



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

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Order F14-05

BC PAVILION CORPORATION (“PavCo”)

Vaughan L. Barrett
Adjudicator

February 24, 2014

Quicklaw Cite: [2014] B.C.I.P.C.D. No. 6

CanLII Cite: 2014 BCIPC No. 6

Summary: The applicant requested a copy of the agreement between PavCo and the BC Lions for the use of BC Place Stadium. PavCo refused to release some portions of the agreement under s. 17(1) of FIPPA, claiming that disclosure would harm its financial or economic interests. The adjudicator found that s. 17(1) did not apply to the agreement.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 17.

Authorities Considered: **B.C.:** Order No. 325-1999, 1999 CanLII 4017; Order 02-38, 2002 CanLII 42472; Order 02-50, 2002 CanLII 42486; Order F07-12, 2007 CanLII 30397; Order F08-19, 2008 CanLII 66913; **Ont:** Order MO-2852 (Appeal MA11-22), 2013 CanLII 11999 (ON IPC).

INTRODUCTION

[1] The applicant requested a copy of the latest “lease contract or agreement” between BC Pavilion Corporation (“PavCo”) and the BC Lions football team for its use of BC Place Stadium for games, practices and other events.

[2] PavCo identified the information requested as the BC Place License Agreement (“Agreement”). It severed some information under ss. 15, 17 and 21 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) before

disclosing the record to the applicant. The applicant asked the Office of the Information and Privacy Commissioner (“OIPC”) to conduct a review of PavCo’s decision. PavCo subsequently withdrew its reliance on ss. 15 and 21 of FIPPA, and for the purpose of this inquiry it relies solely on s. 17 of FIPPA for the redactions made.

[3] Mediation failed to resolve the dispute and the matter proceeded to a written inquiry.

ISSUE

[4] Is PavCo authorized under s. 17 of FIPPA to refuse to disclose the information in dispute?

[5] Section 57(1) of FIPPA states that the public body has the burden of proof.¹

DISCUSSION

[6] **Background**—PavCo is the public body responsible for operating two of British Columbia’s largest venues for public events, BC Place Stadium and the Vancouver Convention Centre. Its responsibilities include finalizing licensing agreements with promoters of special events and with local sports and entertainment franchises for long term tenancies. In November 2011 the CEO of PavCo and the President of the BC Lions signed the BC Place Licensing Agreement under which the BC Lions are afforded the right to use BC Place Stadium for each of its home games and for ancillary events.

[7] **Record at Issue**—The Agreement, under which PavCo gives the BC Lions the right to use BC Place, is the record at issue in this inquiry. The Agreement comprises 53 pages including 16 pages of attached schedules. It provides details on the fees paid by the BC Lions for BC Place facilities including the field, balconies and private suites and for services including utilities, security, ticket sales, food and beverage, advertising and merchandising. Most fees and charges are based on variable rates. The redacted portions concern fees charged for the facilities and services, which services are provided without cost, and information about complimentary tickets and insurance coverage.

[8] **Would Disclosure Harm PavCo’s financial or economic interests?**—PavCo relies on the main clause in s. 17(1) for the redactions but makes no specific reference to any of its subsections (a)–(f). Section 17(1) reads:

¹ PavCo acknowledges that it has the burden of proof in its Initial Submission at para. 15.

17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy.

[9] The wording of s. 17(1) has been the subject of a number of inquiries.² In Order 02-50, former Commissioner David Loukidelis set out the threshold to be met by a public body in order to refuse disclosure under s. 17:

General, speculative or subjective evidence is not adequate to establish that disclosure could reasonably be expected to result in harm under s. 17(1). That exception must be applied on the basis of real grounds that are connected to the specific case. This means establishing a clear and direct connection between the disclosure of withheld information and the harm alleged. The evidence must be detailed and convincing enough to establish specific circumstances for the contemplated harm to be reasonably expected to result from disclosure of the information.³

[10] I will apply this approach to the facts in this inquiry.

ANALYSIS

[11] PavCo submits that the criteria and standard of proof required for s. 17 to apply have been met in this case.⁴ It claims that 90% of the Agreement has been disclosed and that there are a number of ways in which full disclosure of the Agreement can be reasonably expected to harm its financial interests. It maintains that competitors could take advantage of any financial information it discloses by being able to undercut any bid it makes and that it will lose clients to an underbidding competitor and thus experience revenue loss.⁵ It emphasizes that in its competition for business with other local venues such as Rogers Arena, the PNE and the Fraser Valley Trade and Exhibition Center it expects to lose customers to some of those venues if the Agreement is disclosed. It confirms that it treats all of its contracts for the use of BC Place as confidential and that it has never released any of those contracts to the public.⁶

[12] PavCo says that its submissions are more than speculation. It submits that one of its current repeat clients, Live Nation Worldwide Inc. (“Live Nation”), has stated in writing that it will no longer bring business to BC Place if the financial details of its license agreements are subject to public release.⁷ It also

² See for example: Order F08-19, 2008 CanLII 66913 at para. 49; Order F07-12, 2007 CanLII 30397 at para. 35.

³ F02-50, 2002 CanLII 42486 at para. 137.

⁴ PavCo's Initial Submission at para. 14.

⁵ *Ibid* at para. 17.

⁶ PavCo's Initial Submission at para.19.

⁷ *Ibid* at para. 23.

submits that BC Place's long term anchor tenants have "voiced their strong opposition to any release of their financial information and other terms contained in their respective license agreements."⁸

[13] In short, PavCo submits that full disclosure of the Agreement "could reasonably be expected to harm" its financial interests in any one of three ways. It may lose some of its current clients, it could lose one or both of its anchor tenants and its negotiating position in attracting (or maximizing profits from) potential new long term or new one-off event clients could be compromised.

[14] The applicant submits that FIPPA exists "first and foremost" to make public bodies more accountable to the public and to protect personal privacy by giving the public right of access to records.⁹ He maintains that PavCo has breached its FIPPA responsibilities and offers comparisons between its disclosures and those provided by other venue managers. He asserts that the Privacy Commissioner for Ontario ordered a venue manager to disclose financial information.¹⁰ He claims that PavCo holds a "monopoly" on large venues in BC as there are no other venues for BC Place's two anchor tenants to play their regular season games and, by implication, there are no risks of PavCo losing its anchor tenants if the Agreement was fully disclosed.

[15] If any of PavCo's claims that disclosure of the disputed information could reasonably be expected to harm its financial or economic interests are proven, then it will have shown it is authorized to sever portions of the Agreement. Accordingly I will examine those claims in light of the relevant criteria and the evidence provided.

PavCo may lose some of its current clients

[16] PavCo's submission concerning Live Nation's stated intention of no longer bringing business to BC Place if *their* License Agreements are disclosed is not particularly relevant to this inquiry. Live Nation's license agreement is not at issue in this inquiry. Disclosure of the BC Lions Agreement would not require PavCo to disclose Live Nation's agreement or any others it has with other clients. As PavCo itself notes, "each inquiry will turn on the evidence and argument adduced in that inquiry".¹¹ PavCo makes no claim that the BC Lions have stated they would seek a venue other than BC Place for its needs should the Agreement be disclosed.

⁸ *Ibid.*

⁹ Applicant's Initial Submission at para.1

¹⁰ Order MO-2852 (Appeal MA11-221), 2013 CanLII 11999 (ON IPC).

¹¹ PavCo's Reply Submission at para. 9.

[17] On this point I conclude that PavCo has not established a “clear and direct connection between the disclosure of withheld information and the harm alleged”.¹²

PavCo could lose one or both of its current anchor tenants

[18] PavCo does not explain why its two anchor tenants voiced “strong opposition” to disclosure of their respective license agreements. Further, there is no suggestion that either tenant threatened to cancel or refuse to renew its contract with PavCo should the Agreement be disclosed.

[19] For these reasons I do not accept claims that the third persons’ opposition to disclosure of their license agreements equates to detailed and convincing evidence of harm to PavCo should the Agreement be disclosed.

PavCo’s negotiating position would be compromised

[20] PavCo submits that its negotiating position with “one-off” event promoters and potential new long term tenants would be compromised should the terms of the Agreement be disclosed.

[21] It is not apparent on its face how the release of a long term contract would affect negotiations concerning a one-off event contract given their differing nature. If there were a relationship between them, it would follow that release of one could affect negotiations with the other. However, this proposition is undermined by the fact that PavCo has publicly disclosed financial information on one-off contracts in the past. PavCo did not deny the applicant’s assertions that PavCo previously released information for a number of special events at BC Place including the 2011 Grey Cup, the Canadian Soccer Association’s Women’s Olympic Soccer Qualifying Tournament and the Times of India Film Awards. Nor did PavCo suggest that the release of information about these one-time events in any way impacted its ability to attract new one-off clients.

[22] It is also not apparent to me how, beyond speculation, release of the Agreement could affect PavCo’s ability to attract other long term tenants. Despite PavCo’s claim that it is “in constant negotiation with third parties for long-term tenancy”¹³ PavCo does not identify even in general terms with who it is (or has been) in negotiation. Further, PavCo does not suggest how disclosure of the Agreement would compromise those negotiations, a possibility rendered more unlikely by PavCo’s admission that contracts for the use of BC Place “differ widely in form.”¹⁴ I am unable to accept without evidentiary support that PavCo’s negotiating position with potential new long term tenants with different needs

¹² See para. 8 of this inquiry.

¹³ Affidavit of Dana Hayden at para. 21, sworn May 21, 2013.

¹⁴ PavCo’s Initial Submission at para. 20.

over different time frames than the BC Lions would be compromised should the Agreement be disclosed. The Agreement is clearly designed to address the BC Lions' accommodation and service needs over a period of years.¹⁵

[23] I am satisfied that PavCo's concerns regarding its negotiating position are speculative and are "not adequate to establish that disclosure could reasonably be expected to result in harm under s. 17(1)".¹⁶

[24] In summary, while I understand that PavCo prefers to exercise confidentiality in its operations, FIPPA places upon it the onus for proving that the requisite conditions for authorizing its refusal to disclose information under s. 17 have been met. I am unable to conclude that PavCo has met that onus.

CONCLUSION

[25] For the above noted reasons I conclude that PavCo has not met the burden of proof required to confirm that it was authorized under s. 17 of FIPPA to sever information from the Agreement.

ORDER

[26] Under s. 58 of FIPPA I require the BC Pavilion Corporation to provide the applicant with a copy of the complete, un-redacted Agreement on or before **April 7, 2014**, pursuant to s. 59. The BC Pavilion Corporation must concurrently send me a copy of its cover letter to the applicant, together with a copy of the records.

February 24, 2014

ORIGINAL SIGNED BY

Vaughan Barrett, Adjudicator

OIPC File No: F12-49180

¹⁵ The Agreement defines the Initial License Term as January 1, 2011 until December 31, 2015.

¹⁶ See para. 8 of this inquiry.