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Order F14-31

CITY OF VANCOUVER

Elizabeth Barker, Adjudicator

August 28, 2014

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Summary: A journalist requested records related to the City of Vancouver's closed circuit television system. The City refused to disclose some of the requested information under ss. 13, 14, 15, 17 and 19. The adjudicator found that the City was authorized to refuse to disclose some information under s. 13 (policy advice or recommendations) and other information under s. 14 (legal advice). However, the adjudicator found that the City had not established that disclosure could reasonably be expected to result in the harms in s. 15 (harm to law enforcement), s. 17 (harm to the City's financial or economic interests) or s. 19 (harm to public safety). In addition, the adjudicator ordered the City to process, under Part 2, Division 2 of FIPPA, the information that it incorrectly withheld from the records as being not responsive, repeats and examples.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4, 13(1), 14, 15(1)(a), (c), (d), (e) and (l), 17(1)(c), (d) and (f), 19(1)(b).

Authorities Considered: B.C.: Order 00-10, 2000 CanLII 11042 (BC IPC); Order 01-15, 2001 CanLII 21569 (BC IPC); Order 02-38, 2002 CanLII 42472 (BC IPC); Order 02-50, 2002 CanLII 42486 (BC IPC); Order F06-16, 2006 CanLII 25576 (BC IPC); Order F07-15, 2007 CanLII 35476 (BC IPC); Order F08-22, 2008 CanLII 70316 (BC IPC); Order F09-13, 2009 CanLII 42409 (BC IPC); Order F10-15, 2010 BCIPC 24 (CanLII); Order F10-39, 2010 CanLII 77325 (BC IPC); Order F11-14, 2011 BCIPC 19 (CanLII).

Cases Considered: *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665; *R. v. B.,* 1995 Can LII 2007 (BCSC); *Canada v. Solosky*, [1980], 1 S.C.R 82; *John Doe v. Ontario* 2014 SCC 36; *Lavigne* v. *Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773; *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner),* 2012 BCSC 875.

Publication Considered: Manes and Silver, *Solicitor-Client Privilege in Canadian Law*, 1993, pp. 187-191.

INTRODUCTION

[1] This inquiry deals with a journalist's request to the City of Vancouver ("City") for records related to its closed circuit television system ("CCTV"). The City initially disclosed some parts of the records but refused to disclose other parts under s. 14 (solicitor-client privilege), s. 15 (harm to law enforcement), s. 17 (harm to public body's financial or economic interests), and s. 19 (harm to public safety). The applicant requested that the Office of the Information and Privacy Commissioner ("OIPC") review the City's decision. During the OIPC investigation and mediation process, the City indicated that it was also applying s. 13(1) (policy advice or recommendations) to withhold some of the requested information. The matters in dispute were not resolved, and the applicant requested that they proceed to inquiry under part 5 of *The Freedom of Information and Protection of Privacy Act* ("FIPPA").

ISSUES

[2] The issues to be decided in this inquiry are whether the City is authorized under ss. 13, 14, 15, 17 and/or 19 of FIPPA to refuse to disclose the information requested by the applicant. Section 57(1) of FIPPA places the onus on the City to prove that the applicant has no right of access to the information it has withheld under those sections.

DISCUSSION

[3] **Background**—The City did not provide any background information about its CCTV system. However, the applicant provided a copy of the City's "Closed Circuit Television Systems Setup and Monitoring Policy" ("CCTV Policy"), which he received by way of an earlier FIPPA request.[1]

[4] According to the CCTV Policy, CCTV may be used for planning or law enforcement purposes for short term events or projects only, and it must be deactivated immediately after an event is completed. Any City department, the Vancouver Board of Parks and Recreation, the Library Board or the Vancouver Police Department ("VPD") can use the CCTV. CCTV is not to be permanently installed, and the system must be removed and stored as soon as practicable at the conclusion of the event. The Risk and Emergency Management Division of the City is responsible for receiving and approving requests to use CCTV, and it maintains a log of requests, approvals and problems related to its use.[2]

[1] Provided by the applicant in his initial submission. The City did not respond or comment in any way on the Policy.
[2] Sections 8-14 and 32-39 of the Policy.

[5] The applicant, a journalist, requested a copy of the following from the City:

- all correspondence originating from the City between September 1, 2011 and November 22, 2012 that relates to the CCTV;
- any draft or final policy documents about CCTV created after January 2012;
- all requests to access CCTV data;
- all written proposals to the City to install and use CCTV;
- all City evaluations of those proposals;
- the most up-to-date CCTV log regarding approved proposals;
- all complaints about breaches of the CCTV Policy; and
- all reports of investigations into any complaints of breaches of the CCTV Policy.

[6] **Information in dispute**—There are 53 pages of records, consisting of emails, memos, forms and one invoice. The City has disclosed some of the information but withheld other parts of the records. In all but a few instances, the City has relied on more than one FIPPA exemption to withhold information.

[7] **Non-responsive and repetitive information**—The City withheld some portions of the records because it believes they are either "not responsive" to the applicant's request, "repeat email strings", or "examples" of what might be entered into a logsheet.[3]

[8] FIPPA provides a right of access to "records" under s. 4(1) of FIPPA, subject to specific exemptions from disclosure for "information" of the types listed in the exceptions under Part 2, Division 2 of FIPPA.

> 4(1) A person 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...
>
> (2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

[9] Therefore, even if only a portion of a record is responsive to an access request, it is still a responsive record and the public body is required to disclose the entire contents of the record unless an exception to disclosure under Part 2, Division 2 of FIPPA applies.

[3] Pages 1, 5, 6, 32, 33, 34, 36, 38, 39, 40, 41, 42, 43, 44 and 46.

[10] The records in this case contain two long chains or strings of emails. There are no page breaks, spaces or other markers between the emails that separate them. In my view, each of these email strings is a discrete record for the purposes of FIPPA.

[11] I agree with the City that not all of the information in the second of the two email strings relates to the topic of the applicant's request. Nevertheless, the fact that there is unrelated information in a record that is responsive to the access request is not a ground under FIPPA to refuse to disclose the information. In every case, the City must comply with s. 4 of FIPPA and provide access to all of the information contained in a responsive record unless an exception to disclosure under Part 2, Division 2 of FIPPA applies.

[12] In addition, the City withheld some information because it is repeated elsewhere in the records[4] and other information because it amounts to "examples" of the sort of information that could be entered into a logsheet.[5] The fact that information is repeated elsewhere in the records or is only an example does not authorize the City to refuse to disclose the information. Those are not exceptions to disclosure under FIPPA. Regarding the repeated information, in particular, the City should have applied the FIPPA exceptions to it in the same manner it did to the other iterations of the information.

[13] There is no indication in the inquiry materials that the City has turned its mind to whether any FIPPA exceptions authorize or require it to refuse disclosure of the information it has labelled as not responsive, repeats or examples. The City must process this information[6] and make a decision under FIPPA whether to disclose it to the applicant.

Solicitor-client Privilege (s. 14)

[14] The City submits that solicitor-client privilege applies to some of the information in dispute. Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. This provision encompasses both legal advice privilege and litigation privilege.[7] The City submits that legal advice privilege applies to the information that has been withheld under s. 14. The applicant questions whether s. 14 has been appropriately applied.

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[4] On pp. 40-42 I note that the information on the bottom of p. 40 is clearly not repeated elsewhere in the records.

[5] CCTV Imagery Release Log (p. 5) and the CCTV Breach Log (p. 6).

[6] On pp. 1, 5, 6, 32, 33, 34, 36, 38, 39, 40, 41, 42, 43, 44 and 46.

[7] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665, para. 26.

[15] For legal advice privilege to apply, the following conditions must be satisfied:

1. there must be a communication, whether oral or written;

2. the communication must be confidential;

3. the communication must be between a client (or agent) and a legal advisor; and

4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

[16] Not every communication between client and solicitor is protected by solicitor-client privilege, but if the four conditions above are satisfied, then privilege applies to the communications and the records relating to it.[8] Records relating to the privileged communication would include communication internal to the client (for example amongst the client's employees), which would reveal the privileged communication.

Analysis

[17] The first step in this s. 14 analysis requires determining who the "client" is because it is apparent from the records that the legal advice, which was provided by the City's lawyers to the director of the City's Office of Emergency Management, was also shared and discussed amongst various City staff and VPD officers. From my review of the records in dispute and the City's submissions, it is clear that the City is the "client". Because the City provided no information about the relationship of the VPD to the City, I have considered what the *Police Act*[9] says on that point. Under the *Police Act*, the City provides policing and law enforcement by way of a municipal police board, which in turn establishes the municipal police department and appoints a chief constable and the other constables and employees necessary to provide policing and law enforcement in the municipality. The City's mayor chairs the police board. Based on that information, I am satisfied that the VPD is a department of the City and an integral part of its municipal operations. Therefore, I conclude that the VPD is part of the City-as-client for the purposes of the s. 14 analysis.

[18] Most of the information to which s. 14 has been applied meets the required elements of the test for legal advice privilege. Some of it is direct communication between the City and its legal counsel related to the seeking, formulating, or giving of legal advice and some is communication amongst

[8] For a statement of these principles see also *R. v. B., 1995 Can LII 2007* (BCSC), para. 22 and *Canada v. Solosky*, [1980], 1 S.C.R 82, p. 13.
[9] [RSBC 1996] Chapter 367.

members of the City discussing the legal advice. For example, s. 14 has been applied to written communication between the City's legal counsel and its director of Emergency Management, containing legal advice and details of how the legal advice is to be provided.[10] There are also several emails between City staff and VPD officers that reveal details of the legal advice.[11] Many of these communications are marked as being "privileged and confidential", but even where they are not, there is nothing to suggest that they were not treated as confidential and kept within the circle of the City staff, the VPD and the City's legal counsel.

[19] On the other hand, there are a few instances where the City applied s. 14 to withhold information about scheduling meetings and other purely administrative matters.[12] That information in no way relates to the seeking, formulating or giving of legal advice, so it does not meet the required elements of solicitor-client privilege.

Advice or Recommendations (s. 13)

[20] The City also withheld some of the requested information under s. 13(1), which states that the head of a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister. I will not consider the application of s. 13 to the information that I have already found may be withheld under s. 14.

[21] The process for determining whether s. 13 of FIPPA applies to information involves two stages. The first, in this case, is to determine whether the disclosure of the information would reveal advice or recommendations developed by or for the City. If it does, it is necessary to consider whether the information at issue falls within any of the categories of information listed in s. 13(2). The effect of s. 13(2) is that even in cases where information would reveal advice or recommendations developed by or for a public body, if the information falls within any of the categories listed in s. 13(2) the public body may not withhold the information.

[22] Section 13(1) has been the subject of many orders, which have consistently held that the purpose of s. 13(1) is to allow 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 government decision and policy-making were subject to excessive scrutiny.[13] Recently, the Supreme Court of Canada in *John Doe v. Ontario,* 2014 SCC 36[14] reiterated this point:

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[10] Several emails on pp. 18,19, 33, 37, 38, and one memo on pp. 47-53.
[11] Pages 20 (all), 21 (top), 24, 25 (top), 44 (bottom).
[12] That information is located on pp. 19, 23, 44 and 45.
[13] Order 01-15, 2001 CanLII 21569 (BC IPC).
[14] At para. 45.

> Political neutrality, both actual and perceived, is an essential feature of the civil service in Canada... The advice and recommendations provided by a public servant who knows that his work might one day be subject to public scrutiny is less likely to be full, free and frank, and is more likely to suffer from self-censorship. Similarly, a decision maker might hesitate to even request advice or recommendations in writing concerning a controversial matter if he knows the resulting information might be disclosed. Requiring that such advice or recommendations be disclosed risks introducing actual or perceived partisan considerations into public servants' participation in the decision-making process.

[23] BC Orders have also found that s. 13(1) applies not only when disclosure of the information would directly reveal advice and recommendations but also when it would allow accurate inferences about the advice or recommendations.[15]

[24] Applying the above analysis of the law to the facts before me, I find that the City appropriately withheld information under s. 13(1) from page 29 of the records. That information is a series of recommendations clearly labeled as such, and it does not even remotely fall into the categories of information listed in s. 13(2).

[25] However, I find that the City is not authorized to withhold the following information under s. 13(1) because it does not reveal, or enable accurate inferences about, advice or recommendations:

- an email among City and VPD staff about scheduling a teleconference;[16]
- an email between two City employees in which one explains the focus of the City's project management office and staff availability;[17]
- an email between two City employees confirming when a memo will be sent;[18]
- the "to", "from", "date", "subject" and signature blocks for several emails.[19]

Harm to Law Enforcement (s. 15) or Public Safety (s. 19)

[26] The City also relies on ss. 15(1)(a), (c), (d), (e) and (l) and 19(1)(b) to withhold information from the records. Given that the application of these exceptions and the City's submissions regarding them overlap, I will consider them together. However, I will only consider those instances where ss. 13 and 14 do not apply.

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[15] Order F10-15, 2010 BCIPC 24 (CanLII); Order 02-38, 2002 CanLII 42472 (BC IPC); Order F06-16, 2006 CanLII 25576 (BC IPC).
[16] Bottom of p. 19.
[17] Bottom of p. 23.
[18] Bottom of p. 25.
[19] Pages 19 (bottom), 23 (bottom), 25 (bottom).

[27] The relevant portions of ss. 15 and 19 of FIPPA are as follows:

> 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> (a) harm a law enforcement matter,
>
> ...
>
> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
>
> (d) reveal the identity of a confidential source of law enforcement information,
>
> (e) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities,
>
> ...
>
> (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.
>
> 19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
>
> ...
>
> (b) interfere with public safety.

[28] The standard of proof applicable to harms-based exceptions is whether disclosure of the information could reasonably be expected to cause the specific harm. Although there is no need to establish certainty of harm, it is not sufficient to rely on speculation.[20] In Order F07-15, former Commissioner Loukidelis outlined the evidentiary requirements to establish a reasonable expectation of harm:

> …there must be a confident and objective evidentiary basis for concluding that disclosure of the information could reasonably be expected to result in harm… Referring to language used by the Supreme Court of Canada in an access to information case, I have said 'there must be a clear and direct connection between disclosure of specific information and the harm that is alleged'.[21]

[20] Order 00-10, 2000 CanLII 11042 (BC IPC), at p. 10.
[21] Order F07-15, 2007 CanLII 35476 (BC IPC), at para. 17. Referring to *Lavigne* v. *Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773.

[29] Further, in *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner),*[22] Bracken, J. confirmed it is the release of the information itself that must give rise to a reasonable expectation of harm, and that the burden rests with the public body to establish that the disclosure of the information in question could result in the identified harm.

[30] I take the same approach in assessing the City's application of ss. 15 and 19 to the records.

[31] The City explains that the CCTV system is only operational during a large event or when public safety is a concern, such as during Stanley Cup playoffs or Vancouver's Celebration of Light. During such events, the City uses CCTV live feeds so foot traffic barricades and pathways can be moved to ensure the crowd moves in a safe manner from venue to venue. The City's explanation of the harm it fears will result if the information in dispute is disclosed is as follows:

> City of Vancouver CCTV public safety camera operations are vulnerable to willful covert or overt vandalism. Destruction and their non-operation during an event with large crowds and safety concerns would effectively mean all city and VPD staff members could only react to their immediate crowd circumstances because the cameras could not transmit an overall crowd view and provide a larger, clearer vision.[23]
>
> ...
>
> Information in the records severed under these sections contain specific details related to the public safety cameras that would provide enough information ie. type of feed wire, setup of transmission and exact location of one or more cameras, for a person or persons to harm and render ineffective the CCTV public safety system through harm to the system information provided, whether it was in operation mode or not... Without the cameras, the only valid information of the same type that can be provided is via 'spotter' personnel on the ground and this information is not of the same timeliness nor does it provide a broad perspective like the global view of the CCTV system...[24]

[32] I understand from this that by using the terms "vandalism" and "destruction" the City fears physical damage to the CCTV cameras. The City also hints in the quote above that the system might be harmed in some sort of technical way. However, there was no explanation about how that might occur, nor could I see anything in the disputed information about the "type of feed wire" or "setup of transmission" as suggested by the City. Admittedly, there are two instances where the withheld information deals with technical matters: an email about scheduling a meeting to discuss possible changes to the CCTV network,

[22] 2012 BCSC 875, at para. 43.
[23] Ministry reply, para. 6.
[24] Ministry submission, para. 22.

and an email between a City employee and a non-employee in which they identify different emergency management technologies that are worth discussing.[25] The significance of the non-specific information withheld from these two emails, and how it might be used to harm the CCTV system, is not apparent and the City does not explain.

[33] Regarding the fear of physical vandalism to CCTV cameras, there are a few instances where information about the location of cameras has been withheld. For example, the name of a building where maintenance was conducted on CCTV equipment (pp. 23 and 31); where cameras and public notification signs were located for the 2012 Celebration of Lights festival (pp. 15, 35, 41, 42); and a possible CCTV location for future Celebration of Lights festivals (p. 43). The City does not explain how disclosing where cameras were located at past events is significant, which is notable given the CCTV Policy states that cameras are not to be authorized for long-term or permanent placement and are to be deactivated and removed after events.[26] Although the City does not say so, I assume that the concern is that the locations may be reused, so knowing where the cameras were placed in the past would allow an educated guess about where they might be located for future public events.

[34] The City did not provide information to assist in understanding how CCTV cameras work, where they are generally located, if efforts are made to hide them from view, who might be motivated to damage them, and what steps are taken to deter vandalism. Nor did the City comment on its CCTV Policy which stipulates that access to the CCTV operations room is restricted to authorized individuals and that security arrangements are in place to ensure that the CCTV signals cannot be monitored by unauthorized individuals.[27] Presumably, any cameras mounted lower down, for example on street signs or lamp posts, would be discernible to anyone taking the time to look especially given that the CCTV Policy requires notifying the public through the media that they are being monitored. The City also posts signs at the site of the public event alerting the public to CCTV monitoring.[28] Despite the likelihood that some of the cameras mounted lower down would have been visible and accessible to the public in the past, there was no information that any cameras were ever vandalized or rendered ineffective.

[35] I can certainly appreciate that CCTV cameras may be a useful crowd management tool and an inoperative CCTV camera could negatively impact the police's ability to efficiently manage crowds at large public events. However, I am not convinced of the connection between disclosure of the information in

[25] Pages 32 and 37, respectively.
[26] CCTV Policy, para. 2 and 21.
[27] CCTV Policy, para. 23.
[28] CCTV Policy, para. 24. Information that is not being withheld on p. 34 indicates that the City also posts signs to alert the public of the CCTV monitoring.

dispute and the CCTV system being vandalized or otherwise rendered inoperable. In my view, the City's submissions and evidence are speculative and lacking in information about the how, who, what, where and when that would satisfactorily demonstrate a link between disclosure and the harms the City alleges.

[36] In conclusion, the City has not established that there is a clear and direct connection between disclosure of the information in dispute and the harms in ss. 15 and 19.

[37] Finally, the City also relies on ss. 15 and 19 to withhold information about purely administrative matters, such as details about scheduling meetings and when memos are due as well as the "to", "from", "date", "subject" and signature blocks for several emails.[29] The City does not explain how this information relates to law enforcement or public safety, and I can see no connection.

[38] In conclusion, I find that the City is not authorized to withhold any information under ss. 15 and 19.

Harm to Financial or Economic Interests (s. 17)

[39] The City has also relied on s. 17(1)(c), (d) and (f) to withhold several portions of the records. Those sections of FIPPA read as follows:

> 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, including the following information:
>
> ...
>
> (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
>
> (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

[29] Pages 19 (bottom), 23 (bottom), 25 (bottom).

> ...
>
> (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[40] As with ss. 15 and 19, the evidence must establish on a confident and objective basis that disclosure could reasonably be expected to result in the s. 17 harms the City alleges. Speculative evidence is not adequate. Rather, the evidence needs to be detailed and convincing enough to demonstrate a clear and direct connection between the disclosure and the reasonable expectation of the harms alleged.[30]

[41] Previous orders have established that clauses 17(1)(a) through (f) provide examples of the type of information the disclosure of which may result in harm under s. 17(1). Information that does not fit in the listed clauses (a) to (f) may still fall under the opening language of s. 17(1): "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."[31]

[42] The City has applied s. 17(1) to withhold the following information:

- Page 31 – The dollar amounts from an invoice submitted to the City. The figures are the unit price and total cost of CCTV maintenance at one particular location.
- Page 32 – Information from two emails between City staff about the scheduling of a meeting to discuss possible changes to the CCTV network.
- Page 37 – Portions of an email exchange between the director of the City's Office of Emergency Management and an individual, in which both indicate their willingness to meet and discuss additional emergency management and communication technologies.
- Page 43 – A three line email between City staff about a possible opportunity to place a CCTV camera in a specific location.

Section 17(1)(c)

[43] More specifically, the City relies on 17(1)(c) to withhold information from pages 32, 37 and 43. The City provides no explanation or evidence that indicates that the information in dispute involves "plans that relate to the management of personnel or the administration of a public body and that have

[30] Order 02-50, 2002 CanLII 42486 (BC IPC), para. 137.
[31] Orders F08-22, 2008 CanLII 70316 (BC IPC); F09-13, 2009 CanLII 42409 (BC IPC), F10-39, 2010 CanLII 77325 (BC IPC); F11-14, 2011 BCIPC 19 (CanLII).

not yet been implemented or made public" or how disclosure could reasonably be expected to harm the financial or economic interests of the City. The City has not satisfied me that there is an objective evidentiary basis for concluding that disclosure of the information on pages 32, 37 and 43 could reasonably be expected to result in harm under s. 17(1)(c).

Section 17(1)(d)

[44] The City also relies on 17(1)(d) to withhold information from all four pages. For the following reasons, I find that the City has not established a link between disclosure and a reasonable expectation of either "premature disclosure of a proposal or project" or "undue financial loss or gain to a third party".

[45] The City provides no explanation about what proposals or projects it believes will be prematurely disclosed and how disclosure might result in harm to the City's financial or economic interests. Based on the information at issue, I could make an educated guess about the nature of the proposals referenced on pages 32, 27 and 43. However, even if I were to do so, the City provides no information about its financial or economic interests or how disclosure of the information at issue on these pages is linked to, or could reasonably be expected to, harm those interests.

[46] Regarding undue financial loss or gain to a third party, the City says the following about its application of s. 17(1)(d) to the invoice on page 31:

> ... the information that has been severed under this section is unit pricing of a Third Party Service provider to the City. Release of this information presents third party private commercial information into public domain. Many private corporations adapt unit and volume pricing based on the terms and conditions of each contract. Release of the third party pricing information precludes the third party's ability to adapt and negotiate their unit pricing based on the terms and conditions of a sale thus potentially causing undue financial lost to the 3rd party.[32]

[47] There was no explanation or information about the nature of the financial loss or gain that the City believes the third party supplier will experience or why the third party would not be able to adapt and negotiate its unit pricing in the future if the information is disclosed. Without such information, I am unable to form any opinion on whether disclosure could reasonably be expected to cause the third party a loss or a gain, let alone whether it might be "undue".

Section 17(1)(f)

[48] Finally, the City has used s. 17(1)(f) to withhold dollar amounts from the invoice for CCTV maintenance on page 31. The dollar amounts are the unit price

[32] City's initial submission para. 25.

and total cost of the maintenance work performed at one location on two occasions in 2012. The City submits that the pricing of CCTV maintenance is always a point of negotiation, and the disclosure of this information would impact its ability to negotiate the best prices and services.[33]

[49] Despite its assertions that disclosure of the dollar amounts on this invoice would harm its negotiating position, the City provides no supporting information. For example, it does not explain the actual nature of the services provided or the type of agreements it is concerned about negotiating. Nor does it provide information about the context or marketplace in which it must negotiate for the services it needs, such as the availability or volume of suppliers who can provide the required technical expertise. Furthermore, the City does not attempt to quantify the alleged financial harm in order to demonstrate how there might be harm to its financial or economic interests. Given this lack of information, I am not persuaded that there is a connection between disclosure of the dollar amounts in the invoice and the harm the City alleges would result to its negotiating position.

[50] In conclusion, having reviewed the withheld information and the City's brief submission regarding s. 17(1), I find that there is insufficient evidence to establish that disclosure could reasonably be expected to result in the harms claimed. Therefore, the City is not authorized by s. 17(1) (c), (d) or (f) to withhold the information in dispute on pages 31, 32, 37 and 43.

CONCLUSION

[60] For the reasons given above, I make the following orders under s. 58 of the Act:

1. I require the City to complete the processing of the applicant's request with respect to the information on pp. 1, 5, 6, 32, 33, 34, 36, 38, 39, 40, 41, 42, 43, 44 and 46, which it labelled as not responsive, repeats or examples.

2. Subject to para. 3, the City is not authorized by ss. 13, 14, 15, 17 or 19 to refuse to disclose the information in dispute.

3. The City is authorized under ss. 13 and 14 to refuse to disclose the information that has been highlighted in a copy of the records that accompanies the City's copy of this order.

[33] City's initial submission para. 28.

4. The City must comply with the terms of this Order by **October 10, 2014** and concurrently send me a copy of its cover letter and the records it sends to the applicant.

August 28, 2014

ORIGINAL SIGNED BY

Elizabeth Barker, Adjudicator

OIPC File No.: F13-52543