



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F24-69

CITY OF VANCOUVER

Celia Francis
Adjudicator

July 19, 2024

CanLII Cite: 2024 BCIPC 79

Quicklaw Cite: [2024] B.C.I.P.C.D. No. 79

Summary: An applicant requested, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a copy of an agreement between the City of Vancouver (City) and the Vancouver Canadians baseball team for the use of Nat Bailey Stadium. The City disclosed the agreement in severed form, withholding some information under s. 21(1) of FIPPA (harm to third-party business interests). The adjudicator noted that the City had disclosed some of the withheld information in a public report in 2012 but, nevertheless, considered all of the information in dispute. The adjudicator found that s. 21(1) did not apply to the withheld information and ordered the City to disclose it to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 21(1)(a)(ii), 21(1)(b).

INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Vancouver (City) for a copy of the current agreement, including any extensions or amendments, between the City and the Vancouver Canadians baseball team, for the use of Nat Bailey Stadium. The City disclosed most of the agreement, withholding some information under s. 21(1) of FIPPA (harm to third-party business interests).

[2] The applicant asked that the Office of the Information and Privacy Commissioner (OIPC) review the City's decision to withhold information. Mediation by the OIPC did not resolve the issues and the matter proceeded to inquiry. The OIPC received submissions from the applicant, the City and Vancouver Professional Baseball LLP (VPB), the legal entity that contracts on behalf of the Vancouver Canadians baseball team.

PRELIMINARY ISSUE

[3] The applicant said that some financial details from the agreement have been publicly available for more than a decade. He said that a 2012 report to the Vancouver Board of Parks and Recreation (Parks Board), published on the City's website, contained these details:

The key terms of the agreement include:

- An initial term of five years plus four five year renewals at the option of the VPB.
- Capital contributions by both parties of up to \$2.5 million each, to improve and upgrade the stadium and field and to improve the safety of the facility.
- A rent free period for the initial five year term and in following terms an annual minimum rent of \$100,000 plus 4% of gross revenues beyond \$2.5 million.

In order to recognize the additional investment of \$698,000 VPB has requested an amendment to the current agreement that would adjust the annual minimum rent from \$100,000 to the following level for the second five year term:

- Year 1 \$25,000
- Year 2 \$50,000
- Year 3 \$75,000
- Year 4&5 \$100,000¹

[4] The applicant questioned why, in this case, the VPB and the City would resist disclosure of the information in dispute.²

[5] In its reply submission, the City said it was unaware that these terms had been considered in an open meeting of, and publicly posted by, the Parks Board when it processed the request and prepared its initial inquiry submissions. The City added that, given the late stage of the inquiry, it takes no position on the impact of this information on the applicability of s. 21 to the information in dispute.³

[6] The City provided copies of the June 12, 2012 report to the Parks Board which contains the information quoted above, as well as the recommendation that the rent be amended as the VPB requested. The City also provided a copy of the minutes of the Parks Board meeting of July 9, 2012 which noted that the

¹ Applicant's response, paras. 45

² Applicant's response, paras. 46.

³ City's reply, para. 4.

Parks Board had adopted the report on the agreement.⁴ I also note that the City provided information on the dates of the agreement renewals in its submission.⁵

[7] The VPB did not address this revelation.

[8] Although some of the information in dispute has been made public, I have considered all of the withheld information.

ISSUE AND BURDEN

[9] The issue to be decided in this inquiry is whether s. 21(1) of FIPPA requires the City to withhold the information in dispute.

[10] Under s. 57(2) of FIPPA, the City has the burden of proof respecting s. 21(1).

DISCUSSION

Background

[11] The Vancouver Canadians Baseball Club is a Minor League Baseball (“MiLB”) team known as the “Vancouver Canadians” and is located in Vancouver, British Columbia. The club is a member of the Northwest League and is affiliated with the Toronto Blue Jays.⁶

[12] The City owns Nat Bailey Stadium. The Parks Board manages operations at Nat Bailey Stadium, including the administration of the agreement between VPB and the City for use of Nat Bailey Stadium.⁷ The City, represented by the Parks Board, first entered into the agreement in 2007 and renewed it in 2012. The agreement contemplates a series of five-year renewal terms, up to 2032.⁸

Information in dispute

[13] The responsive records consist of a 160-page document from 2012 entitled “Nat Bailey Stadium Amended and Restated Amendment #1 Agreement” (Agreement) and a four page document from 2015 entitled “Modification of Lease” (Modification Agreement).

⁴ Attachments to City’s reply.

⁵ City’s initial submission, para. 15.

⁶ VPB’s initial submission, para. 7.

⁷ Affidavit of the City’s Manager of Commercial Operations for the Parks Board, paras. 2-3.

⁸ City’s initial submission, paras. 14-15; Affidavit of the City’s Manager of Commercial Operations for the Parks Board, para. 6.

[14] The City disclosed the Modification Agreement in full.⁹ The City withheld five items in the Agreement's table of contents, as well as some or all of the following paragraphs in the text of the Agreement:

- 2.3 Minimum Rent
- 2.4 Percentage Rent
- 2.5 Free Rent Period – First Term Only
- 2.7 Payment of Percentage Rent
- 8.3 Exceptions to Requirement for Landlord's Consent
- 8.6 Transfers – Defined
- Schedule H – Rent Calculation for First Renewal Term

[15] The City withheld this information under s. 21(1) and it is the information in dispute.

Harm to third-party business interests – s. 21(1)

[16] The City and the VPB believe that the information in dispute should be withheld under s. 21(1).¹⁰ The applicant disagrees.¹¹

[17] The relevant parts of s. 21(1) of FIPPA read as follows:

21(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

...

(ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

...

(iii) result in undue financial loss or gain to any person or organization, ...

[18] Previous orders and court decisions have established the principles for determining whether s. 21(1) applies.¹² All three parts of the s. 21(1) test must be met in order for the information in dispute to be properly withheld. The City must demonstrate the following:

⁹ City's initial submission, para. 35.

¹⁰ City's initial submission, para. 7; VPB's initial submission, para. 12.

¹¹ Applicant's response, para. 59.

¹² See, for example, Order 03-02, 2003 CanLII 49166 (BCIPC), Order 03-15, 2003 CanLII 49185 (BCIPC), and Order 01-39, 2001 CanLII 21593 (BCIPC).

- that disclosing the information at issue would reveal one or more types of information listed in s. 21(1)(a);
- that the information was supplied, implicitly or explicitly, in confidence, within the meaning of s. 21(1)(b); and
- that disclosure of the information could reasonably be expected to cause one or more of the harms set out in s. 21(1)(c).

Type of information – s. 21(1)(a)(ii)

[19] The parties agreed that the information in dispute is financial or commercial information of or about VPB.¹³

[20] FIPPA does not define “commercial” or “technical” information. However, past orders have found that

- “financial information” is information about money and its uses, for instance, prices, expenses, hourly rates, contract amounts and budgets;¹⁴ and
- “commercial information” relates to commerce, or the buying, selling, exchanging or providing of goods and services; the information does not need to be proprietary in nature or have an actual or potential independent market or monetary value.¹⁵

[21] The information in dispute consists of rental amounts, terms for payment of rent, method of calculating rent and exceptions for the requirement for the City to consent to certain team transfers. I am satisfied that it is all financial or commercial information of or about the VPB for the purposes of s. 21(1)(a)(ii). I will consider next whether this information falls under s. 21(1)(b).

Supply in confidence – s. 21(1)(b)

[22] The next step is to determine whether the information I found is financial or commercial information of or about VPB was “supplied, implicitly or explicitly, in confidence”. The information must be both “supplied” and supplied “in confidence”.¹⁶

[23] The City and the VPB said the information in dispute falls under s. 21(1)(b). The applicant disagreed.

¹³ VPB’s initial submission, para. 15; City’s initial submission, para. 36; applicant’s reply, para. 18.

¹⁴ Order F21-65, 2021 BCIPC (CanLII), at para 76.

¹⁵ See Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 17, and Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 62.

¹⁶ See, for example, Order F17-14, 2017 BCIPC 15 (CanLII) at paras. 13-21, Order 01-39, 2001 CanLII 21593 (BC IPC) at para. 26, and Order F14-28, 2014 BCIPC 31 (CanLII) at paras. 17-18.

Supply

[24] BC orders have consistently found that information in an agreement or contract will not normally qualify as “supplied” by the third party for the purposes of s. 21(1)(b), because the information is the product of negotiations between the parties. Order 01-39 also said this about the “supply” element in contracts:

By their nature, contracts are negotiated between the contracting parties. The fact that the requested records are contracts therefore suggests that the information in them was negotiated rather than supplied. It is up to CPR, as the party resisting disclosure, to establish with evidence that all or part of the information contained in the contracts including their schedules was not negotiated, as would normally be the case, but was “supplied” within the meaning of s. 21(1)(b).¹⁷

[25] This is so, even where the information was subject to little or no back and forth negotiation. There are two exceptions to this rule:

- where the information the third party provided was “immutable” (i.e., not open or susceptible to negotiation) and was incorporated into the agreement without change; or
- where the information in the agreement could allow someone to draw an “accurate inference” about underlying information a third party had supplied in confidence but which does not expressly appear in the agreement.¹⁸

[26] Both the City and VPB acknowledged that past orders have found that information in an agreement is not ordinarily held to be “supplied”. However, the VPB said, the information in dispute falls into one or both of the exceptions set out just above.¹⁹ The City supported VPB in this position.²⁰

[27] The applicant argued that the information in dispute was negotiated.²¹ The applicant argued that the Agreement itself describes negotiations that took place between the City and VPB about financial terms. For example, the applicant said, the agreement describes a request from VPB, which the Parks Board approved, to reduce its rent in recognition of investments it had made in the stadium.²²

[28] I agree. I also note that the severed record is itself entitled an “Agreement” and is signed by representatives of the City and the VPB. This supports the

¹⁷ Order 01-39, 2001 CanLII 21593 (BCIPC), at para. 43.

¹⁸ Order 01-39, 2001 CanLII 21593 (BCIPC), at para. 45.

¹⁹ VPB’s initial submission, para. 18.

²⁰ City’s initial submission, paras. 24, 37.

²¹ Applicant’s response, paras. 22-23.

²² Applicant’s response, para. 22, with reference to para. J of the Introduction to the Agreement.

conclusion that the Agreement consists of negotiated information that the City and the VPB agreed on.

[29] Furthermore, the Agreement includes several statements that the City (as Landlord) and the VPB (as Tenant) “agreed” to the terms and schedules that follow, for example, the opening words to the Agreement:

This Agreement is evidence that in consideration of the terms and conditions set out below (the receipt and sufficiency of which is acknowledged by the Landlord and Tenant), the Landlord and Tenant now agree with each other as follows: ...

[30] Other statements in the Agreement also say that the City and the VPB “agree” to certain terms, e.g., paras. F and K of the Introduction; para. 1.9 of the Agreement; para. H.1, Schedule H. The 2015 Modification Agreement also contains statements that the City and the VPB agreed to modify certain terms in the 2012 Agreement.

[31] I find, based on the above, that the information was not “supplied” within the meaning of s. 21(1)(b). I will, nevertheless, consider whether it falls within the exceptions set out above.

Immutable information

[32] **Fixed costs and transfer details:** The VPB said that it supplied “immutable” information which, it said, consists of the following: fixed costs that determine the floor for the financial terms of the lease; and transfer provisions for the lease that are specific to the operation of the baseball club.²³

[33] The applicant disputed this argument, saying that the VPB had provided no evidence to support its position.²⁴

[34] The VPB did not point to any supposed “fixed costs” in the Agreement or explain how they were “immutable”.

[35] The withheld transfer provisions appear to be similar in character to the disclosed ones. It is not clear why the two types of information were treated differently.

[36] **Policies:** The VPB also said that the Agreement contains immutable and detailed information about sensitive policies related to the relocation of teams based on their performance.²⁵ It said this information is

²³ VPBs initial submission, paras. 14-21.

²⁴ Applicant’s response. paras. 25-26.

²⁵ VPBs initial submission, paras. 14-21.

... specific to the rules and regulations that govern MiLB. These highly sensitive provisions were supplied by the Baseball Club to the City on the basis that those sections had to be included in the lease in order for the Baseball Club to receive approval from the MLB PDL [Major League Baseball Professional Development League] for the purchase of the franchise rights from the prior owner.²⁶

[37] The applicant disputed this argument and added that the agreement was established in 2012 but that the MLB PDL did not come into existence until 2021. In the applicant's view, there is no way the agreement could incorporate policy information for an organization that would not exist for another nine years.²⁷

[38] The VPB responded that, prior to the MLB PDL, it was governed by the policies of its predecessor, the National Association of Professional Baseball Leagues and that these "highly sensitive policies are now its own".²⁸

[39] The VPB did not point to the withheld information it considers to be its "highly sensitive policies". The VPB also did not explain how these policies were "highly sensitive" or what this means.

[40] In conclusion, I find the submissions of the VPB and the City on the issue of "immutability" were vague and lacking in specifics as to the nature of the original information and how any of this supposedly "immutable" information was incorporated unchanged into the Agreement. The VPB and the City have not persuaded me that any of the withheld information falls into the "immutable" exception for the purposes of s. 21(1)(b).

Reveal underlying confidential information

[41] VPB said that disclosure of the information in dispute would permit the drawing of accurate inferences about underlying confidential financial information that it supplied to the City.²⁹ It added this:

The Baseball Club continues to provide the City with confidential financial statements as part of its obligations under the lease. The contents of those financial statements assist in finalizing the determination of amounts payable by the Baseball Club to the City for the lease of the Stadium Grounds.³⁰

[42] The VPB did not explain what underlying information would be revealed if the information in dispute were disclosed, nor how this would occur. The applicant suggested that the Agreement sets out a formula that is used to

²⁶ VPB's initial submission, para. 21.

²⁷ Applicant's response, paras. 29-30.

²⁸ VPB's reply, para. 3.

²⁹ VPB's initial submission, para. 18.

³⁰ VPB's initial submission, para. 19.

calculate rent for the stadium, based on the VPB's annual revenues. The applicant argued, and I agree, that the value of those revenues would not have been known at the time of the contract negotiations and that the formula itself would have been the product of negotiations.³¹

[43] In conclusion, the VPB and the City have not persuaded me that disclosure of the withheld information would reveal any underlying, confidentially-supplied information, for the purposes of s. 21(1)(b).

[44] For reasons discussed above, I find that the information in dispute was not "supplied". I need not therefore consider whether it was supplied explicitly or implicitly "in confidence". I find that s. 21(1)(b) does not apply to the information.

Conclusion on s. 21(1)

[45] Since all three parts of the s. 21(1) test must be met, my finding that s. 21(1)(b) does not apply means that s. 21(1) does not apply. Consequently, I need not consider whether disclosure could reasonably be expected to result in significant harm to the VPB under s. 21(1)(c).

[46] The City has not met its burden of proof. I find that s. 21(1) does not apply to any of the withheld information.

CONCLUSION

[47] For the reasons given above, under s. 58 of FIPPA:

1. The City is required to disclose the information in dispute to the applicant.
2. The City must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the information in dispute described at item 1 above.

[48] Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by September 3, 2024.

July 19, 2024

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F22-89107

³¹ Applicant's response, paras. 31-37.