. “Recommendations” involve “a suggested course of action that will ultimately be accepted or rejected by the person being advised.”⁸ The term “advice” is broader than “recommendations”.⁹ Advice includes a communication about which courses of action are preferred or desirable;¹⁰ and an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.¹¹

[18] Section 13(1) applies not only when disclosure of the information would directly reveal advice or recommendations, but also when it would allow accurate inferences to be drawn about advice or recommendations.¹²

[19] If I find the information at issue is advice or recommendations, the next step is to determine whether any of the circumstances in ss. 13(2) or 13(3) apply. If information falls within ss. 13(2) or (3), the public body may not refuse to disclose it, even if it is advice or recommendations within the meaning of s. 13(1).

Parties’ submissions – s. 13(1)

[20] The City says that previous OIPC orders have upheld the withholding of records related to workplace investigations under s. 13(1). The City argues those previous orders apply here and authorize it to withhold the Report.¹³ More specifically, the City says that, as in those orders, the Report here:

- falls precisely into the same categories of information;¹⁴

⁷ *John Doe v Ontario (Finance)*, 2014 SCC 36 at para 45 [*John Doe*], interpreting a similar provision in Ontario’s *Freedom of Information and Protection of Privacy Act*.

⁸ *Ibid* at para 24.

⁹ *Ibid* at para 24.

¹⁰ Order 01-15, 2001 CanLII 21569 at para 22.

¹¹ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

¹² See for example *John Doe supra* note 7 at para 24; Order 02-38, 2002 CanLII 42472 (BCIPC); Order F10-15, 2010 BCIPC 24 (CanLII); and Order F21-15, 2021 BCIPC 19 (CanLII).

¹³ The City cites the following orders: Order F23-66, 2023 BCIPC 77 (CanLII), Order F20-08, 2020 BCIPC 09 (CanLII), Order F24-83, 2024 BCIPC 95 (CanLII), and Order F15-12, 2015 BCIPC 12.

¹⁴ City’s initial submission, p. 3.

- includes advice on how to address human resources matters and workplace complaints;¹⁵ and
- contains such expert opinion arrived at using the Investigator's judgment and skill to weigh the significance of the facts compiled in support of the expert evidence.¹⁶

[21] The City also cites a previous order's reference to the purpose of s. 13(1) as the prevention of the harm that would occur if a public body's deliberative process was exposed to public scrutiny.¹⁷ The City argues that the Report contains sensitive and highly confidential information pertaining to both the investigative and deliberative processes that would cause harm if released publicly.¹⁸

[22] The City identifies the harm from disclosure of the Report as a violation of the Terms of Reference with the Investigator,¹⁹ and harm to the City's future ability to protect the fairness, integrity, and confidentiality of workplace investigations. Such failure to protect, it says, could result in a lack of confidence and cooperation in future investigations and further workplace difficulties.²⁰

[23] The applicant says the City argues the wrong legal test. The applicant further says that private confidentiality agreements do not override statutory disclosure rights, and the Terms of Reference for the Investigator do not, by themselves, establish that the Report falls within s. 13(1).²¹

[24] The applicant says the Report does not consist solely of advice or recommendations within the meaning of s. 13(1), as it is expected to contain factual summaries, witness evidence, credibility assessments, and findings of fact.²² I understand the applicant to argue this type of information is not advice or recommendations within the meaning of s. 13(1).

[25] The applicant further says the courts have recognized there is a distinction between advice that reflects judgment or opinion and objective information contained in a record.²³

¹⁵ City's initial submission, p. 4.

¹⁶ *Ibid*, p. 4.

¹⁷ Citing Order F24-83, 2024 BCIPC 95 (CanLII).

¹⁸ City's initial submission, p. 4.

¹⁹ The City says the Terms of Reference for the investigation, as agreed upon between it and the Investigator, clearly stipulated that any information will only be shared on a "need-to-know" basis and that the final investigation report will not be disclosed except under exceptional circumstances.

²⁰ City's initial submission, p. 4

²¹ Applicant's submission, p. 8.

²² *Ibid*, p. 10.

²³ *Ibid*, p. 13 citing *John Doe* (*supra* note 7).

Misunderstanding of precedents

[26] The City's arguments, in my view, are grounded in two fundamental misunderstandings about the application of previous OIPC orders and court decisions. The first relates to the City's harm arguments, and the second to its reliance on previous orders.

[27] The City references its need to prevent the harm that would result from disclosure of the Report. In doing so, it correctly cites what previous orders say about the purpose of s. 13. Those orders come from a court ruling which says that the purpose of s. 13 is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.²⁴

[28] In the context of the orders the City cited, "purpose" refers to the purpose of the legislative provision and the reason the Legislature decided to exempt advice and recommendations from the general right of access under FIPPA. The orders were not talking about a public body's purpose for withholding the specific information in dispute. The only consideration for whether information may be withheld under s. 13(1) is whether disclosure would reveal "advice or recommendations"; the issue is not whether its disclosure would cause harm.

[29] The City also relies upon several previous orders to support its position that the Report can be withheld under s. 13(1). The City cites, for example, two orders, each dealing with a workplace investigation. The City says the public bodies in those orders were permitted to withhold the same type of information as here. In both of those orders, however, the adjudicator did not even consider the application of s. 13(1) to the information in investigators' reports.²⁵ While the City is correct that these orders deal with similar factual circumstances, i.e., workplace investigations, these orders do not support the City's position that s. 13(1) applies to the Report in this case.

Analysis – s. 13(1)

[30] There is no dispute that the City hired the Investigator to investigate the applicant's allegations of bullying and harassment. The Terms of Reference for the Investigator specifically provide as follows (using the acronym CPM for City of Port Moody):

The final determination with respect to the appropriate response to the Confidential Investigation Report rests solely within the discretion of CPM. It is the responsibility of CPM (and not that of the Investigator) to advise the Complainant and the Respondent in writing of the outcome of the

²⁴ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para 52.

²⁵ Order F23-66, 2023 BCIPC 77 (CanLII) at para 92 and Order F20-08, 2020 BCIPC 09 (CanLII) at para 41.

Investigation and of CPM's response to the Confidential Investigation Report.²⁶

[31] I find the City hired the Investigator to determine if the complaint was substantiated so the City could take the appropriate action. The result of the investigation, in the form of the Report, was to provide the information necessary to inform the City's decisions.

[32] Therefore, and consistent with prior orders,²⁷ I find that some of the information in the Report constitutes "advice" because it is expert opinion on matters of fact, including the weighing of the evidence. This information includes the investigator's analysis, opinions, and conclusions about the evidence and the application of the precedents of law and policy.

[33] I do not accept the City's submission, however, that the entire Report constitutes advice and recommendations. First, the title page, headers, footers, and page numbers are clearly not advice or recommendations. I also find the following types of information in the Report are largely factual statements that do not reveal advice or recommendations:

- a background/overview section;
- the Investigator's mandate;
- an introduction to the investigation process;
- a summary of the allegations made by the applicant;
- a summary of the facts not in dispute;
- the applicant's factual description of the events leading to the allegations;
- and
- quotes from the applicable policies and statutory provisions.

[34] I analyzed the above information carefully. In my view, the Investigator drafted these parts of the Report in an impartial and objective manner. They do not reveal analytical expertise, nor do they enable the reader to make inferences about the Investigator's analysis, opinions or conclusions. I find that these passages do not constitute advice or recommendations.

[35] Therefore, I find that only some of the information in the Report reveals advice.

²⁶ Terms of Reference at para 7.

²⁷ Order F24-83, 2024 BCIPC (CanLII) 95, Order F23-71, 2023 BCIPC 84 (CanLII), and Order F15-12, 2015 BCIPC 12 (CanLII).

Section 13(2)

[36] The next step in the s. 13 analysis is to consider if s. 13(2) applies to the information that I found above would reveal advice. Both parties make submissions about factual materials, which raises s. 13(2)(a). The applicant says there is a human rights complaint arising from the factual circumstances that lead to his complaint,²⁸ which raises s. 13(2)(n). I consider both provisions next.

Section 13(2)(a)

[37] Section 13(2)(a) provides that the head of a public body must not refuse to disclose any “factual material” under s. 13(1).

[38] The applicant says significant portions of the Report consist of factual material. The City says all the factual information is integrated with the advice such that the entire Report is “clothed with the same protection as the opinions or advice themselves”.²⁹

[39] The term “factual material” in s. 13(2)(a) is distinct from factual information. Factual material has an independent prior existence. In contrast, if factual information is compiled from source materials by experts, which then becomes integral to the analysis or views expressed in the record, it is not factual material within the meaning of s. 13(2)(a).³⁰ Thus, for s. 13(2)(a) to apply, the information must be purely factual material that is not intertwined with the advice or recommendations.³¹

[40] I conclude the information which I found would reveal advice is not factual material. To the extent that information contains facts, the facts are intermingled with and an integral part of the analysis, opinion, and advice and cannot be separated from the advice. Therefore, I find that s. 13(2)(a) does not apply.

Section 13(2)(n)

[41] Section 13(2)(n) states that a public body must not refuse to disclose a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[42] I considered whether s. 13(2)(n) applies because the applicant asserted a rights issue regarding the matters investigated in the Report. It is clear, however,

²⁸ Applicant’s submission, p. 10.

²⁹ City’s reply submission, p. 2 citing *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025.

³⁰ Order F18-41, 2018 BCIPC 44 (CanLII) at para 34 citing *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at paras 93-94 and *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at para 52.

³¹ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at paras 91-94.

that the Report is not a decision, and the Investigator was not exercising a discretionary power. Therefore, I find that s. 13(2)(n) does not apply to the information in the Report.

[43] I considered whether any of the other provisions of s. 13(2) might apply and find they did not. Therefore, I find that s. 13(2) does not apply to any of the information which I have found above would reveal advice.

Section 13(3) – Information in existence for more than 10 years

[44] Section 13(3) provides that s. 13(1) does not apply to information in a record that has been in existence for more than 10 years. The information in the Report is clearly not 10 years or older, so I find that s. 13(3) does not apply.

Conclusion – s. 13(1)

[45] In conclusion, I find that s. 13(1) authorizes the City to refuse to disclose some, but not all, of the information it withheld under that exception.

CONCLUSION

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

1. Subject to item 2 below, I confirm the City's decision to withhold information under s. 13(1).
2. In a copy of the Report that is provided to the City along with this order, I have highlighted in orange the only information that the City is authorized to refuse to disclose to the applicant under s. 13(1). Other than the information highlighted in orange, and the information the City outlined in red boxes relating to its s. 22 redactions, I require the City to disclose the remaining information to the applicant.
3. The City must concurrently copy the OIPC's Registrar of Inquiries on its cover letter to the applicant, together with a copy of the information it discloses in compliance with item 2 above.

[47] Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by November 19, 2026

October 6, 2026

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No.: F25-00378