



Order F22-35

## **E-COMM EMERGENCY COMMUNICATIONS FOR BRITISH COLUMBIA INC.**

Lisa Siew  
Adjudicator

July 18, 2022

CanLII Cite: 2022 BCIPC 39  
Quicklaw Cite: [2022] B.C.I.P.C.D. No. 39

**Summary:** A local of a union (applicant) requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to daily reports generated by an employee of E-Comm Emergency Communications for British Columbia Inc. (E-Comm). The reports contain historical data about emergency and non-emergency call statistics and the operational performance of E-Comm’s call-taking and dispatch services. E-Comm refused access to the records withholding information under s. 17(1) of FIPPA. The adjudicator determined E-Comm was not authorized to refuse access to the information at issue since its disclosure could not reasonably be expected to harm E-Comm’s financial or economic interests in accordance with s. 17(1). The adjudicator ordered E-Comm to disclose the withheld information to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 17(1), 17(1)(b), 17(1)(f).

### **INTRODUCTION**

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), Local 873-02 of the Canadian Union of Public Employees (applicant) made two access requests to E-Comm Emergency Communications for British Columbia Inc. (E-Comm).<sup>1</sup> The applicant requested access to records about a variety of matters, including records related to E-Comm’s operations and governance, specific reports about emergency call statistics and for copies of certain emails between E-Comm employees.

[2] E-Comm provided the applicant with access to some of the responsive records. For other records, E-Comm provided the applicant with partial access by withholding information under ss. 17(1) (harm to financial or economic interests of a public body) and 22(1) (disclosure harmful to third-party personal privacy) of

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<sup>1</sup> Applicant’s access requests dated June 26 and June 28, 2019. In its June 28<sup>th</sup> request, the applicant requested additional records and also clarified some aspects of its first request.

FIPPA. It also withheld information under s. 9(1) of the *Emergency Communications Corporations Act (ECCA)*.<sup>2</sup>

[3] The applicant was dissatisfied with E-Comm’s response and asked the Office of the Information and Privacy Commissioner (OIPC) to review E-Comm’s decision. The applicant also complained that E-Comm did not conduct an adequate search for records in accordance with s. 6(1) of FIPPA.

[4] During the OIPC’s investigation and mediation process, E-Comm disclosed additional information to the applicant at various times and withdrew its reliance on s. 9(1) of the *ECCA*. As well, the applicant accepted E-Comm’s s. 22(1) severing of the records and also withdrew the adequate search complaint because of E-Comm’s additional disclosures. However, the parties did not resolve their dispute over E-Comm’s s. 17(1) decision and that matter proceeded to this inquiry.

## **ISSUE AND BURDEN OF PROOF**

[5] The issue I must decide in this inquiry is whether E-Comm is authorized to withhold the information at issue under s. 17(1). Section 57(1) of FIPPA places the burden on E-Comm, as the public body, to prove the applicant has no right of access to the information withheld s. 17(1).

## **DISCUSSION**

### ***Background***

[6] E-Comm is a corporation established under the *Emergency Communications Corporations Act*.<sup>3</sup> It provides emergency communications and public safety services for governments, organizations or agencies that subscribe to and fund its services (“member agencies”).<sup>4</sup> Those member agencies include municipalities, regional districts, the provincial government, the federal government, government agencies and emergency services agencies.

[7] E-Comm’s primary responsibilities include maintaining the emergency radio system for police, fire and ambulance services, operating the 9-1-1 call centre, maintaining two post-disaster facilities and providing dispatch operations for police and fire departments within British Columbia.

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<sup>2</sup> SBC 1997, c. 47. E-Comm is an “emergency communications corporation” under the *Emergency Communications Corporations Act (ECCA)*, and in that way it is a public body under Schedule 2 of FIPPA.

<sup>3</sup> SBC 1997, c. 47.

<sup>4</sup> In their submissions, the parties either use the term “member agencies” or “participating agencies”. I use the term “member agencies” throughout this order.

[8] E-Comm operates its call-taking and dispatching services through centralized call centres. Call centre agents answer 9-1-1 phone calls from the public, in the order in which they arrive, and direct those calls to the dispatcher of the appropriate emergency service such as ambulance, fire or police. At various stages in the process, phone calls may be placed in a queue waiting to be connected to an available agent. Those wait times can vary depending on the number of staff working at a given time and the number of incoming calls.

[9] The applicant is the local union representing emergency dispatchers, call takers and support staff in BC. It requested records relating to the 9-1-1 queue and police, fire and non-emergency calls, specifically records with data about call wait times and performance metrics. The applicant later revised its request for access to specific reports generated by an E-Comm employee. The applicant was satisfied that those reports would contain the information that it sought in its initial access request.

### ***Records and information at issue***

[10] The records at issue between the parties are daily reports generated by E-Comm's Operations Staffing Analyst. The daily reports contain data about emergency and non-emergency call statistics and the operational performance of E-Comm's emergency call-taking services. The records total approximately 1,278 pages and cover a three and a half year date range from January 2016 to July 2019. E-Comm withheld the entirety of the reports from the applicant.

### ***Is a sampling approach appropriate in this case?***

[11] E-Comm provided me with a small sample of the reports for my review.<sup>5</sup> Subject to some exceptions that are not applicable here, public bodies are required and expected to provide all the records at issue for the adjudicator's review.<sup>6</sup> Therefore, I must determine at this point whether a sampling approach is appropriate in this case or whether it is necessary for me to review all the disputed records in order to address the issue of whether s. 17(1) applies.

[12] I can see from the sample set provided by E-Comm that each daily report contains two tables. One table contains numerical data such as "number of calls answered and abandoned, call waiting times, and service level statistics by each member agency."<sup>7</sup> The second table reflects all the call data and response times for that day as "the percentage of calls answered within expected targets or

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<sup>5</sup> The sample consists of four reports that are dated May 16, 2016, March 19, 2017, July 7, 2018 and August 19, 2018.

<sup>6</sup> Where s. 14 (solicitor-client privilege) is at issue, public bodies are permitted to provide affidavit evidence instead of the records to establish s. 14 applies.

<sup>7</sup> S.H.'s affidavit #1 at para. 19.

service levels.”<sup>8</sup> The second table also contains more detailed numerical data regarding call wait times.<sup>9</sup>

[13] In both tables, there are separate columns or rows for each member agency that uses E-Comm’s services.<sup>10</sup> Each table also captures certain performance targets or “performance numbers”<sup>11</sup> set internally by E-Comm and the actual outcome. Those targets and their results are expressed as a percentage with 100% as the highest target and achievable number. Some of the data in both tables may be highlighted in red or yellow, which means “service levels fell below expected levels.”<sup>12</sup>

[14] Taking all of this into account, I find each report captures the same type or category of information, but vary based on the daily data inputted or compiled for each report. Therefore, given the nature and content of the reports, I am satisfied that this sample set would allow me to assess whether s. 17(1) applies to the information in all the daily reports for the date range requested by the applicant.

***Preliminary matter regarding s. 17(1)***

[15] Before considering whether s. 17(1) applies to the information at issue, I first have to address a preliminary matter raised by the applicant. As set out below, the applicant submits E-Comm should not be allowed to rely on s. 17(1) because it improperly changed its reasons for refusing access under this exception.

[16] When responding to an access request, s. 8 of FIPPA requires a public body to tell an access applicant whether or not the applicant is entitled to access the requested record or only parts of the record. If access is refused to all or part of a record, then the public body must provide the applicant with the reasons for the refusal and the provision of FIPPA on which the refusal is based.<sup>13</sup> When E-Comm responded to the applicant’s access request, it relied on s. 17(1) as a basis to refuse access; however, its reasons for the refusal have changed.

[17] In its initial decision letter provided in response to the access request, E-Comm said it was refusing access under s. 17(1) because disclosing the information at issue would reveal information of “proprietary and competitive value to E-Comm” that gave it a “competitive service advantage” when it participates in “requests for proposal processes.”<sup>14</sup> E-Comm said that its

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<sup>8</sup> E-Comm’s submission dated April 21, 2022 at para. 12.

<sup>9</sup> I am unable to say more as it would reveal information in dispute for which E-Comm has not openly discussed in its submissions and evidence.

<sup>10</sup> This information is disclosed in S.H.’s affidavit #1 at para. 34 and affidavit #2 at para. 9.

<sup>11</sup> E-Comm’s submission dated April 21, 2022 at para. 12.

<sup>12</sup> *Ibid* at para. 23.

<sup>13</sup> Section 8(1)(c)(i) of FIPPA.

<sup>14</sup> E-Comm’s letter dated October 1, 2019 at appendix “A”.

economic interests would be harmed, in accordance with s. 17(1), since the public disclosure of “its proprietary methodologies and overall performance experience data” would prejudice its ability to bid for 9-1-1 call-taking and dispatch service contracts.<sup>15</sup>

[18] In its initial inquiry submission, E-Comm expanded its reasons for withholding the information at issue under s. 17(1). It now argues that disclosing the information at issue could also reasonably be expected to harm its financial or economic interests because the public and the agencies that it currently services could misinterpret or misunderstand the information in the reports resulting in a loss of funding and requiring it to spend time and money to address any negative consequences.

[19] The applicant objects to E-Comm expanding its reasons for withholding information under s. 17(1). It says E-Comm’s additional argument relies on assertions that the information at issue is “in some sense, inherently flawed and unreliable” and that this position could only have materialized well after the initial access decision had been made.<sup>16</sup>

[20] The applicant submits public bodies should not be allowed to engage in such behaviour because:

The fact that a Public Body decides after the fact to change the way it collects and handles information should not be allowed to stand as a reason for withholding information. Allowing a Public Body to withhold records simply because they decided, in retrospect, that the Records are not useful invites a moral hazard in which Public Bodies may evade their disclosure obligations simply through a unilateral assertion that the Records are no longer reliable. The Commissioner should be wary about allowing this argument to succeed in light of the incentives it creates in future requests for disclosure.<sup>17</sup>

[21] I understand the applicant is arguing that public bodies should not be allowed to withhold information under a FIPPA exception or revise their harms arguments in an inquiry by relying on changed circumstances that the public body itself created. In this case, the changed circumstances being E-Comm’s conclusion the data is no longer useful and its decision to stop generating and using the reports.

[22] In response, E-Comm says circumstances have changed since the applicant made their access request and E-Comm has stopped producing the daily reports “as a result of discoveries about the reliability, quality and accuracy

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<sup>15</sup> E-Comm’s letter dated October 1, 2019 at appendix “A”.

<sup>16</sup> Applicant’s submission at para. 26.

<sup>17</sup> *Ibid* at para. 30.

of the data set out in those reports.”<sup>18</sup> Regarding the applicant’s allegations, E-Comm submits it is permitted and it is not unusual for a public body to “amend or amplify” its reasons for refusing access.<sup>19</sup>

[23] Relying on previous OIPC orders, E-Comm says an inquiry proceeding is a “hearing *de novo*” and not merely a review or appeal of a public body’s decision in response to an access request.<sup>20</sup> Therefore, it submits an adjudicator’s decision at inquiry is based on the circumstances, evidence and arguments as they exist at the time of the inquiry. As a result, E-Comm contends OIPC adjudicators may consider at an inquiry entirely new grounds for refusing access, along with any change in the parties’ circumstances.

[24] I am not persuaded by the applicant’s argument that E-Comm should not be allowed to rely on s. 17(1) to withhold information because E-Comm revised and expanded its reasons for refusing access under this exception. When a public body introduces arguments for the first time at inquiry, I can understand how it may appear to the applicant that the public body is improperly withholding information by creating new arguments in order to evade its disclosure obligations under FIPPA. However, I do not find E-Comm’s actions in this case were in any sense improper or that fairness dictates E-Comm is no longer allowed to rely on s. 17(1) as a basis to refuse access.

[25] This is not a case where E-Comm unilaterally added a new issue to the inquiry or applied a new FIPPA exemption to the disputed records without permission. Instead, E-Comm has consistently relied on s. 17(1) to refuse access and only its arguments under s. 17(1) have changed. I am not aware of, nor did the applicant identify, any previous OIPC orders where a public body was not allowed to rely on a FIPPA exception because it revised or expanded its arguments at inquiry about why that exception applied.

[26] E-Comm has explained that its reasons for relying on s. 17(1) have changed because of a change of circumstances that occurred at some point after its initial refusal decision, specifically E-Comm decided the type of reports at issue in this inquiry were no longer useful and stopped creating and relying on them. I understand the applicant believes E-Comm should not be allowed to expand its s. 17(1) arguments in this inquiry by relying on changed circumstances that are a result of E-Comm’s own actions. However, taking into account E-Comm’s explanation, I am not persuaded that its actions qualify as dishonest or wrongful behaviour. There is insufficient evidence to establish that the changes E-Comm made to its reporting practices were designed or intended to evade its disclosure obligations under FIPPA, as suggested by the applicant.

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<sup>18</sup> E-Comm’s submission dated April 21, 2022 at para. 3.

<sup>19</sup> *Ibid* at para. 3.

<sup>20</sup> *Ibid* at paras. 4-7, citing Order F15-37, 2015 BCIPC 40 (CanLII) at paras. 47-50 and Order F16-14, 2016 BCIPC 16 (CanLII) at paras. 22-23.

[27] Furthermore, the OIPC's review process includes early resolution procedures which may result in the public body revising its position and abandoning arguments that it later realizes have no merit after further discussion or investigation. When the matter reaches the inquiry stage, there could also be new events or a change in the surrounding circumstances, as was the case here, that may impact the analysis required at inquiry. Therefore, I agree with previous OIPC orders that have said "it is appropriate to consider harms-based exceptions to disclosure as of the date of the inquiry."<sup>21</sup> The analysis may then result in an outcome favourable to the applicant since the reasonable expectation of probable harm may no longer exist due to changing circumstances or it may result in a public body revising its arguments as was the case here. In my view, it would be unfair for an applicant to benefit from changing circumstances, but not to allow a public body to provide new arguments on the same basis.

[28] I have considered whether there is some unfairness that would result from permitting E-Comm to expand its s. 17(1) arguments in this inquiry. Administrative tribunals such as the OIPC are subject to the principles of procedural fairness which includes providing the parties with notice and an opportunity to be heard. In this case, the applicant was fully aware of E-Comm's overall position that the disclosure of the disputed records could reasonably be expected to harm its financial or economic interests under s. 17(1). The applicant also had the opportunity and did respond to E-Comm's new arguments. As a result, I do not find allowing E-Comm to expand its reasons for refusing access under s. 17(1) would be a breach of procedural fairness or result in prejudice to the applicant.

[29] For the reasons given above, I do not find it was inappropriate for E-Comm to revise its reasons for relying on s. 17(1) to withhold information from the disputed records and I will consider those arguments further below.

***Harm to a public body's financial or economic interest - s. 17(1)***

[30] Section 17(1) authorizes a public body to refuse to disclose information that, if disclosed, could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia. Subsections (a) to (f) of s. 17(1) are examples of the types of information that, if disclosed, could reasonably be expected to cause harm under s. 17(1).

[31] However, information that does not fit under subsections (a) to (f) may still fall under the opening language of s. 17(1) as information that, if disclosed, could reasonably be expected to harm the financial or economic interests of a public

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<sup>21</sup> For example, Order F15-37, 2015 BCIPC 40 (CanLII) at para. 50.

body or the government of British Columbia or the ability of that government to manage the economy.<sup>22</sup>

[32] The s. 17(1) provisions that are relevant in this inquiry are 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:

...

(b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;

...

(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.

[33] Earlier decisions have determined, however, that subsections 17(1)(a) to (f) are not stand-alone provisions and that it is not enough for a public body to meet a subsection's requirements. Even if the information at issue fits under ss. 17(1)(a) to (f), a public body must also demonstrate that disclosure could reasonably be expected to result in financial or economic harm to a public body or the government of British Columbia or the ability of that government to manage the economy.<sup>23</sup>

[34] In terms of the standard of proof for s. 17(1), it is well-established that the language "could reasonably be expected to" in access to information statutes means that in order to rely on the exception, a public body must establish that there is a "reasonable expectation of probable harm."<sup>24</sup> The Supreme Court of Canada has described this standard as "a middle ground between that which is probable and that which is merely possible."<sup>25</sup>

[35] Specifically, the public body need not show on a balance of probabilities that the harm will occur if the information is disclosed, but it must demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible

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<sup>22</sup> Order F14-31, 2014 BCIPC 34 (CanLII) at para. 41.

<sup>23</sup> Order F19-03, 2019 BCIPC 4 (CanLII) at para. 22.

<sup>24</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

<sup>25</sup> *Ibid.*



or speculative.<sup>26</sup> There needs to be a reasonable basis for believing the harm will result and the standard does not require a demonstration that harm is probable.<sup>27</sup>

[36] The determination of whether the standard of proof has been met is contextual, and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and the “inherent probabilities or improbabilities or the seriousness of the allegations or consequences.”<sup>28</sup> Previous OIPC orders have said general speculative or subjective evidence will not suffice.<sup>29</sup>

[37] Furthermore, it is the release of the information itself which must give rise to a reasonable expectation of harm.<sup>30</sup> The public body must provide evidence to establish “a direct link between the disclosure and the apprehended harm and that the harm could reasonably be expected to ensue from disclosure.”<sup>31</sup>

[38] I have categorized the parties’ positions and arguments regarding s. 17(1) under the following topics:

- Is there a reasonable expectation of probable harm to E-Comm’s financial or economic interests under s. 17(1) because the information at issue may be misinterpreted or misunderstood?
- Is the information at issue E-Comm’s financial or commercial information that has monetary value in accordance with s. 17(1)(b) that, if disclosed, could reasonably be expected to harm E-Comm’s financial or economic interests under s. 17(1)?
- Could the disclosure of the information at issue reasonably be expected to harm E-Comm’s negotiating position in accordance with ss. 17(1)(f) and 17(1)?

[39] I will discuss and consider each category below.

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<sup>26</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 206.

<sup>27</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 59 and *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 (CanLII) at para. 93.

<sup>28</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

<sup>29</sup> For example, Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 27.

<sup>30</sup> *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para. 43.

<sup>31</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 219.

**Is there a reasonable expectation of probable harm under s. 17(1) because of misinterpretation or misunderstanding?**

[40] E-Comm submits the disclosure of the information at issue could reasonably be expected to harm its financial or economic interests because member agencies or the public could misinterpret or misunderstand the information in the reports. It contends the data in the daily reports, on its own, does not reflect contextual and influencing factors that are outside of its control or account for how it delivers its services on a centralized call-taking system.

[41] For example, in terms of call wait times, E-Comm submits that the data in the daily reports does not reflect when there is a significant emergency event resulting in a high number of people calling for emergency services. E-Comm also notes that the telecommunications technology that it currently relies on may “stack” calls on top of each other when there are high call volumes resulting in busy signals for some callers.<sup>32</sup> E-Comm further notes that its service areas vary in population size and typically the larger service areas experience a higher volume of calls than the smaller areas.

[42] E-Comm also explains that when a person calls 9-1-1 in any of its service areas, they are connected with a centralized E-Comm operator who then connects them to the appropriate emergency service dispatch such as ambulance, fire or police. However, it says calls are answered by E-Comm operators in the order that they arrive and “are not prioritized by service area.”<sup>33</sup> As a result, depending on the volume of calls, a caller may experience a wait before being connected to an operator. Therefore, E-Comm submits the data may show there was increased wait times for people calling for emergency services without accounting for factors, such as the ones previously mentioned, that can influence or skew the data. As a result, E-Comm contends member agencies or the public may misinterpret the data and conclude that E-Comm is not processing calls in a timely manner.

[43] E-Comm further submits that another area of misinterpretation or misunderstanding is how the data may create the impression that it is unfairly allocating its resources amongst the member agencies. In support of its position, E-Comm provided an affidavit from S.H., a member of its executive leadership team, who says “if a given day has a high priority, highly visible emergency in a specific area then resources will, by default, show as being more heavily dedicated to that agency to meet public safety needs.”<sup>34</sup> However, S.H. notes this high-demand incident is not identified in the reports. Therefore, S.H. argues “the daily reports show only that a disproportionate amount of E-Comm’s resources

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<sup>32</sup> E-Comm’s submission dated March 14, 2022 at para. 16(g).

<sup>33</sup> S.H.’s affidavit #1 at para. 17.

<sup>34</sup> *Ibid* at para. 20.

were consumed by one agency, thereby presenting an inaccurate picture of E-Comm's service allocations and use."<sup>35</sup>

[44] E-Comm also says the daily reports present the data and response times on an agency by agency basis while it operates and delivers its services based on a "consolidated service delivery model."<sup>36</sup> Under this model, E-Comm says "resources and personnel are not targeted to a specific member agency" allowing it to "respond to day-to-day fluctuations in the needs of each region."<sup>37</sup> As a result, E-Comm argues the data in the reports should be presented in the same way as it is delivered. Otherwise, it says the information can easily be misinterpreted as indicating that some regions are being underserved or that a different level of service is being provided to each member agency. E-Comm submits this is another way that the information in the reports is not accurate and does not truly reflect its performance or operations.

[45] E-Comm also submits the data in the daily reports is unreliable because it contains numerous inaccuracies and inconsistencies. E-Comm describes the daily reports as consisting of two tables of statistics with the first table containing numerical information such as the number of calls received during the day and the number of calls answered and abandoned. E-Comm says the second table shows its "performance numbers" or the percentage of calls answered within expected targets or service levels.<sup>38</sup>

[46] It contends part of the problem is the way that the numbers in one table are reflected in the second table. As an example, E-Comm says one table captures calls answered or abandoned based on a response time of "less than ten seconds", but the other table captures that information based on calls answered or abandoned "up to and including ten seconds".<sup>39</sup> As a result, E-Comm argues that those type of inconsistencies impact the performance numbers and cannot be changed because they were "hard coded into the reports."<sup>40</sup>

[47] E-Comm further notes that some of the information in the daily reports is inaccurate because of human error. It says manual data entry methods were used in producing the daily reports; therefore, there were problems with the accuracy of the data. To avoid these instances of human error, E-Comm says it now imports the data directly from its systems in order to produce its current performance reports and that the new reports are based on different metrics.<sup>41</sup>

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<sup>35</sup> S.H.'s affidavit #1 at para. 20.

<sup>36</sup> E-Comm's submission dated April 21, 2022 at para. 9.

<sup>37</sup> *Ibid.*

<sup>38</sup> E-Comm's submission dated April 21, 2022 at para. 12.

<sup>39</sup> *Ibid* at para. 12 [emphasis in original].

<sup>40</sup> *Ibid* at para. 12.

<sup>41</sup> S.H.'s affidavit #1 at para. 30.

[48] For all the reasons discussed above, E-Comm contends the reports at issue in this inquiry do not provide an accurate picture of call wait times and its operations or performance. E-Comm submits that it does not rely on these reports for any strategic decision-making and that the reports do not identify trends or patterns in performance over time and do not reflect important, external, influencing factors.<sup>42</sup> In particular, E-Comm says the data in the reports was “compiled without identifying any objective in terms of how the data would be used”; therefore, it submits the data does not contain “contextual factors” which then creates problems “in interpreting the data or using it in any meaningful way.”<sup>43</sup>

[49] In support of E-Comm’s position, S.H. attests the daily reports are no longer generated by E-Comm and were only internally circulated amongst management and operational staff.<sup>44</sup> S.H. says she spoke with members of the management team who informed her that the daily reports were not useful for strategic analysis or decision-making and were only “briefly reviewed each morning as a ‘snap-shot’ of call volumes and response times from the prior day.”<sup>45</sup> S.H. deposes that these daily reports have been replaced with other reporting methods and that E-Comm posts its monthly call statistics on its website in a more user-friendly, consolidated form.<sup>46</sup>

[50] S.H. also notes that E-Comm has hired a company to conduct an operational review of its business in order to inform a 5-year strategic plan that will affect future negotiations with participating agencies. S.H. says the strategic plan will address issues that E-Comm has experienced around call wait times and how E-Comm intends to resolve those concerns. S.H. attests that E-Comm has given the applicant a copy of “the first phase report prepared by these external consultants.”<sup>47</sup>

[51] As to whether it can correct or annotate the reports, E-Comm submits that it is not possible for it to specifically identify the inaccuracies or the contextual and other factors that may influence the data given the volume of the reports and their historical nature. Without those corrections and the relevant context, S.H. submits “the results could be misinterpreted or misconstrued so as to represent that some member agencies are receiving a disproportionate amount of E-Comm’s resources or to mischaracterize E-Comm’s performance or to indicate that the service level for some member agencies (and not others) fell below targeted levels.”<sup>48</sup>

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<sup>42</sup> E-Comm’s submission dated April 21, 2022 at paras. 10-11 and S.H.’s affidavit #2 at paras. 5-8.

<sup>43</sup> S.H.’s affidavit #1 at paras. 29 and 31.

<sup>44</sup> S.H.’s affidavit #1 at para. 8 and affidavit #2 at para. 5.

<sup>45</sup> S.H.’s affidavit #2 at para. 5.

<sup>46</sup> S.H.’s affidavit #1 at paras. 8, 29-30 and affidavit #2 at para. 10.

<sup>47</sup> S.H.’s affidavit #2 at para. 34.

<sup>48</sup> *Ibid* at para. 7.

[52] Turning now to the alleged harms, E-Comm submits the misinterpretation of the information at issue could reasonably be expected to harm its financial or economic interests in the following ways:

- Damage its relationships with member agencies: E-Comm submits that it will need to devote time and resources into correcting any misunderstandings that member agencies may have about the data and to repair those relationships. E-Comm says member agencies are not required to use its services for their emergency communications and safety needs and can use their own systems or hire another service provider.<sup>49</sup> Therefore, E-Comm submits that it is vital for it to maintain those relationships and ensure its current member agencies are happy.
- Undermine public confidence in its services, in emergency responders and the system as a whole: E-Comm says it would need to spend time and money on correcting public misperceptions about the information at issue and to support its member agencies in responding to questions from the public or the media about the data.
- Negatively impact or reduce business and funding levels: if E-Comm is not able to successfully correct any misperceptions, then member agencies may cancel or re-negotiate their service contracts, or be pressured to do so by their communities, which would result in E-Comm suffering a loss of business and funding.
- Disrupt E-Comm’s strategic planning: the loss of funding would negatively impact E-Comm’s current plans for technological upgrades that would improve or enhance its services.
- Undermine E-Comm’s review of its operations: the withheld information is inaccurate and unreliable and would contradict, confuse and undermine E-Comm’s current review of its operations and performance data, thereby, making the results of that review appear inconsistent and call into question the results of those efforts.

[53] Furthermore, E-Comm submits there is a direct connection between the information at issue and the alleged harms. E-Comm contends that it is “plain and obvious” that the information in the reports “can be selectively used to represent” that certain member agencies are “being under serviced” or not receiving their “proportionate share” of its resources.<sup>50</sup>

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<sup>49</sup> E-Comm’s submission dated March 14, 2022 at para. 12.

<sup>50</sup> E-Comm’s submission dated April 21, 2022 at para. 18.

[54] In support of E-Comm’s position, S.H. argues that the likelihood of harm to E-Comm is “real”.<sup>51</sup> S.H. attests that “E-Comm has recently encountered a situation where a member agency decided to terminate their agreement with E-Comm to provide non-emergency police call-taking services based on perceived service problems.”<sup>52</sup> S.H. also deposes that she “spent considerable time working closely with member agencies to explain and assess the available data to ensure that the data is appropriately interpreted and that it supports a funding model for member agencies that is equitable.”<sup>53</sup> Based on those experiences, S.H. submits the disclosure of the reports would be harmful to E-Comm’s financial interests because, without context or careful explanation, the information at issue will lead to misunderstanding or misinterpretation that could cause its member agencies to terminate their agreements or negatively impact those relationships.<sup>54</sup>

[55] E-Comm also submits that the alleged harms in this case are not speculative because there has been a great deal of media attention and increased public concern about call wait times for emergency services and the performance of first responders; therefore, making it probable that the public and participating agencies will scrutinize the information at issue here. In support, S.H. attests that E-Comm has received numerous inquiries from the media about its call wait times and, starting in 2021, has already publicly released and provided this information to its participating agencies. However, S.H. notes that this publicly-released information is “prepared carefully to ensure they accurately reflect call-wait time data to members and to the public.”<sup>55</sup>

*Applicant’s response regarding misinterpretation and harm*

[56] The applicant submits E-Comm’s assertions about the way third parties might misinterpret or misunderstand the information at issue is entirely speculative. The applicant says E-Comm underestimates the ability of its customers and the public to understand that on any given day resources may be allocated unequally depending on the nature and location of the emergency. The applicant says “surely member agencies know that E-Comm utilizes a consolidated call-taking model where resources are pooled, and that resources will flow to where they are needed moment by moment.”<sup>56</sup>

[57] The applicant also says there is no reason to believe that member agencies will view a single day’s data in isolation to assess E-Comm’s overall service performance and not take into account the entirety of the data for the

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<sup>51</sup> S.H.’s affidavit #1 at para. 26.

<sup>52</sup> *Ibid.*

<sup>53</sup> S.H.’s affidavit #2 at para. 15.

<sup>54</sup> S.H.’s affidavit #1 at para. 26 and affidavit #2 at para. 15.

<sup>55</sup> S.H.’s affidavit #1 at para. 15.

<sup>56</sup> Applicant’s submission at para. 35.

three-year date range. The applicant further notes that it is contradictory for E-Comm to use the reports for its own internal planning purposes and now take the position, based on a “retrospective assessment”, that the information in the reports is “fundamentally flawed and unreliable.”<sup>57</sup>

[58] The applicant also contends that E-Comm’s submissions about the supposed inaccuracies in the daily reports is unconvincing, vague and lacks specificity. In particular, the applicant submits there is no evidence about the extent, frequency and number of alleged inaccuracies, where in the records these inaccuracies are said to exist, what form they take, how or why they came about or their impact on any analysis and conclusions that might be drawn from the data. The applicant notes E-Comm had the opportunity, but did not seek approval to make an *in camera* submission (i.e. a submission only viewed by the adjudicator) to show where these alleged inaccuracies are found in the reports.

[59] In terms of the alleged harms, the applicant submits E-Comm’s fears are not supported by evidence and only “focuses exclusively on the worse-case scenario even where they are not the most likely outcome from the evidence.”<sup>58</sup> As an example, the applicant challenges E-Comm’s assertion that disclosure of the reports would undermine the external review of its operations. The applicant contends there is no evidence to suggest that the information at issue differs from the data provided to the external consultant.

[60] The applicant also submits there is no evidence to support E-Comm’s position that it would need to devote resources to repair its business relationships or that its member agencies would end their service contracts. The applicant says E-Comm did not provide any objective evidence as to how the information in the records may be interpreted by an outsider (e.g. from one of the participating agencies or a lay person). The applicant notes that E-Comm’s evidence about any potential misinterpretation by its member agencies or the public is “merely the subjective opinion of one of its managers” based on “catastrophic reasoning focused on the worst-case scenario.”<sup>59</sup>

[61] The applicant also notes the OIPC has previously rejected similar arguments about how the public might misinterpret or respond to information, about allegations of reputational harm to a public body and the negative impact disclosure may have on a public body’s revenue.<sup>60</sup> The applicant argues the same outcome should apply here since E-Comm’s assertions about harm are speculative and unconvincing.

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<sup>57</sup> Applicant’s submission at para. 34.

<sup>58</sup> *Ibid* at para. 38.

<sup>59</sup> *Ibid* at para. 40.

<sup>60</sup> Applicant’s submission at para. 39, citing Order F20-36, 2020 BCIPC 42 (CanLII) at para. 57.

*Analysis and findings regarding misinterpretation and harm*

[62] Taking into account the parties' submissions and evidence, I have carefully reviewed the type of information withheld from the daily reports. I conclude the information at issue consists of:

1. Report titles, column and row headings, the names of each member agency serviced by E-Comm and the date of each report (administrative information).
2. Call-related numerical data, including the number of calls answered and abandoned and call wait times (call data).
3. Certain performance targets and the percentage of calls answered within those expected performance targets (performance data).
4. Whether the expected performance targets were achieved or not: some of the data is highlighted in red or yellow which means "service levels fell below expected levels"<sup>61</sup> (performance data).

[63] E-Comm's position on the applicability of s. 17(1) to this information depends on the public or its member agencies misinterpreting or misunderstanding that information. E-Comm says this misunderstanding will result in a loss of business and revenue and the added time and expense of addressing any negative consequences that flow from the disclosure of the information.

[64] Previous OIPC orders have consistently found that a public body's fears that the public or potential readers might misinterpret or fail to understand the information, if disclosed, is not a persuasive basis for withholding information under FIPPA's harm-based exceptions.<sup>62</sup>

[65] Furthermore, the courts are skeptical about claims that public misunderstanding could reasonably be expected to result in harm under access to information legislation. In *Merck Frosst Canada Ltd. v. Canada (Health)*, Justice Cromwell writing for the majority of the Supreme Court of Canada gave the following caution:

If taken too far, refusing to disclose for fear of public misunderstanding would undermine the fundamental purpose of access to information legislation. The point is to give the public access to information so that they can evaluate it for themselves, not to protect them from having it. In my

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<sup>61</sup> E-Comm's submission dated April 21, 2022 at para. 23.

<sup>62</sup> Order F11-35, 2011 BCIPC 44 (CanLII) at para. 7; Order F11-23, 2011 BCIPC 29 (CanLII) at para. 40; Order F10-06, 2010 BCIPC 9 (CanLII) at paras. 129-131.



view, it would be quite an unusual case in which this sort of claim for exemption could succeed.<sup>63</sup>

[66] However, it is clear that the determination of whether a FIPPA harms-based exception applies is a case-by-case analysis which depends on the facts, evidence and particular circumstances. In the present case, for the reasons to follow, I am not persuaded that the disclosure of the information at issue could reasonably be expected to harm E-Comm's financial or economic interests in accordance with s. 17(1).

[67] Starting with the administrative information, E-Comm has openly discussed and disclosed that the reports contain this information. For example, in its submissions, E-comm identifies the categories of data captured in the reports.<sup>64</sup> Based on its access request and submissions, it is also clear to me that the applicant knows the reports contain this information.<sup>65</sup> The administrative information also appears completely harmless and E-Comm has not explained if it is controversial in some way or how it could be misinterpreted. The information would only show the categories of data contained in the tables, the date of the report, the names of each member agency and other innocuous information. As a result, for all those reasons, I conclude s. 17(1) does not apply to the administrative information in the daily reports.

[68] Regarding the call data and the performance data, I am not persuaded that the public or the member agencies would review this information and conclude they are being under-served by E-Comm or not receiving full value for subscribing to E-Comm's services. I agree with the applicant that E-Comm is underestimating the ability of the public and its member agencies to understand E-Comm's consolidated call-taking system or to recognize that E-Comm's operations depends on a number of external factors that it does not control and that may influence the data. For example, I am satisfied that the public or member agencies would generally expect that E-Comm would allocate and distribute resources as needed to respond to high priority emergencies and they usually assume that E-Comm receives a higher volume of calls from its larger service areas. Therefore, I am not persuaded the public or member agencies would look at the information at issue and conclude that E-Comm is somehow inequitably distributing its resources and services.

[69] I also find E-Comm has underestimated its own ability to explain or provide context for the reports if needed. For instance, some of the data in the sample set indicates E-Comm did not meet its internal performance targets regarding certain non-emergency calls. However, I find that result easily aligns

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<sup>63</sup> 2012 SCC 3 (CanLII) at para. 224.

<sup>64</sup> For instance, S.H.'s affidavit #1 at para. 19 and E-Comm's submission dated April 21, 2022 at para. 12.

<sup>65</sup> For instance, applicant's request for review to the OIPC dated October 25, 2019 at p. 6.

with E-Comm’s prior public explanation that emergency phone lines are prioritized over non-emergency lines resulting in longer wait times for non-emergency calls.<sup>66</sup> Therefore, it is unclear why E-Comm would not be able to easily provide the public or its member agencies with reasonable explanations about the data in the reports, as it has evidently done in the past.

[70] E-Comm submits that it is “plain and obvious” that someone can selectively use data from the reports “to represent that certain member agencies are not receiving their proportionate share of the resources or are being under serviced.”<sup>67</sup> However, based on the materials before me, I am not persuaded that E-Comm’s fears about the likelihood of this scenario occurring are well beyond the merely possible or speculative. In my view, this hypothetical scenario depends on a number of assumptions such as someone intentionally setting out to harm E-Comm’s business interests and that E-Comm’s member agencies would simply accept this misrepresentation of the data and terminate or renegotiate their service agreements without talking to E-Comm or questioning the source of the information or the origin of the data. I have a hard time believing that E-Comm’s member agencies, which include law enforcement agencies and sophisticated government entities, would blindly accept such information or be so easy to mislead.

[71] E-Comm also submits that the public or its member agencies would review the information at issue and conclude that E-Comm is not processing calls in a timely manner. However, as set out below, it is clear to me that the public and member agencies already have that impression or opinion. Yet, there is no evidence this public perception has resulted in any harm to E-Comm’s business relationships or financial interests.

[72] As part of its submission, the applicant provided copies of media reports which focus on increased wait times for callers trying to reach emergency and non-emergency services, including an anecdotal report from a member of the public. In some of those news articles, E-Comm publicly acknowledges there are problems with call wait times because of staff shortages, record-breaking demand on emergency services, increased call volumes, people inappropriately tying up emergency and non-emergency phone lines or the lack of available emergency personnel.

[73] There is no evidence that the public attention that E-Comm has already received about this issue resulted in harm to its financial or economic interests such as the loss of business and funding from its member agencies. Rather, one news article indicates that a member agency understands there are system-wide issues and is working collaboratively with E-Comm to address some of those

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<sup>66</sup> News article dated July 29, 2021 in applicant’s submission.

<sup>67</sup> E-Comm’s submission dated April 21, 2022 at para. 18.

concerns, specifically the coordination of emergency services and long wait times for people calling the non-emergency number for that service area.<sup>68</sup>

[74] I note that E-Comm does not need to establish actual harm or that the harm will probably occur if the information at issue here is disclosed.<sup>69</sup> However, there needs to be a reasonable basis for believing the harm will result.<sup>70</sup> I find the fact there is no evidence of any harm to E-Comm's financial or economic interests, when the evidence shows the public already believes E-Comm is not processing calls in a timely manner, undermines E-Comm's assertions that the same harm could reasonably be expected to occur here. Considering all of the evidence and materials before me, I find E-Comm has not met its burden of establishing that disclosure of the information at issue here will result in a risk of harm that is well beyond or considerably above the merely possible or speculative.<sup>71</sup>

[75] I have considered whether disclosing the information at issue would add further fuel to the public's ire about long wait times or act as the final straw that irrevocably damages E-Comm's relationship with its member agencies. However, I am not persuaded that the public or member agencies could reasonably be expected to judge E-Comm's current and overall service levels based on the data in the daily reports. The data is from 2016-2019 and E-Comm has proactively moved towards a new tracking and reporting method for its performance metrics. I also find its reasons for making that change are reasonable. The news articles and E-Comm's submissions also indicate the public is aware there are several contributing factors or systemic problems causing the increased call wait times. Taking all of that into account, I am not satisfied the disclosure of the information at issue could reasonably be expected to incite public condemnation or result in a loss of business.

[76] I have also taken into account that S.H. deposes a member agency recently decided to terminate their agreement based on perceived service problems.<sup>72</sup> However, there is no evidence that the member agency's decision was a result of misinterpreting or misunderstanding the information at issue here or similar data. Therefore, without more, I find E-Comm's evidence about this recent event does not assist in establishing a direct connection between disclosure of the records at issue here and the reasonable expectation of probable harm.

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<sup>68</sup> News article dated October 18, 2019 in applicant's submission.

<sup>69</sup> *British Columbia Hydro and Power Authority v British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 (CanLII) at para. 88.

<sup>70</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 59.

<sup>71</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras. 197, 199 and 206.

<sup>72</sup> S.H.'s affidavit #1 at para. 26.

[77] To summarize, I am not persuaded based on the materials before me that the risk of the public or E-Comm’s member agencies misinterpreting or misunderstanding the information at issue, resulting in a loss of business and increased expense to E-Comm, is well beyond the merely possible or speculative. As noted, E-Comm does not need to prove the alleged harms are probable, but it must establish a reasonable basis for believing the alleged harms will result from the disclosure of the information at issue.<sup>73</sup> For the reasons given, I conclude E-Comm has not met that standard here.

**Is there a reasonable expectation of probable harm in accordance with ss. 17(1)(b) and 17(1)?**

[78] For s. 17(1)(b) to apply, a public body must prove the following criteria:

- (1) The information at issue would reveal financial, commercial, scientific or technical information which belongs to a public body or the BC government;
- (2) The information has, or is reasonably likely to have, monetary value; and
- (3) The disclosure of this information could reasonably be expected to cause one or more of the harms set out in s. 17(1).

[79] All of these elements must be met in order for the information at issue to be properly withheld under ss. 17(1)(b) and 17(1). I will consider each requirement below.

*Is the information financial, commercial, scientific or technical information?*

[80] E-Comm submits the information in the daily reports qualifies as its financial and commercial information under s. 17(1)(b) since it relates to E-Comm’s business activities, specifically statistics on its operations and the services it offers. E-Comm argues that it uses this information to determine how to divert its own resources and maintain service levels; therefore, it says the information qualifies as its financial or commercial information.<sup>74</sup> As well, E-Comm submits the information at issue is similar to how past OIPC orders have defined “financial” or “commercial” information which includes information such as hourly rates, contract amounts, prices, expenses and fees payable under a contract.<sup>75</sup>

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<sup>73</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 59.

<sup>74</sup> E-Comm’s submission dated March 14, 2022 at para. 34.

<sup>75</sup> *Ibid* at para. 36, citing Order F18-39, 2018 BCIPC 42 (CanLII) at para. 19.

[81] The applicant submits the information at issue is not "commercial" information, as past OIPC orders have found, because it does not relate in any way with the buying and selling of goods and services.<sup>76</sup> It says the withheld information is about "the volume of calls received by E-Comm on a daily basis and the manner in which those calls were processed", which it argues does not qualify as "commercial" or "financial" information.<sup>77</sup>

[82] For the reasons to follow, I find the information at issue does not qualify as "commercial" or "financial" information. FIPPA does not define the terms "commercial information" or "financial information". However, previous OIPC orders have found information is "commercial" information if it relates to commerce such as the buying, selling or exchange of goods and services carried on by a particular entity, including the terms, conditions and methods for providing the services and products.<sup>78</sup> Information is "financial" if it is about things such as prices charged for goods and services, assets, liabilities, expenses, cash flow, profit and loss data, operating costs, financial resources or arrangements.<sup>79</sup>

[83] I conclude the information at issue here does not fall under any of those previous interpretations of the terms "commercial" or "financial" information. The withheld information consists of statistical information about call volumes such as the number of calls answered and abandoned, wait times and E-Comm's performance targets that was used by E-Comm for internal review purposes.<sup>80</sup> While this information is related to E-Comm's business activities, it does not qualify as "commercial" or "financial" information as set out above. For example, the information at issue is not financial data and it does not consist of the contractual terms and conditions under which E-Comm will provide its services.

[84] For those reasons, I conclude s. 17(1)(b) does not apply to the information withheld in the daily reports. Having found the information at issue does not qualify as "commercial" or "financial" information, it is not necessary to consider the other criteria under this provision since all elements under s. 17(1)(b) must be met.

**Is there a reasonable expectation of probable harm in accordance with ss. 17(1)(f) and 17(1)?**

[85] Section 17(1)(f) relates to the disclosure of information that could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia. Previous OIPC orders have found that

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<sup>76</sup> Applicant's submission dated April 5, 2022 at paras. 48-49, citing Order F07-06, 2007 CanLII 9597 (BCIPC) at para. 22.

<sup>77</sup> Applicant's submission dated April 5, 2022 at para. 50.

<sup>78</sup> For example, Order F11-12, 2011 BCIPC 15 (CanLII) at paras. 54-55.

<sup>79</sup> For example, Order F11-25, 2011 BCIPC 31 (CanLII) at para. 34 with regards to s. 17(1)(b) and Order F17-41, 2017 BCIPC 45 (CanLII) at paras. 59-61 with regards to s. 21(1) of FIPPA.

<sup>80</sup> S.H.'s affidavit #2 at paras. 3-5.

s. 17(1)(f) applies to information that reveals valuable information or a key aspect of a public body's negotiating position that could give another party a negotiating advantage to the detriment of the public body's financial interests or otherwise harm a public body's financial interests.<sup>81</sup>

[86] E-Comm submits s. 17(1)(f) applies "where disclosure of the disputed information might reveal the negotiating position of a public body or that might permit future negotiating partners to orient their negotiations in [a] particular way."<sup>82</sup> E-Comm contends that s. 17(1)(f) applies to the information at issue here because member agencies will "orient their negotiations to perceived performance issues or resource allocation issues" based on "inaccurate and unreliable data" and that "focussing unnecessarily on these issues would interfere with meaningful interest based negotiations and prevent parties from dealing with other important issues."<sup>83</sup>

[87] E-Comm further contends that the disclosure of the withheld information would result in "misperceptions about how E-Comm delegates its resources to certain member agencies" which would "necessarily impair or damage E-Comm's negotiation position with other member agencies for future service contracts."<sup>84</sup> E-Comm says the information at issue does not reveal its "confidential negotiating position", but it argues that "the circulation of inaccurate or misleading historical data about service volume and performance could create confusion and protracted negotiations or cause member agencies to seek funding reductions."<sup>85</sup>

[88] The applicant submits there is no evidence of a reasonable expectation of probable harm to E-Comm's future negotiating position pursuant to s. 17(1)(f). The applicant contends the information at issue is not about how E-Comm formulates its negotiation position or how it enters into contracts with its member agencies. Therefore, the applicant submits there is no rational connection between the information at issue, which is about E-Comm's historical performance data, and any potential negotiations it may have with member agencies.

[89] I understand E-Comm is arguing that member agencies will misinterpret the information at issue to mean that E-Comm is doing a bad job and develop the inaccurate impression that not all member agencies are getting a fair share of its resources. Therefore, E-Comm submits disclosure of the information at issue could reasonably be expected to harm its financial or economic interests by creating confusion, interfere with contract negotiations, reduce the amount of

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<sup>81</sup> Order F20-38, 2020 BCIPC 44 (CanLII) at paras. 62-63 and Order F17-10, 2017 BCIPC 11 (CanLII) at para. 19 and the cases cited therein.

<sup>82</sup> E-Comm's submission dated March 14, 2022 at para. 30, citing Order F10-34, 2010 BCIPC 50 (CanLII).

<sup>83</sup> E-Comm's submission dated March 14, 2022 at paras. 31-32.

<sup>84</sup> *Ibid* at para. 32.

<sup>85</sup> E-Comm's submission dated April 21, 2022 at para. 26.

funding it gets from member agencies and require it to spend time and money on correcting these misperceptions.

[90] I find these arguments are similar to what E-Comm has argued under s. 17(1) generally. For the same reasons given previously at paragraphs 62 to 77 of this order, I am not satisfied that the risk of the public or E-Comm's member agencies misinterpreting or misunderstanding the information at issue resulting in reasonable expectation of probable harm to E-Comm's financial or economic interests is well beyond the merely possible or speculative.

[91] I am also not satisfied that there is a direct link between the disclosure of the information at issue here and the alleged harm. Based on my own review of the records, I am not persuaded that any third parties, armed with knowledge of the information at issue, could reasonably be expected to gain a negotiating advantage to E-Comm's financial detriment. E-Comm has not sufficiently explained how the information at issue reveals valuable information or a key aspect of its position for any current or future negotiations. I also find it relevant that E-Comm has acknowledged that the information at issue does not reveal its "confidential negotiating position."<sup>86</sup> As a result, I am not satisfied that disclosing the information at issue could result in a reasonable expectation of harm to E-Comm's negotiating position for the purposes of ss. 17(1)(f) and 17(1).

## CONCLUSION

[92] To conclude, I am not persuaded that disclosure of the information at issue could reasonably be expected to harm E-Comm's negotiating position or that the harms referred to in its argument and evidence could reasonably be expected to flow from disclosing the information at issue. As a result, I am not satisfied there is a reasonable expectation of probable harm to E-Comm's financial or economic interests in accordance with s. 17(1).

[93] Therefore, for the reasons set out above, I make the following order under s. 58 of FIPPA:

1. I require E-Comm to give the applicant access to all of the records at issue since it is not authorized to refuse access under s. 17(1).
2. In providing the applicant with access to the entirety of the records at issue, E-Comm must concurrently provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order, along with a copy of the relevant records.

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<sup>86</sup> E-Comm's submission dated April 21, 2022 at para. 26.

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[94] Under s. 59 of FIPPA, E-Comm is required to give the applicant access to the records that it is not authorized to withhold by **August 30, 2022**.

July 18, 2022

**ORIGINAL SIGNED BY**

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Lisa Siew, Adjudicator

OIPC File No.: F19-81385