



Order F26-89

TOWNSHIP OF LANGLEY

Carol Pakkala
Adjudicator

October 22, 2026

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Quicklaw Cite: [2026] B.C.I.P.C.D. No. 114

Summary: An applicant requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to records about their lease agreement with the Township of Langley (Township). The Township provided responsive records but withheld information in them under various sections of FIPPA. The adjudicator found the Township was authorized to withhold some of the information it withheld under ss. 12(3)(b) (local public body confidences) and 14 (solicitor client privilege) and all of the information it withheld under s. 13(1) (advice or recommendations). The adjudicator ordered the Township to disclose the information it was not authorized to refuse to disclose under s. 12(3)(b). The adjudicator also ordered the Township to produce the information that she found s. 14 did not apply to so she can review it and decide whether s. 12(3)(b) applies.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 12(3)(b), 13(1), 13(2), 13(3), 14, 44(1), and 44(3).

INTRODUCTION

[1] An individual (applicant) requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to all communications regarding their lease agreement with the Township of Langley (Township).

[2] The Township provided the applicant with some responsive records but withheld information from them under ss. 12(3)(b) (local public body confidences), 13(1) (advice or recommendations), and 14 (solicitor client privilege) of FIPPA.¹

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

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

investigation and mediation process did not resolve the matter, and it proceeded to this inquiry.

[4] Both parties provided written submissions in this inquiry. Parts of the Township's submissions and affidavit evidence were accepted *in camera*.²

ISSUES AND BURDEN OF PROOF

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

1. The Township is authorized to refuse to disclose the information at issue under s. 12(3)(b);
2. The Township is authorized to refuse to disclose the information at issue under s. 13(1); and
3. The Township is authorized to refuse to disclose the information at issue under s. 14.

[6] Section 57(1) provides that the Township has the burden of proving that the applicant has no right of access to the information withheld under ss. 12(3)(b), 13(1), and 14.

DISCUSSION

Background³

[7] The Township is a municipal corporation. The applicant owns a business that leases a property from the Township under a lease agreement (Lease). In 2019, a dispute arose between the applicant and the Township with respect to the Lease (the Dispute). The Township engaged a law firm (the Law Firm) as external legal counsel with respect to the Dispute. At the time of this inquiry, the Dispute is still unresolved.

Records and Information at Issue

[8] There are 372 pages of records responsive to the access request. The Township provided these records for my review, but I can only see the

² The term *in camera* means the information was visible to me as the Commissioner's delegate, but not to the applicant. Section 56 of FIPPA provides the Commissioner the authority to consider *in camera* materials during an inquiry. In general, the Commissioner will permit material to be submitted *in camera* if it would reveal the actual information in dispute in the inquiry or it is information that a public body would be required or authorized to refuse to disclose under FIPPA. An adjudicator considered and approved the Township's *in camera* request.

³ This background is based on information provided in the parties' submissions and is not in dispute.

information that was withheld solely under ss. 12(3)(b) and 13(1). I cannot see any of the information that the Township withheld under s. 14.

[9] The information at issue consists of emails, email attachments which include a legal opinion, a document titled “Closed Council Minutes” (Table),⁴ a spreadsheet, and a memorandum.

Preliminary matters

Scope of this inquiry

[10] The applicant devotes much of their submission to the underlying Dispute. The resolution of that Dispute is outside my jurisdiction. Further, the applicant seeks an order that the Township disclose the legal fees it paid to external counsel regarding the Dispute. The OIPC has already adjudicated that matter and issued Order F25-88 which confirmed the Township’s decision to withhold the legal fee information.⁵

[11] While I have reviewed the applicant’s submission in its entirety, in these reasons, I only refer to what I find relevant to my analysis and decision.

Is it necessary to order production of the s. 14 information at issue?

[12] As mentioned above, the Township did not provide me with the information it withheld under s. 14. Instead, it provided affidavit evidence in addition to its submissions. The severed responsive records also provide context for the information at issue.

[13] Section 44(1) gives me the power to order the Township to produce the unsevered records for my review. Consistent with the OIPC’s longstanding approach, I would only order production of records that are claimed to be privileged if absolutely necessary to decide the issues in dispute. This cautious approach recognizes that the confidentiality of solicitor client communications is essential to the proper functioning of the legal system.⁶

[14] The Supreme Court of Canada has explained that without the assurance of confidentiality, clients cannot be expected to speak honestly and candidly with their lawyers, which compromises the quality of the legal advice they receive.⁷ Even the courts will decline to review solicitor client documents when

⁴ I am calling it a Table because its format does not resemble meeting minutes.

⁵ Order F25-88, 2025 BCIPC 012 (CanLII).

⁶ *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII) [Calgary], at paras 34 and 40; *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 (CanLII) at para 9; *R. v Fox*, 2026 SCC 4 (CanLII) [Fox] at para 40.

⁷ *Calgary*, *ibid* at para 34; *R v. McClure*, 2001 SCC 14 (CanLII), at para 2; *Fox*, *ibid* at para 40.

adjudicating claims of privilege unless there is evidence of the necessity to do so in order to fairly decide the case.⁸

[15] Past court cases and OIPC orders have discussed the evidence required to establish solicitor client privilege in the absence of the records. Although there are no steadfast rules and each case depends on its own facts, some general rules have been established, including that:

- a party claiming privilege must list each disputed record separately and provide, without revealing privileged information, a description of the record in sufficient detail to allow one to assess the claim of privilege;
- the description of the record should include the date it was created or sent, the type of communication (e.g., “email”) and the names of the author and the recipient(s);
- in addition to a proper description of the disputed records, the party claiming privilege must provide evidence to substantiate the privilege claim;
- ideally, affidavit evidence in support of a privilege claim should avoid hearsay and come from an affiant with direct knowledge of the disputed records; and
- it is helpful, and in some cases even necessary, to have affidavit evidence from a lawyer.

[16] In support of its privilege claim, the Township provided affidavits from its Clerk and from its Supervisor of Information, Privacy and Records Management (Supervisor), neither of whom are lawyers.

[17] Affidavit evidence from a lawyer generally attracts higher probative value because lawyers are officers of the court who are bound by a professional duty to ensure that privilege is properly claimed. However, there is no rule requiring that such evidence come from a lawyer. Rather, it is one relevant consideration in assessing whether the Township provided sufficient evidence to establish that s. 14 applies to the information at issue.⁹

[18] To decide the sufficiency of the Township’s evidence, I considered the affiants’ experience and knowledge of the information at issue. For the reasons that follow, I am satisfied that each of the affiants has direct knowledge of the records and the material facts.

⁸ *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII) [*Finance*] at para 51.

⁹ Order F26-25, 2026 BCIPC 31 (CanLII) at para 15 citing for example *Finance*, *ibid* at paras 76-93 and Order F20-16, 2020 BCIPC 18 at paras 8-10.

[19] The Supervisor processed the applicant's access request, reviewed all of the information, and applied the severing to the records.¹⁰ The Supervisor also outlined in detail the factors he considered in this severing.¹¹ Therefore, I am satisfied the Supervisor has direct knowledge of the information at issue.

[20] The Clerk's evidence is that her responsibilities include seeking legal advice from the Township's external legal counsel. The Clerk identifies the Law Firm as that counsel.¹² I can also see in the records that the Clerk was directly involved in the Township's interactions with the Law Firm about the Dispute, including in email communications and meetings. Therefore, I am satisfied the Clerk has direct knowledge of the information at issue.

[21] The Clerk's affidavit includes a detailed description of the information at issue.¹³ Each record is listed separately along with the date it was created or sent, the type of record, and for the emails, the names of the senders and recipients. Further, in the severed records, the names of the senders and recipients of the emails have not been withheld. I can see that these names match the Clerk's descriptions.

[22] After considering the affidavit evidence together with the parties' submissions and the context provided by the information I can see in the responsive records, I am satisfied I have sufficient detail about the information at issue under s. 14.

[23] Based on the details before me, I can understand the nature of the information at issue under s. 14, including its purpose, context, and who was involved. Accordingly, I do not find it necessary to exercise my authority under s. 44(1) to order the Township to produce an unredacted version of the records to decide if s. 14 applies.

Solicitor client privilege - s. 14

[24] The Township relies on s. 14 to withhold information from emails, email attachments including a legal opinion, and the Table. The only part of the Table that is visible to me is the title "Council Closed Minutes" and what I understand to be the dates of a June meeting and an October meeting along the left hand side.

[25] Section 14 allows a public body to refuse to disclose information that is subject to solicitor client privilege. The term "solicitor client privilege" in s. 14

¹⁰ Supervisor's affidavit at paras 20, 23, and 25.

¹¹ *Ibid* at para 37.

¹² Clerk's affidavit at para 2.

¹³ *Ibid* at para 27.

encompasses both legal advice privilege and litigation privilege.¹⁴ The Township relies on both in this inquiry.

Legal advice privilege

[26] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion or analysis.¹⁵

[27] Legal advice privilege attaches to communications that:

- are between a solicitor and their client (or their agent);
- entails the seeking or providing of legal advice, and
- are intended by the solicitor and client to be confidential.¹⁶

[28] Not every communication between a solicitor and client is privileged merely because it is a communication between those parties, but if the above three conditions exist, legal advice privilege applies.¹⁷

[29] In addition to the communications set out above, legal advice privilege also applies to the “continuum of communications” related to the seeking and giving of legal advice, including the information furnished by the client to the lawyer as part of seeking legal advice and to internal client communications that comment on the legal advice received and its implications.¹⁸

Parties’ submissions – legal advice privilege

[30] The Township says the access request was for communications between a lawyer and client pertaining to a Dispute about the interpretation of the Lease, so it invariably captures information subject to privilege.¹⁹

[31] The Township says the emails consist of communications between the Township and the Law Firm about the Dispute, and communications within the Township about the Law Firm’s legal advice. The Township also says some emails had attachments, including a legal opinion prepared by the Law Firm for the Township.²⁰

¹⁴ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 26.

¹⁵ *Ibid* at para 31.

¹⁶ *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821, p. 837.

¹⁷ *Ibid*, p. 829.

¹⁸ *Bilfinger Berger (Canada) Inc v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24.

¹⁹ Township’s initial submission at para 64.

²⁰ *Ibid* at para 65.

[32] The Township says the emails relate directly to the Law Firm's engagement and provision of legal services regarding the Dispute. The Township further says the emails were always intended to be confidential and were marked as such. The Township says the emails were, at all times, treated as privileged and confidential.²¹

[33] The Township says the Table describes the information considered in the June and October meetings. The Township also says the information in the Table does not explicitly describe legal advice. Instead, the Township says the applicant, who has knowledge of the Dispute, may be able to infer the legal advice based on the motions and results of motions put forth at the meetings documented in the Table.²²

[34] The applicant challenges what they characterize as an overbroad application of s. 14.²³ The applicant further says the Township is hiding administrative policy rather than protecting legitimate legal advice. The applicant says the Township is required to sever legal advice and release the underlying factual and administrative discussions.²⁴

Analysis – legal advice privilege

[35] For the reasons that follow, I find that legal advice privilege applies to most, but not all, of the information withheld on that basis. I begin with the specifics of each of the conditions needed for legal advice privilege to apply.

1. Communications between a solicitor and client

[36] The applicant's access request was for copies of all communications between the Township and the Law Firm related to the Dispute, including any staff communications.

[37] From the materials before me, I am satisfied that a solicitor client relationship existed between the Township and the Law Firm. I am not persuaded by the applicant's assertion that the Township is hiding administrative policy rather than protecting legitimate legal advice. The applicant does not further elaborate on this assertion. I see no evidence in the records of the Law Firm acting in the capacity of an administrator rather than as a lawyer. Further, I can see that the Law Firm communicated directly with the applicant about the Dispute as solicitor for the Township.²⁵

²¹ *Ibid* at para 66.

²² *Ibid* at para 68.

²³ Applicant's submission, p. 1.

²⁴ *Ibid*, p. 2.

²⁵ The applicant does not dispute the existence of this solicitor client relationship as evidenced by both his access request and submissions.

[38] From the materials before me, I am also satisfied that the information withheld on the basis of legal advice privilege consists of emails, email attachments, and the Table. The information about the email attachments was submitted *in camera*,²⁶ so I am limited in what I can say about them. I find that most of the emails at issue were between the Law Firm and the Township's staff, including the Clerk, and that the remainder were between Township staff.

[39] The Clerk's evidence is that the Table contains extracts from the minutes of the Township's June and October meetings.²⁷ The Clerk says the Table does not reveal the legal advice provided by the Law Firm.²⁸ The Clerk's opinion is that legal advice could be inferred based on the descriptions of the motions put forth by councillors at one of the meetings described in the Table.²⁹

[40] On balance, I am not persuaded by the Clerk's opinion about the drawing of inferences about legal advice based on the motions. The Clerk does not say that the motions were put forward based on the legal advice received by the Township. Councillors can put forward motions based entirely on their own opinions about legal matters, independent of actual legal advice. As the Clerk expressly says the Table does not reveal any legal advice, I am not persuaded that the information about the councillors' motions would disclose, or allow inferences about, legal advice.

[41] Legal advice privilege protects privileged communications. It does not apply simply because information relates to legal matters.³⁰ For this reason, I find the information withheld from the Table does not reveal communications between solicitor and client. Therefore, that information does not meet the first condition for legal advice privilege to apply. I will, however, consider it further below under litigation privilege.

[42] Based on all of the above, I find that the Law Firm was communicating with the Township in the context of a solicitor client relationship. I find that most of the emails at issue and all of the email attachments at issue were exchanged between the Law Firm as solicitor, and the Township as client. I find the remainder of the emails at issue were between Township staff.

[43] For all of the above reasons, I find the emails and email attachments satisfy the first condition for legal advice privilege to apply.

²⁶ See footnote 2 for an explanation of *in camera*.

²⁷ Clerk's affidavit, Exhibits B and D. These Exhibits indicate the minute extracts are certified true copies of the June and October meetings.

²⁸ Township's initial submission at para 68 and Clerk's affidavit at para 27.

²⁹ Clerk's affidavit at para 27.

³⁰ For similar reasoning, see Order F25-59, 2025 BCIPC 68 (CanLII) at para 66.

2. Seeking and providing legal advice

[44] From the materials before me, I am satisfied that the emails exchanged between the Township and the Law Firm were for the purposes of seeking and providing legal advice. I am also satisfied that the remaining emails at issue were between Township staff about that legal advice.

[45] The Clerk describes some of the emails as exchanges between Township staff about an intention to seek legal advice about the Dispute.³¹ On their own, communications about an intention to seek legal advice are usually not privileged.³² However, where there is evidence that a public body actually sought and received legal advice about the intended matter, they are privileged because they would reveal confidential communications between a lawyer and client.³³

[46] Both the Supervisor and the Clerk provide evidence that the Township sought and received legal advice about the Dispute.³⁴ I find that the Township did seek and receive legal advice about the Dispute and that therefore, the emails about its intention to do so are privileged.

[47] For the email attachments, I accept the Clerk's description of them. Based on those descriptions, most of which was accepted *in camera*, I find the email attachments were exchanged between the Township and the Law Firm for the purpose of seeking and providing legal advice.

[48] For the above reason, I find the emails and email attachments satisfy the second condition for legal advice privilege to apply.

3. Intended to be confidential

[49] The Clerk describes each of the emails and email attachments at issue under s. 14 and says they were marked as confidential and privileged and were treated by the Township as such.³⁵ From the portions of the emails that were not withheld, I can see a confidentiality notice in the signature block of the Law Firm. The Supervisor also says the "solicitor-client correspondence at issue in this inquiry was at all times treated by the Township as confidential and privileged".³⁶

[50] Based on the above, I am satisfied that the emails and email attachments at issue were intended to be confidential. For the above reasons, I find the emails

³¹ Clerk's affidavit at para 27.

³² Order F21-63, 2021 BCIPC 72 at para 40.

³³ Order F22-34, 2022 BCIPC 38 (CanLII) at para 64, relying upon Order F21-63, 2021 BCIPC 72 at para 41.

³⁴ Supervisor's affidavit at para 7 and Clerk's affidavit at para 11.

³⁵ Clerk's affidavit at para 28.

³⁶ Supervisor's affidavit at para 37(i).

and email attachments satisfy the third condition for legal advice privilege to apply.

Summary – legal advice privilege

[51] To summarize my findings above, I find that at the time of the creation of the records there was a solicitor client relationship between the Township and the Law Firm. The Township exchanged emails and email attachments with the Law Firm and internally that I find were communications about legal advice that were intended to be confidential.

[52] For all of the above reasons, I find that legal advice privilege applies to all of the emails and email attachments the Township withheld on that basis. Therefore, s. 14 authorizes the Township to refuse to disclose that information.

[53] I found above that the Table does not reveal a communication between solicitor and client, so I consider it next under litigation privilege.

Litigation privilege

[54] The Township also claims litigation privilege applies to the emails, email attachments, and the Table. As I found above that legal advice privilege applies to the emails and email attachments, I only consider the application of litigation privilege to the Table.

[55] Litigation privilege is a rule of evidence that protects from disclosure documents or communications that are made for the dominant purpose of litigation.³⁷ Its purpose is to create a “zone of privacy” in relation to pending or apprehended litigation.³⁸ This zone of privacy is a protected space for parties to develop their respective positions and strategies, free from the intrusion of their adversary.³⁹

[56] Litigation privilege encompasses communications between a client or his or her solicitor and third parties, if made for the purpose of pending or contemplated litigation.⁴⁰

[57] Litigation privilege ends once the litigation is completed. As explained by the Supreme Court of Canada in *Blank v Canada (Minister of Justice)*, “[o]nce the litigation has ended, the privilege to which it gave rise has lost its specific and concrete purpose — and therefore its justification.”⁴¹ However, the Court also

³⁷ *Lizotte v Aviva Insurance Company of Canada*, 2016 SCC 52 at paras 20 and 23.

³⁸ *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 (CanLII) [*Blank*] at para 34.

³⁹ *Raj v. Khosravi*, 2015 BCCA 49 at para 7.

⁴⁰ *Blank*, *supra* note 38 at para 27.

⁴¹ *Ibid* at para 34.

said that litigation privilege can continue “where the litigation that gave rise to the privilege has ended, but related litigation remains pending or may reasonably be apprehended.”⁴²

Parties’ submissions – litigation privilege

[58] The Township says the minutes reflected in the Table were created in the context of a Dispute with the applicant for the dominant purpose of contemplated litigation.⁴³ The Township relies on the Clerk’s evidence which says the Table describes materials council received and discussed concerning the Dispute.⁴⁴

[59] The Township says that, in 2021, it came to an agreement with the applicant to resolve the Dispute for a fixed period. The Township further says that period has now expired and the same Dispute has reemerged.⁴⁵ The Township says it is now contemplating litigation or arbitration pursuant to the lease agreement to finally determine the parties’ rights and responsibilities.⁴⁶

[60] The applicant says that it is preposterous for the Township to claim litigation privilege over routine interpretations of a lease. The applicant also denies that any agreement about the Dispute was ever reached.⁴⁷

Analysis – litigation privilege

[61] To succeed in a claim of litigation privilege the party invoking it must establish that:

1. Litigation was ongoing or was in reasonable prospect at the time the document was created; and
2. The dominant purpose of creating the document was to prepare or aid in the conduct of that litigation.⁴⁸

[62] In my view, the application of litigation privilege can be resolved here based on the second condition. However, I am also not persuaded that the Township has established the first condition. While I am satisfied there was a Dispute, I am not persuaded that litigation was ongoing or was in reasonable prospect at the time the minutes reflected in the Table were recorded. By the

⁴² *Ibid* at para 38.

⁴³ Township’s initial submission at para 71.

⁴⁴ Clerk’s affidavit, para 27.

⁴⁵ Township’s initial submission at paras 72-73.

⁴⁶ *Ibid* at para 73.

⁴⁷ Applicant’s submission, p. 3.

⁴⁸ *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2014 BCCA 259 (CanLII) at para 32 and *Raj v Khosravi*, 2015 BCCA at paras 12 and 20.

Township's own admission, it is only now contemplating litigation or arbitration pursuant to the Lease.⁴⁹

[63] The Township says the Table was created in the context of the Dispute for the dominant purpose of contemplated litigation. While the nuance is subtle, in my view, "created in the context of the Dispute" and "created for the dominant purpose of litigation" are not the same.

[64] The Township does not say, and I cannot see, how the Table would prepare it for, or aid in the conduct of, any litigation. Nothing in the nature of municipal council meeting minutes in general suggests they are created for the dominant purpose of litigation. Instead, minutes are a record of resolutions and what was said at council meetings.⁵⁰ I am not persuaded that the dominant purpose for which the Table was created was to prepare for or aid in the conduct of litigation.

[65] For the above reasons, I find the Township has not established that litigation privilege applies to the Table. Therefore, s. 14 does not authorize the Township to refuse to disclose the Table. The Township also applied s. 12(3)(b) to the Table so I will consider it again below.

Conclusion - s. 14

[66] For the reasons outlined above, apart from the Table, I find that s. 14 authorizes the Township to refuse to disclose all of the information withheld on that basis.

Local public body confidences - s. 12(3)(b)

[67] The Township relies on s. 12(3)(b) to withhold a spreadsheet, a memorandum, and the Table I considered above under s. 14.⁵¹

Production order

[68] The Township applied s. 12(3)(b) to information in the Table that I found above it was not authorized to refuse to disclose under s. 14. The Township did not provide this information for my review.

[69] Given the importance of solicitor client privilege to legal system and based on the clear direction from the courts, the OIPC often decides the application of

⁴⁹ Township's initial submission at para 73.

⁵⁰ For similar reasons, see Order F25-59, 2025 BCIPC 68 (CanLII) at para 71.

⁵¹ For clarity, the Township also relied on s. 12(3)(b) to withhold certain documents that I already found above it was authorized to withhold under s. 14 – email attachments. It is not necessary to decide if s. 12(3)(b) also applies, so I decline to do so.

s. 14 without seeing the records. The same cannot be said for most of the other exceptions to disclosure.

[70] In my view, to decide whether s. 12(3)(b) applies to the information severed from the Table, I must be able to conduct an independent, line by line review of it. I find that it is necessary and appropriate for me to exercise my jurisdiction under s. 44(1) to order the Township to produce that information for my review so that I may decide whether s. 12(3)(b) applies.⁵²

[71] In the interest of providing a timely resolution for as much of the parties' dispute as possible, I will consider the application of s. 12(3)(b) to the information the Township did provide for my review.

Section 12(3)(b)

[72] Section 12(3)(b) is a discretionary exception that allows the head of a local public body to refuse to disclose information that would reveal

- (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

[73] The purpose of s. 12(3)(b) is to protect a local public body's ability to engage in full and frank exploration of issues, despite how controversial they may be, by allowing a local public body's governing body to engage in certain discussions in the absence of the public.⁵³

[74] The following three conditions must be met for a public body to withhold information under s. 12(3)(b). The public body must establish that:

1. it has the statutory (legal) authority to meet in the absence of the public;
2. the meeting was actually held in the absence of the public; and
3. the information would, if disclosed, reveal the substance of deliberations of that meeting.⁵⁴

⁵² For a similar conclusion, see Order F26-25, 2026 BCIPC 31 (CanLII) at para 115-116 and Order F23-41, 2023 BCIPC 49 (CanLII) at para 106.

⁵³ Order F11-04, 2011 BCIPC 4 at para 29 and Order 04-04, 2004 CanLII 34258 (BC IPC) at para 72.

⁵⁴ Order 02-47, 2002 Can LII 42482 (BC IPC) at para 10 citing Order 02-22, [2002] B.C.I.P.C.D. No. 22, articulating the test from Order No. 326-1999, [1999] B.C.I.P.C.D. No. 39. Order F13-10, 2013 BCIPC 11 at para 8 relying on, for example, Order 00-14, [2000] B.C.I.P.C.D. No. 17. See also Order 02-19, [2002] B.C.I.P.C.D. No. 19 at para 70.

[75] Past orders have said that the phrase “substance of deliberations” covers discussions conducted with a view to making a decision or following a course of action.⁵⁵

[76] There is no dispute that the Township is a municipality and therefore meets the definition of a “local public body” in FIPPA.⁵⁶ Therefore, I find that the Township may, in principle, rely on s. 12(3)(b) to withhold information if it demonstrates that information meets the test set out above.

Parties’ submissions, s. 12(3)(b)

[77] The Township says it had the legal authority to hold, and actually held, meetings⁵⁷ closed to the public for the purposes described in s. 90(1)(g) (litigation or potential litigation affecting the municipality) of the *Community Charter*.⁵⁸ Those meetings were the June and October meetings.

[78] The Township says it withheld information under s. 12(3)(b) that:

- describes the information received and discussed in the closed meetings;⁵⁹
- directly outlines the substance of deliberations;⁶⁰ and
- would permit the drawing of accurate inferences about deliberations.⁶¹

[79] To support its position on s. 12(3)(b), the Township relies on the affidavit evidence from both the Clerk and the Supervisor. I can also see the information in the spreadsheet and memorandum.

[80] The applicant does not comment specifically on the application of s. 12(3)(b).

Analysis - s. 12(3)(b)

[81] As noted above, the three-part test for the application of s. 12(3)(b) is well established and I apply it here.

⁵⁵ Order 00-11 2000, CanLII 10554 (BC IPC) at s. 3.3.

⁵⁶ Schedule 1.

⁵⁷ Township's initial submission at paras 43-44.

⁵⁸ SBC 2003 c 26.

⁵⁹ Township's initial submission at para 46.

⁶⁰ *Ibid* at paras 46-47 and 48(a).

⁶¹ *Ibid* at para 48(b).

1. Was the Township authorized to meet in the absence of the public?

[82] The first condition of the s. 12(3)(b) test is the statutory authority for the meeting. The Township says that ss. 90 and 92 of the *Community Charter* authorized it to hold, in the absence of the public, the meetings documented in the Table and at which the spreadsheet and memorandum were discussed.

[83] The relevant portions of the *Community Charter* provide:

90 (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

(g) litigation or potential litigation affecting the municipality;

...

92 Before holding a meeting or part of a meeting that is to be closed to the public, a council must state, by resolution passed in a public meeting,

(a) the fact that the meeting or part is to be closed, and

(b) the basis under the applicable subsection of section 90 on which the meeting or part is to be closed.

[84] For its statutory authority to hold the June and October meetings, the Township relies on the Clerk's affidavit. The Clerk's evidence is that her responsibilities include preparing agendas, recording meeting minutes, and ensuring adherence to legal requirements.⁶²

[85] The Clerk attaches as Exhibits C, E, F, and G to her affidavit certified correct copies of resolutions to hold the June and October meetings and the cover pages of the minutes of the same. These cover pages show the dates of the meetings.

[86] From the resolutions, I can see that the motions to go into the special closed meetings were carried. Further, I can also see that the resolutions include, among other items and sections, that their purpose was to discuss "Item G.1 – Section 90(1)(g) Legal" for the June meeting and Items F.1 and F.2 – Section 90(1)(g) Legal" for the October meeting. Those items are further identified in the exhibits to the Clerk's affidavit as being about the applicant's business.

[87] From the evidence described above, I am satisfied that the Township's council had the statutory authority to hold the June and October meetings in the absence of the public. The subject matter of those closed meetings relates to s. 90(1)(g) of the *Community Charter*. Therefore, I find the first condition for s. 12(3)(b) to apply is met.

⁶² Clerk's affidavit at para 2.

2. Were the meetings held in the absence of the public?

[88] The second part of the s. 12(3)(b) test is that the meetings were actually held in the absence of the public. From the Clerk's evidence, I am satisfied that the June and October meetings were, in fact held in the absence of the public. Therefore, I find the second condition for s. 12(3)(b) to apply is met.

3. Would disclosure of the information at issue reveal the substance of deliberations at the meeting?

[89] The third part of the s. 12(3)(b) test is that the information would, if disclosed, reveal the substance of deliberations at the closed meetings. The phrase "substance of deliberations" includes the essential or material part of discussions conducted with a view to making a decision or following a course of action.⁶³

[90] Past orders describe the "substance of deliberations" as capturing what was discussed or decided at the closed meeting. This discussion includes the different views and various possible courses of actions being expressed and suggested by the meeting attendees."⁶⁴

[91] Section 12(3)(b) only applies to what took place during a meeting. For this reason, it does not apply to background materials unless disclosing them would allow someone to draw accurate inferences about the substance of deliberations.⁶⁵

[92] A critical aspect identified in previous orders is the distinction between revealing the "basis" for deliberations and protecting the "substance" of deliberations.⁶⁶ The "substance" of deliberations is not the same as the topic or subject of deliberations.⁶⁷

[93] The question before me is whether the particular information would, in the circumstances of this case, either directly reveal, or permit the drawing of inferences about, the substance of deliberations at those meetings.⁶⁸ For the June meeting, that information is in the spreadsheet; and for the October meeting, that information is in the memorandum.

⁶³ Order 00-11, 2000 CanLII 10554 (BC IPC), p 5.

⁶⁴ Order F25-59, 2025 BCIPC 68 (CanLII) at para 28, Order F24-03, 2024 BCIPC 4 (CanLII) at para 158, and Order F23-57, 2023 BCIPC 67 (CanLII) at paras 27-35.

⁶⁵ Order F12-11, 2012 BCIPC 15 (CanLII) at para 14.

⁶⁶ *Ibid* at para 12.

⁶⁷ Order F26-58, 2026 BCIPC 71 (CanLII) at para 25 and the orders cited therein.

⁶⁸ This principle is well established. See for example, Order No. 326-1999, 1999 CanLII 4353 (BC IPC) at p. 3.

[94] The Clerk describes the spreadsheet⁶⁹ as follows:

This is a table of the expenses for which the applicant has sought reimbursement from the Township pursuant to the Lease. The table is colour coded to indicate which expenses are eligible or non-eligible for reimbursement. The table was distributed to Council for consideration in the June 28, 2021 meeting, which was closed to the public pursuant to s. 90(1)(g) of the *Community Charter*.⁷⁰

[95] The Clerk describes the memorandum⁷¹ as follows:

This is a confidential memorandum addressed to the mayor and Council concerning the Dispute for the October 4, 2021 Council meeting closed to the public pursuant to s. 90(1)(g) of the *Community Charter*. The memorandum describes the background to the Dispute, analyzes the issues pertaining to the interpretation of the terms of the Lease, and provides recommendations to Council with respect to how to resolve the Dispute.⁷²

[96] I reviewed the spreadsheet and memorandum, and I agree with the Clerk's descriptions of them.

[97] I find the spreadsheet is a document that has a description of expenses which are colour coded as eligible or non-eligible for reimbursement under the Township's lease with the applicant. The colour coding is based on opinions about the Township's interpretation of the provisions of the lease. I further find that this spreadsheet was distributed to council for its consideration at its June meeting.

[98] I find that the memorandum is a document, authored by a Township employee, that describes the background of the Dispute, an analysis of the issues, and options for resolving it. I find that the memorandum was distributed to council for consideration at its October meeting.⁷³ The memorandum is written, in my view, in an objective fashion and contains no legal advice.

[99] While I am persuaded that both the spreadsheet and memorandum were provided to council for its consideration at the June and October meetings respectively, I am not persuaded that either were, in fact, considered by council. Neither document reveals anything about what was actually said at the council table, much less what was decided. The evidence before me is that these documents were distributed, not that they were actually discussed or to what

⁶⁹ Records, pp. 170-71.

⁷⁰ Clerk's affidavit at para 27.

⁷¹ Records, pp. 3-5 and 224-26.

⁷² Clerk's affidavit at para 27.

⁷³ *Ibid* at para 25.

degree. Further, the evidence does not establish whether either document informed council's decisions, if there were any.

[100] More specifically, the spreadsheet and memorandum do not reveal any of the following: how or even if, council members dealt with that information in the meetings; whether they debated any of the options or opinions reflected therein; what options, if any, they accepted; what individual members said; whether a vote was taken; or how they voted.⁷⁴

[101] Based upon my review of the spreadsheet and memorandum, I am satisfied that their disclosure would not reveal, either directly or indirectly, the substance of deliberations of the June or October meetings held in the absence of the public. Therefore, I find the third condition for s. 12(3)(b) to apply is not met for this information.

Conclusion - s. 12(3)(b)

[102] For the reasons given above, I find the Township's June and October meetings were authorized by s. 90(1)(g) of the *Community Charter* to be held in the absence of the public and were in fact held in the absence of the public. I find that disclosure of the spreadsheet and memorandum would not reveal the substance of the deliberations at those meetings, either directly or by inference. For this reason, s. 12(3)(b) does not authorize the Township to refuse to disclose either document.

[103] As mentioned above, I will make my decision about whether s. 12(3)(b) applies to the Table after the Township produces it for my review.

Advice or recommendations – s. 13

[104] The Township relies on s. 13(1) to withhold information from internal staff emails.

[105] 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.

...

⁷⁴ For a similar analysis see Order F12-11, 2012 BCIPC 15 at para 15.

- (3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

[106] The purpose of s. 13 is to allow for full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of decision and policy making were subject to excessive scrutiny.⁷⁵

[107] 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.

[108] “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.”⁷⁶
- The term “advice” is broader than “recommendations”.⁷⁷
- Advice includes a communication about which courses of action are preferred or desirable;⁷⁸ and an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.⁷⁹

[109] 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.⁸⁰

[110] 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)

[111] The Township says it withheld information from internal staff emails concerning strategy and arrangements for a meeting involving the applicant.⁸¹

[112] The applicant does not comment specifically on the application of s. 13(1).

⁷⁵ *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*.

⁷⁶ *Ibid* at para 24.

⁷⁷ *Ibid*.

⁷⁸ Order 01-15, 2001 CanLII 21569 at para 22.

⁷⁹ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

⁸⁰ See for example *John Doe supra* note 75 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).

⁸¹ Township’s initial submission at para 55.

Analysis – s. 13(1)

[113] I have reviewed the information the Township refused to disclose under s. 13(1). I can see that the amount of information withheld is small and is duplicated within the records. From my review, I am satisfied that disclosing this information would reveal, either directly or by inference, advice and recommendations.

[114] I find the information withheld under s. 13(1) is:

- Advice shared between Township employees about different courses of action for a meeting involving the applicant.⁸²
- Recommendations from one Township employee to another Township employee about the strategy for a meeting with the applicant.⁸³
- Information that would allow a reader to accurately infer the above advice and recommendations.⁸⁴

Section 13(2)

[115] 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. The Township says no s. 13(2) exceptions apply, and the applicant does not comment on s. 13(2).

[116] I considered whether any of the provisions of s. 13(2) might apply to the information I found above is advice and recommendations and find they do not.

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

[117] 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 records is clearly not 10 years or older, so I find that s. 13(3) does not apply.

Conclusion – s. 13(1)

[118] In conclusion, I find that s. 13(1) authorizes the Township to refuse to disclose all of the information it withheld under that exception.

⁸² For example, records, p. 300.

⁸³ For example, records, p. 285. For a similar finding in relation to recommendations between employees see Order F25-29, 2025 BCIPC 35 (CanLII) at para 93 regarding a meeting with an applicant and Order F25-13, 2025 BCIPC 15 (CanLII) at paras 20-21 regarding communications with an applicant.

⁸⁴ For example, records, pp. 284, 290, and 296-98.

CONCLUSION

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

1. Subject to item 2 below, I confirm, in part, the Township's decision that ss. 13(1) and 14 apply to the information at issue.
2. The Township is not authorized under s. 14 to refuse access to the Table at pages 1-2 of the records.
3. The Township is not authorized under s. 12(3)(b) to refuse to disclose the spreadsheet or the memorandum. I require the Township to disclose to the applicant the memorandum at pages 3-5 of the records (duplicated at pages 224-226) and the spreadsheet at pages 170-172 of the records.
4. The Township 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 3 above.

[120] Pursuant to s. 59(1) of FIPPA, the Township is required to comply with this order by **December 4, 2026**.

[121] For the reasons given above, I make an additional order under s. 44(1):

I require the Township to produce the Table found at pages 1-2 of the records for my review so I can decide if s. 12(3)(b) applies to it.

[122] Pursuant to s. 44(3) of FIPPA, the Township is required to comply with this production order by **November 5, 2026**.

October 22, 2026

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No.: F24-96676