



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
*for British Columbia*

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Order F13-14

## TOWNSHIP OF LANGLEY

Elizabeth Barker  
Adjudicator

July 24, 2013

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**Summary:** This inquiry concerns a request for the original and revisions of a storm water management plan for a development in the Township of Langley. The township withheld the records under s. 12(3)(a) of FIPPA stating they were drafts of a “legal instrument by which the township acts”. The township submitted that the legal instrument in this case was a servicing agreement, or contract, between itself and the owner of the land under development. The adjudicator found that the meaning of “legal instrument” in s. 12(3)(a) did not include the servicing agreement or the storm water management plan because neither was a legislative or statutory enactment. Therefore, the township was not authorized to withhold the records under s. 12(3)(a).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 12(3)(a).

**Authorities Considered: B.C.:** Order No. 123-1996, [1996] B.C.I.P.C.D. No. 50; Order No. 172-1997, [1997] B.C.I.P.C.D. No. 33; Order No. 281-1998, [1998] B.C.I.P.C.D. No. 76.

**Cases Considered:** *Nanaimo (Regional District) v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 1283; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3.

## INTRODUCTION

[1] This inquiry concerns a request for the original and revisions of a storm water management plan for the Athenry land development in the Township of Langley (“Langley”). Langley is withholding the requested records under s. 12(3)(a) of FIPPA, claiming that they are drafts of part of a legal instrument by which it acts.

## ISSUE

[2] Is Langley authorized to withhold the requested records under s. 12(3)(a) of FIPPA?

## DISCUSSION

[3] **Background**—The applicant is a civil engineer acting for several residential landowners whose properties border the Athenry land development in Langley. His clients are concerned that the new development will cause flooding on their properties. He requested the original and revisions of the storm water management plan as well as the on-site servicing and grading plan for the development. Langley withheld the requested records, claiming they were drafts of a legal instrument by which it acts, namely a servicing agreement (s. 12(3)(a)) and because disclosure would be harmful to the business interests of third parties (s. 21).

[4] The applicant requested that the Office of the Information and Privacy Commissioner (“OIPC”) review Langley’s decision. During the review, Langley indicated that it was no longer relying on s. 21 to withhold information. Mediation did not result in a resolution of the remaining s. 12 issue, so that matter proceeded to inquiry.

[5] Langley eventually provided the applicant with the onsite servicing and grading plan, as well as the *final* version of the storm water management plan.<sup>1</sup> Therefore, the only records remaining at issue are the original and revisions of the storm water management plan.

[6] **Records at Issue**—The records in dispute are the five versions of the storm water management plan that preceded the final version: an original and revisions 1, 2, 3, and 5.<sup>2</sup> There is no revision number 4 in the inquiry materials. Each is an engineering drawing with an accompanying legend, and some also contain handwritten notes.

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<sup>1</sup> Applicant’s initial submission paras. A.2, A.8, and reply para. 12. Langley’s initial submission, para. 3.

<sup>2</sup> Langley provided them in size-reduced format for the purposes of the inquiry. The originals are approximately 24” by 36”.

[7] **Local Public Body Confidences**—Langley withheld the requested versions of the storm water management plan under s. 12(3)(a) of FIPPA because, it argues, they are drafts of a legal instrument by which the township acts. The relevant parts of s. 12 read as follows:

- 12(3) The head of a local public body may refuse to disclose to an applicant information that would reveal
  - (a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts or a draft of a private Bill...
- (4) Subsection (3) does not apply if
  - (a) the draft of the resolution, bylaw, other legal instrument or private Bill or the subject matter of the deliberations has been considered in a meeting open to the public, or
  - (b) the information referred to in that subsection is in a record that has been in existence for 15 or more years.

[8] **Does s. 12(3)(a) Apply?**—Langley withheld the requested records, claiming they were drafts of a legal instrument by which it acts.<sup>3</sup> It submits that the “legal instrument” in this case is a servicing agreement between itself and the landowner. The final, approved version of the storm water management plan forms part of Appendix C of that servicing agreement.<sup>4</sup> Therefore, they argue, the preliminary versions of the storm water management plan are drafts of part of the legal instrument.<sup>5</sup>

[9] The applicant agrees the requested records are “drafts”; however, he submits that there is “nothing legal” about them.<sup>6</sup> He also submits that the servicing agreement is not a “legal instrument” for the purposes of s. 12(3)(a) because it was not finalized (*i.e.*, had not been signed) at the time Langley refused his request for records.<sup>7</sup>

[10] I have reviewed the servicing agreement, which is the document Langley submits is the “legal instrument” in this case. I find that it is a contract between Langley and the owner of the development lands, setting out the terms and conditions for the construction and installation of works and services on the development lands, and defining the entitlements and liabilities of the contracting parties. The final version of the storm water management plan is attached to the servicing agreement as part of Appendix C (which includes all of the approved

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<sup>3</sup> There was nothing in the inquiry materials to suggest that the records in dispute are drafts of a “resolution”, “bylaw” or “private Bill”, and Langley has not argued that they are.

<sup>4</sup> Langley’s initial submission, Lind affidavit, para. 5.

<sup>5</sup> Langley’s submission, paras. 8a and 8b.

<sup>6</sup> Applicant’s submission, paras. C.1 and C.3. He does not expand on this argument.

<sup>7</sup> Applicant’s reply submission, para. 3.

design drawings). In my view, the requested records are clearly drafts of the final storm water management plan.

[11] The next step in this analysis is to determine what is meant by “other legal instrument” in s. 12(3)(a). FIPPA does not define the term. The *Interpretation Act*<sup>8</sup> requires that every enactment be construed as remedial and be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. Further, the Supreme Court of Canada, on numerous occasions, has stated that the modern approach to statutory interpretation requires that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of the legislators.<sup>9</sup>

[12] In my view, the term “other legal instrument” must be read in the context in which it is found, namely a list of specific terms: “resolution”, “bylaw”, “private Bill”, all of which share the characteristic of being a legislative or statutory enactment or decision of a public body. The term “legal instrument”, used in its general sense, would include all legal documents such as contracts, wills, deeds, promissory notes, etc. If the Legislature had intended for the term to be used in this general sense, presumably there would have been no need to spell-out or list several specific kinds of records as the general term would have captured them all. In this current context, “other legal instrument” must be read to share the common trait of other terms in the list. Therefore, a consistent reading of the section would suggest that “other legal instrument” means a legislative enactment or decision of a public body, something a contract is not. Accepting Langley’s assertion that “other legal instrument” includes contracts would make it, in effect, the odd-one-out in the list.

[13] Three previous orders of this Office have addressed s. 12(3)(a).<sup>10</sup> In two, the orders provide little assistance because the records in dispute differ significantly from those in this inquiry and no reasons or analysis for the s. 12(3)(a) decision are set out.<sup>11</sup> In the third, Order No. 281-1998,<sup>12</sup> former Commissioner Flaherty found that an official community plan, approved by way of a bylaw to which it was appended, was not a bylaw for the purposes of

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<sup>8</sup> RSBC 1996, c. 238.

<sup>9</sup> See, for example: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3.

<sup>10</sup> Ontario and Alberta have a similar provision in their freedom of information and privacy legislation, however I could locate no orders interpreting “legal instrument” for the purpose of those provisions.

<sup>11</sup> Order No. 172-1997, [1997] B.C.I.P.C.D. No. 50: a draft report on a topic unknown from one district official to another; Order No. 123-1996, [1996] B.C.I.P.C.D. No. 33: a financial feasibility study of development plans.

<sup>12</sup> [1998] B.C.I.P.C.D. No. 76.

s. 12(3)(a). He did not address the issue of whether it was a legal instrument. However, on judicial review, Hood, J. did.<sup>13</sup> After finding that the official community plan was an integral part of its approving bylaw so amounted to a “bylaw” for the purposes of s. 12(3)(a), he went on to find that it was also a “legal instrument” under that section. This was, Hood, J. found, because the official community plan had a “legislative effect” owing to the *Municipal Act*<sup>14</sup> requiring all future bylaws and works conform to the official community plan. That interpretation is consistent with my understanding that “other legal instrument” means a document that has a legislative or statutory character. In conclusion, I find that the term “legal instrument” in s. 12(3)(a) means a legislative or statutory enactment or decision.

[14] Returning to this case, Langley argues that the drafts of the storm water management plan are drafts of part of a “legal instrument”, namely the servicing agreement. While I accept that the storm water management plan forms an integral part of a contract (it is an appendix to the servicing agreement), this does not answer the fundamental question of whether the servicing agreement is a legal instrument for the purposes of s. 12(3)(a). It does not share the trait of being a legislative enactment or decision, which is common to the other documents listed in s. 12(3)(a). Therefore, I find that the servicing agreement is not a legal instrument for the purposes of s. 12(3)(a).

[15] I have also considered whether the storm water management plan, as a stand-alone document separate from the servicing agreement, would be a “legal instrument” for the purposes of s. 12(3)(a). I find that it would not, again, because it does not share the trait common to the other types of documents listed in s. 12(3)(a), that of being a legislative enactment or decision.

[16] In summary, the requested records are not drafts of a resolution, bylaw, other legal instrument or private Bill for the purposes of s. 12(3)(a). Therefore, they may not be withheld under that exception.

## CONCLUSION

[17] For the reasons stated above, and pursuant to s. 58 of FIPPA, I make the following orders:

1. Langley is not authorized by s. 12(3)(a) of FIPPA to refuse to disclose the original and the four subsequent revisions of the storm water management plan.

<sup>13</sup> *Nanaimo (Regional District) v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 1283.

<sup>14</sup> *Municipal Act*, R.S.B.C. 1996, c. 323.

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2. Langley must give the applicant a copy of original and revisions 1, 2, 3, and 5 of the storm water management plan, on or before **September 6, 2013**. I also require Langley to copy me on its cover letter to the applicant, together with a copy of the records.

July 24, 2013

**ORIGINAL SIGNED BY**

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Elizabeth Barker, Adjudicator

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