



Ensuring the Protection of Sensitive Materials – A Review of FIPPA's Disclosure Obligations

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How does a school district
meet its transparency
obligations under FIPPA
while still protecting
information of a sensitive and
confidential nature?



Information and Privacy Commissioner
of BC 2023-2024 Annual Report

“

Woven into our system of governance are checks, balances and guardrails that ensure governments act with restraint and are accountable throughout their tenure.”



**Information and Privacy Commissioner
of BC 2024-2025 Annual Report**

“

A robust and well functioning access to information system builds trust between public bodies and the people they serve.

It is our single strongest defence in the face of a bombardment of misinformation and disinformation and growing mistrust of institutions. ”



YEAR IN NUMBERS

2024-2025 (FIPPA & PIPA)



4111

Requests for
information



448

Access
complaints
received



755

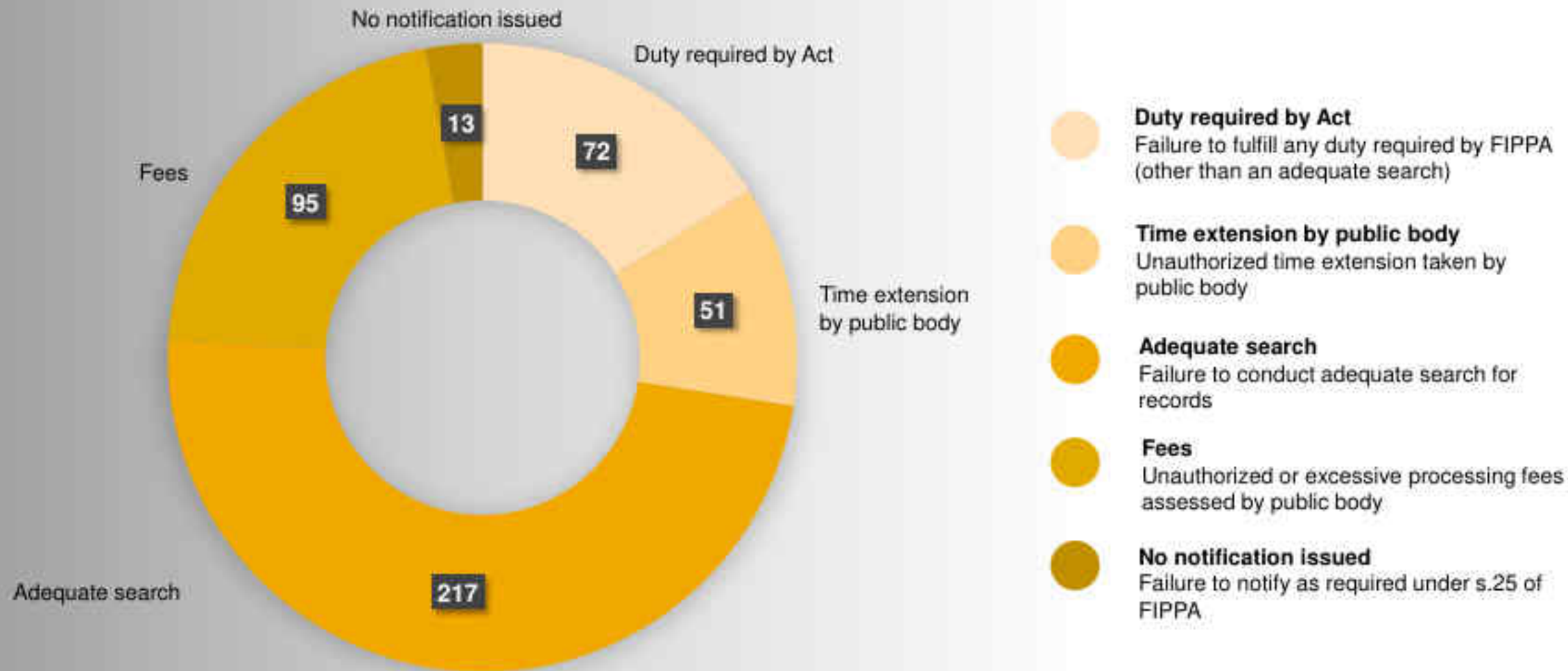
Requests for
review of
decisions to
withhold
information



Breakdown of Access Complaints

The OIPC received **448 access complaints** in 2024/25.

The breakdown of the types of complaints for both FIPPA and PIPA is:



Headlines

Audit says UBC is routinely and brazenly breaking freedom of information law

B.C.'s Information and Privacy Commissioner David Eby's Point Grey Information Act.

In a review of files from 2021 it broke the law when receiving responding to applicants. Six request came from a report.

"This investigation found my office has seen in 10 y Sept. 25 audit report. The and advancing knowledge university's operations

BIV

BRITISH INQUIRY

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B.C. agency told to abide by freedom of information law

The law is broken, privacy watchdog says of freedom of information and Protection of Privacy Act.

Global Media, Jeremy Hazzard
Jan 4, 2024 3:05 AM



Western and government body would keep the information request as it was to despite her asking for limited purposes. / University files / document / daily images

A B.C. government body has been told to abide by the law in a request made in it under the provincial Freedom of Information and Protection of Privacy Act (FIPPA).

Freedom of information review: how to fix a broken system

Three more court orders filed as Northern Health continues to breach information request deadlines

Northern Health receives three more orders to comply as it continues ignoring freedom of information requests.

BY LUCAS PETERSON • [HEALTHY](#) • JUNE 2, 2023



Listen to this article
Presented by: Thomas Wootley
00:00





Concepts & Terminology



FIPPA Framework

Part 1 Introductory Provisions

Part 2 Access

Part 3 Privacy

Part 4 OIPC Powers

Part 5 Enforcement

Part 6 General

Schedules 1, 2 and 3

The Regulations

- Oral requests
- Who can act for minors
- Who can act for adults
- Who can act for deceased
- Disclosures related to mental/physical health
- Consent
- Fees



Section 4



An applicant who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant



Legal and Practical Significance

A duty to disclose

Overrides confidentiality

Each person presumptively entitled to their own personal information

Consequences of non-compliance

What Constitutes a Freedom of Information (FOI) Request?

- 1 In writing
- 2 Must provide sufficient detail to identify records sought
- 3 Must include written authorization if made on behalf of another person

Does not have to refer to legislation





Duty to Assist

The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

– Section 6

Adequacy of Search

The duty to assist “does not impose a standard of perfection or require a public body to establish with absolute certainty that records do not exist. However, a public body must be able to show that its search efforts have been thorough and comprehensive and that it has explored all reasonable avenues to locate records and to assist applicants.”

Investigation Report F15-03



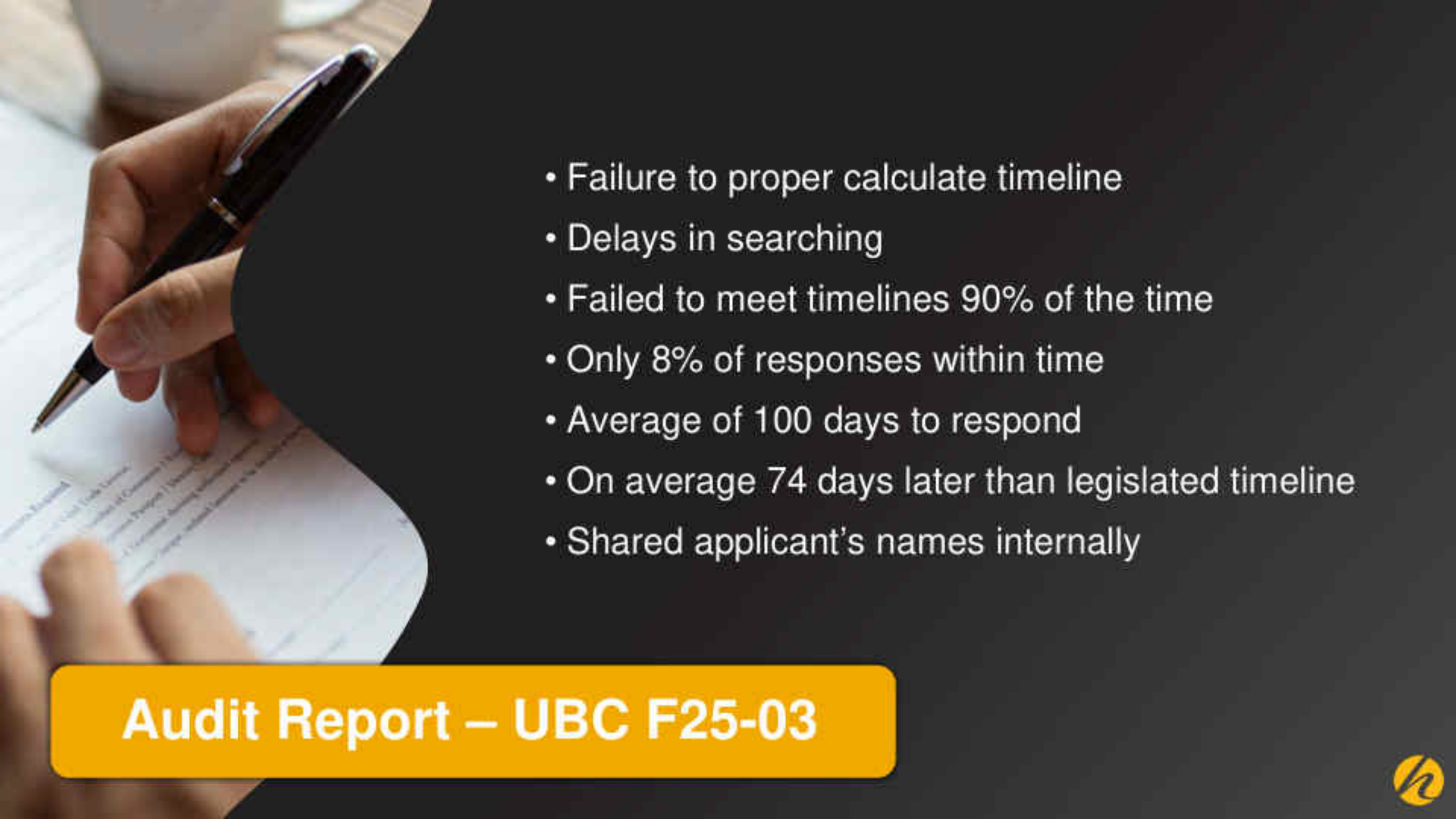
Duty to Assist

- ✓ Clarify requests
- ✓ Conduct comprehensive searches
- ✓ Avoid restrictive interpretations of requests
- ✓ Don't destroy requested records
- ✓ Don't develop practices designed to avoid requests
- ✓ Make "every reasonable effort"



Audit Report 24-02: Vancouver Coastal Health Authority's Duty to Assist

- Responded to less than 1/4 of requests within 30 days
- Average of 80 days to respond
- 72% of sampled files failed to respond within time
- No written acknowledgements
- Incorrectly calculated time limits
- Missing documentation

- 
- Failure to properly calculate timeline
 - Delays in searching
 - Failed to meet timelines 90% of the time
 - Only 8% of responses within time
 - Average of 100 days to respond
 - On average 74 days later than legislated timeline
 - Shared applicant's names internally

Audit Report – UBC F25-03





Protecting privacy. Promoting transparency.

INVESTIGATION REPORT F15-03

ACCESS DENIED: RECORD RETENTION AND DISPOSAL PRACTICES OF THE GOVERNMENT OF BRITISH COLUMBIA

ELIZABETH DENHAM
INFORMATION AND PRIVACY COMMISSIONER FOR BC

October 22, 2015





Triple Delete Investigation

Investigation Report F15-03

Transitory Records

Once a public body receives an access request, it must keep and produce all responsive records, including transitory records, subject to exceptions to disclosure.

Transitory Records:

Convenience copies, unnecessary duplicates and working materials and drafts once the finished record has been produced.

What about deleted emails generally?

What about recovering emails through a backup server?



Recommendations From Investigation Report

- Technological changes to stop employees from permanently deleting emails
 - Best practices to ensure that employees follow correct processes when responding to FOI requests
 - Mandatory training in records management, including training on what is a transitory record and what is not
-



COMMONLY APPLIED EXCEPTIONS

S. 12(3)(b) In-camera meetings

S. 13 Advice or recommendations prepared by or for a public body

S. 14 Solicitor-client privilege

S. 15 Disclosure harmful to law enforcement

S. 17 Harm to public body

S. 21 Harm to third party business

S. 22 Personal information





In-Camera Meetings



Section 12(3)(b)

Public body may refuse to disclose information that would reveal 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.



Section 12(3)(b)

Three conditions have to be met in order for section 12(3)(b) to apply:

- 1 There was a statutory authority to meet in the absence of the public.
 - 2 A meeting was actually held in the absence of the public.
 - 3 The information would, if disclosed, reveal the substance of deliberations of the meeting.
-



Examples of Statutory Authorities that Permit Meetings to be Held in the Absence of the Public

- ***Police Act*** explicitly authorizes the holding of meetings in the absence of the public to discuss specified matters
- ***School Act*** authorizes the holding of meetings in the absence of the public
- ***University Act*** gives university board of governors the power to make rules for the meetings of the board and its transactions





Examples of Records that May Reveal the Substances of Deliberations

- Agenda, minutes or other records that document the matters addressed in an in-camera meeting
- Letter from an elected official relating to the discussion or consideration of an issue or problem
- Briefing notes or submissions placed before elected officials, a governing body or one of its committees

A stack of papers is visible on the left side of the slide. A yellow rounded rectangle is overlaid on the top part of the stack, containing the title text.

Material that Cannot be Withheld Under the In-camera Exception

- “Information only” items
- Who attended, routine matters
- Items that have been announced at a public meeting
- Background materials, unless inferences can be drawn about the substance of deliberations

Do not assume that all materials provided to the Board of Education at an in-camera meeting will be protected under section 12(3)(b)



PRACTICAL TIPS



- ☐ Mark as confidential
- ☐ Ensure advice is framed as advice not simply factual discussion
- ☐ Use the words “advice and recommendations”
- ☐ Adopt standard wording for routine briefing materials
- ☐ Be careful with the word “audit”
- ☐ Don’t over-rely on “draft” nature of documents

A background image showing various Scrabble tiles scattered on a light-colored wooden surface. The tiles are white with black letters and numbers. Some visible tiles include 'F' (4), 'E' (1), 'I' (1), 'D' (1), 'N' (1), 'V' (6), 'R' (1), 'S' (1), 'W' (3), 'G' (2), 'J' (6), 'M' (1), 'U' (1), 'T' (1), 'K' (1), and 'O' (1).

Section 13

Section 13

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.

Purpose:

Intended to allow full and frank discussion of policy issues within the public service, preventing the harm which would occur if the deliberative process were subject to excessive scrutiny.





Examples of Section 13 Application

- The record refers to a suggested course of action or a plan that has not yet been implemented
- The record includes assessment, analysis, advice or opinion that requires professional judgment
- The language discusses the effect or impact of a particular decision
- Where the speaker's role or responsibility is to offer advice or assessment

Section 13(2)

Public body must not refuse to disclose the following:

Factual material

An appraisal

An audit report

An economic forecast

A public opinion poll

An environmental impact statement, etc.

A statistical survey



A Word About Draft Documents...

Previous orders have recognized that editorial advice and recommendations regarding the content and wording of documents contained in the drafts can be withheld under s. 13(1)



Language To Look For

- Language that refers to a suggested course of action or a plan that has not yet been implemented
- Language that discusses the effect or impact of a decision
- Information consisting of an opinion about an existing circumstances
- Pros/cons language, options, choices, etc.
- Words or phrases such as:
 - "The public body should"
 - "It is recommended that"
 - "One option is to"
 - "It would be beneficial to"
 - "The impact or consequences of" etc.



PRACTICAL TIPS



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Section 14

Section 14

Public body may refuse to disclose to an applicant information that is subject to solicitor client privilege

3 types of privilege:

1. Solicitor-client privilege
2. Contemplated litigation privilege
3. Settlement privilege

Labour relations privilege?



Section 14 – Solicitor/Client Privilege

In order for privilege to apply, **four conditions** must be established:

1. There must be a communication, whether oral or written
2. The communication must be of a confidential character
3. The communication must be between a client (or his agent) and a legal advisor, and
4. The communication must be directly related to the seeking, formulating, or giving of legal advice



Section 14 – **Contemplated Litigation Privilege**

In order for contemplated litigation privilege the following must be established:

- 1** Litigation must either have commenced or been anticipated
-
- 2** The communication must have been made for the dominant purpose of obtaining legal advice on such litigation, or for use in litigation
 - Dominant purpose means the primary reason the record was created or used
-





Section 14 - Settlement Privilege

- **Order F23-26: (Burnaby city) 2023**
- Settlement privilege is a class privilege and applies to communications that meet the following three criteria:
 1. A litigious dispute must be in existence or within contemplation;
 2. The communication must be made with the express or implied intention that it would not be disclosed to the court in the event negotiations failed; and
 3. The purpose of the communication must be to attempt to effect a settlement.

CASE

British Columbia (Attorney General) v. Lee, 2017 BCCA 219



- The most important question when the status of communications from a lawyer is questioned is whether those communications took place within the context of a solicitor-client relationship. Once privilege has been established, it applies “to all communications made within the framework of the solicitor-client relationship” ... This principle is central to the disposition of this appeal.
- **A common way of expressing the breadth of the privilege once the context of the solicitor-client relationship has been established is that the privilege attaches to the continuum of communications in which the solicitor provides advice... (emphasis added)**



Section 16 - Intergovernmental Relations

A public body may refuse to disclose information if the disclosure could reasonably be expected to harm the conduct by the BC government between other agencies including other provincial governments, municipality councils, and aboriginal governments





Section 16(1)(b)

Two-part test - The public body must show:

1. That the information was received in confidence
2. That it was received from a "government, council or organization" listed in s.16(1)(a) or one of "their agencies"



When Confidentiality Exists...

Explicit or implicit agreement:

- Nature of content
- Purpose of supply
- Circumstances
- Supplied voluntarily
- Objective evidence of expectation of confidentiality
- Past practice

Redacting and withholding information



Section 17

Public body may refuse to disclose information which could reasonably be expected to harm the financial or economic interests of a public body or the government of BC



Information that Could Reasonably be Expected to Cause Harm Includes:

- Trade secrets
- Financial, commercial, scientific or technical information that belongs to a public body or government of BC and which is reasonably likely to have monetary value
- Plans that relate to management of personnel
- Information which could result in premature disclosure of a proposal or project or in undue financial loss or gain to a third party
- Information about negotiations or which would harm the negotiating position of the public body or government of BC



Section 20

Public body may refuse to disclose information that will be published or released within 60 days.



Questions?



THANK
YOU

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