



Order F25-21

## CITY OF PRINCE RUPERT

Lisa Siew  
Adjudicator

March 24, 2025

CanLII Cite: 2025 BCIPC 25  
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 25

**Summary:** An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to an agreement between the City of Prince Rupert (City) and a business engaged in construction contracting. After consulting with that business, the City provided the applicant with partial access to the requested record but withheld information in the agreement under s. 21(1) (harm to a third party’s business interests) of FIPPA. The applicant requested the Office of the Information and Privacy Commissioner review the City’s decision to refuse access under s. 21(1). The adjudicator determined the requirements of s. 21(1) had not been met and ordered the City to disclose all the redacted information to the applicant.

**Statute Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, Schedule 1 (definition of “trade secret”), ss. 21(1)(a)(i), 21(1)(a)(ii), 21(1)(b).

### INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the City of Prince Rupert (City) provide access to a “Master Service Agreement” referenced in a March 2022 City Council document.<sup>1</sup> The master service agreement is between the City and a business engaged in construction contracting named Coast Tsimshian Northern Contractors Alliance Limited Partnership (Northern).

[2] After consulting with Northern, the City provided the applicant with partial access to the requested record but withheld information under s. 21(1) (harm to a third party’s business interests) of FIPPA. The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the City’s decision to refuse access under s. 21(1).

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<sup>1</sup> Applicant’s access request dated September 7, 2022. The applicant refers to this document as a “Council Summary.” The parties provided no further explanation or description about this document.

[3] As a result of the OIPC’s review and mediation process, the City provided the applicant with access to some information that it had previously withheld in the responsive record. However, the parties were not able to resolve the remaining matters in dispute, and the applicant requested an inquiry. The OIPC notified Northern<sup>2</sup> of the applicant’s request for review and invited it to participate in the inquiry.<sup>3</sup> Northern provided a submission for the inquiry.<sup>4</sup>

## **ISSUE AND BURDEN OF PROOF**

[4] The issue I must decide in this inquiry is whether the City is required to withhold the information at issue under s. 21(1).

[5] Section 57 of FIPPA sets out which party bears the burden of proof in an inquiry. After consulting with Northern, the City decided to refuse the applicant access to the information at issue in the responsive records.<sup>5</sup> Given the City’s decision, s. 57(1) of FIPPA places the burden on the City to prove the applicant has no right of access to the information at issue in the disputed records under s. 21(1).<sup>6</sup>

## **DISCUSSION**

### ***Background***

[6] The City issued a request for proposals for “the purposes of soliciting responses from suitably qualified contractors to undertake installation and construction work, as-and-when required by the [City].”<sup>7</sup> Northern submitted a successful proposal for the anticipated work. The City and Northern signed off on a master service agreement for future installation and construction work.

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

[7] The record responsive to the applicant’s access request, and at issue in this inquiry, is the master service agreement (the Agreement). The Agreement is

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<sup>2</sup> The notice was sent to a company named JV Driver Corporation Inc. The OIPC’s registrar of inquiries determined JV Driver Corporation Inc. was the appropriate contact for Northern.

<sup>3</sup> Under s. 54(b) of FIPPA, the OIPC has the authority to provide a copy of the applicant’s request for review to any person the Commissioner considers appropriate. Under s. 56(3), that person must be given an opportunity to make representations to the Commissioner or their delegate during the inquiry.

<sup>4</sup> An individual identified as Northern’s Business Manager provided the submission.

<sup>5</sup> City’s submission dated October 4, 2024.

<sup>6</sup> If the City had decided to give the applicant access to all or part of the disputed record, then s. 57(3) places the burden on the third party (in this case Northern) to prove the applicant has no right of access under s. 21(1).

<sup>7</sup> Information disclosed on p. 9 of the record.

between the City and Northern and totals 91 pages, which includes several appendices. The City initially withheld information on approximately 36 pages of the Agreement.

[8] After the notice of inquiry was issued, and at the request of the City, Northern agreed to review and “reduce the amount of redactments [*sic*]” in the Agreement.<sup>8</sup> Having completed its review, Northern currently objects to the disclosure of information on 5 pages of the Agreement.

[9] During the inquiry, the City reconsidered its decision and released additional information to the applicant. The City is now only refusing the applicant access to the information that Northern opposes disclosing in the Agreement.<sup>9</sup> Therefore, the information at issue in this inquiry is now limited to information redacted from 5 pages of the Agreement.<sup>10</sup>

### **Section 21(1) – disclosure harmful to third-party business interests**

[10] Section 21(1) of FIPPA requires public bodies to refuse to disclose information that could reasonably be expected to harm the business interests of a third party. Schedule 1 of FIPPA defines a “third party” to mean “any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.” It is not in dispute that Northern is a third party under FIPPA.

[11] Past jurisprudence has established the principles and analysis for determining whether s. 21(1) applies.<sup>11</sup> The party resisting disclosure must first demonstrate that disclosing the information at issue would reveal the type of information listed in s. 21(1)(a). Next, it must show that this information was supplied in confidence to the public body under s. 21(1)(b). Finally, it must establish that disclosure of the information at issue could reasonably be expected to cause one or more of the harms set out in s. 21(1)(c). All three elements must be met to properly withhold information under s. 21(1). I will discuss these requirements and the parties’ arguments below.

#### *Section 21(1)(a): What type of information has been withheld?*

[12] Section 21(1)(a)(i) applies to information that would reveal trade secrets of a third party. Section 21(1)(a)(ii) applies to information that would reveal commercial, financial, labour relations, scientific or technical information of or about a third party. Although it bears the burden of proof, the City did not provide

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<sup>8</sup> City’s submission dated October 4, 2024.

<sup>9</sup> City’s email to OIPC’s Registrar of Inquiries dated March 13, 2025.

<sup>10</sup> This information is located on pp.10-13 and 78 of the Agreement.

<sup>11</sup> See for example, Order F17-14, 2017 BCIPC 15 at para. 9 and *Vancouver Whitecaps FC LP v. British Columbia (Information and Privacy Commissioner)*, 2020 BCSC 2035.

sufficient explanation or evidence as to how the redacted information at issue would reveal the type of information listed in either ss. 21(1)(a)(i) or (ii).

[13] However, Northern submits the information at issue includes its “commercial rates” which it describes as “proprietary” and a “trade secret.”<sup>12</sup> Northern says disclosure of this information would “expose sensitive pricing structures that directly reflect [its] proprietary process and methodologies.”<sup>13</sup> I understand Northern is arguing some of the redacted information would reveal its commercial or financial information or trade secrets.

[14] Section 21(1)(a)(ii) applies to commercial or financial information of, or about, a third party. FIPPA does not define the terms “commercial” or “financial” information. However, previous OIPC orders have found information is “commercial” information if it relates to commerce and the buying and selling of goods and services, including the terms, conditions and methods that a third party proposes to supply the goods or perform the services.<sup>14</sup> Previous OIPC orders have also found that the prices a third party charges for goods and services and other fees payable under a contract are both “commercial” and “financial” information of, or about, a third party.<sup>15</sup>

[15] Section 21(1)(a)(i) applies to information that would reveal trade secrets of a third party. The term “trade secret” is defined in Schedule 1 of FIPPA, to mean information, including a formula, pattern, compilation, program, device, product, method, technique or process, that: (a) is used, or may be used, in business or for any commercial advantage, (b) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, (c) is the subject of reasonable efforts to prevent it from becoming generally known, (d) and the disclosure of which would result in harm or improper benefit. To qualify as a “trade secret” under FIPPA, all four elements set out in the definition must be met.

[16] The information at issue is found under the following sections of the Agreement:

- Term<sup>16</sup>
- Mark-up<sup>17</sup>
- Representatives<sup>18</sup>

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<sup>12</sup> Northern’s submission dated October 4, 2024.

<sup>13</sup> Northern’s submission dated October 4, 2024.

<sup>14</sup> For example, Order F05-09, 2005 CanLII 11960 (BC IPC) at para. 9.

<sup>15</sup> See Order F16-17, 2016 BCIPC 19 (CanLII) at para. 22 and Order F13-20, 2013 BCIPC 27 (CanLII) at para. 14.

<sup>16</sup> Page 10 of the record.

<sup>17</sup> Page 11 of the record.

<sup>18</sup> Page 12 of the record.

- Notices<sup>19</sup>
- Appendix E - Schedule of Quantities and Prices<sup>20</sup>

[17] I find the redacted information in “Appendix E” and in the sections of the Agreement titled “Term” and “Mark-up” reveal the terms and conditions under which Northern has agreed to provide future installation and construction work for the City, including pricing arrangements. Consistent with previous OIPC orders, I conclude this information qualifies as commercial and financial information about a third party under s. 21(1)(a)(ii). Having found this information is commercial and financial information under s. 21(1)(a)(ii), it is not necessary for me to also consider Northern’s argument that this information qualifies as trade secrets of a third party under s. 21(1)(a)(i). For the s. 21(1) analysis, it is sufficient that the information at issue falls under either ss. 21(1)(a)(i) or (ii).

[18] The rest of the information at issue is found in the sections of the Agreement titled “Representatives” and “Notices” which reveals who the City and Northern each chose as their individual representatives for the purposes of contracting for future work and receiving notices under the Agreement, as well as the chosen representative’s work email address and the mailing address for the City and Northern. Some of this redacted information is about the City such as its mailing address and, therefore, this information is not “of or about a third party” as required under s. 21(1)(a).

[19] For the other redacted information in these sections, I am not persuaded that disclosing this information would reveal commercial or financial information as interpreted by past orders or a third party’s “trade secret” as defined in Schedule 1 of FIPPA. For example, none of this information reveals any details about Northern’s methods, processes, financial arrangements or prices for providing the installation and construction work. Ultimately, it is not apparent, and neither the City nor Northern sufficiently explain, how disclosing this redacted information would reveal the type of information listed in s. 21(1)(a). Therefore, I find the s. 21(1)(a) requirement is not met for the information redacted under the sections titled “Representatives” and “Notices”.

*Section 21(1)(b): Was the information supplied in confidence?*

[20] Having found some of the information at issue qualifies as commercial or financial information under s. 21(1)(a), the next step is to consider s. 21(1)(b). Section 21(1)(b) requires the information to be supplied in confidence and involves a two-part analysis. It is first necessary to determine whether a third party supplied the information at issue to the public body. If so, then the second

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<sup>19</sup> Page 13 of the record.

<sup>20</sup> Page 78 of the record.

part of the analysis is to determine whether the third party supplied that information, implicitly or explicitly, in confidence.<sup>21</sup>

Did Northern supply the information at issue to the City?

[21] In the present case, it is not in dispute the Agreement is a contract between the City and Northern for installation and construction work or that the information at issue is a part of this contract. Previous OIPC orders have established that the contents of a contract between a public body and a third party is normally negotiated and, therefore, that information will not qualify as having been “supplied” under s. 21(1)(b).<sup>22</sup> If the other party must agree to that information or those terms in order for the agreement to proceed, then that information is not “supplied” within the meaning of s. 21(1)(b), even where one party drafted or delivered the contractual terms or simply accepts those terms rather than making any changes.<sup>23</sup> Therefore, with two exceptions which I will discuss below, it is well-established that information in a contract or information that is a part of, or a result of, negotiations between a public body and a third party is not supplied information under s. 21(1)(b).<sup>24</sup>

[22] Prior jurisprudence has established two exceptions to the established rule about contracts and negotiated information under s. 21(1)(b).<sup>25</sup> The first exception is where the information is relatively immutable or not susceptible to change, for example, where the third party has provided fixed overhead or labour costs for inclusion in a contract. For information to be immutable, it must be “non-negotiable” such that the third party could not change the information, even if it wanted to.<sup>26</sup> The second exception is where disclosure would allow a reasonably informed observer to draw accurate inferences about underlying confidential information supplied by a third party. This exception protects information in a negotiated contract that would reveal information that was supplied in confidence by a third party, but which was not expressly contained in the contract.<sup>27</sup>

[23] Although it bears the burden of proof, the City did not provide sufficient explanation or evidence as to how the redacted information at issue was supplied to it for the purposes of s. 21(1)(b). There is also insufficient explanation or

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<sup>21</sup> See Order F15-71, 2015 BCIPC 77 at para. 11.

<sup>22</sup> Order F06-20, 2006 CanLII 37940 (BC IPC) at para. 11.

<sup>23</sup> Order 01-39, 2001 CanLII 21593 (BC IPC) at para. 44.

<sup>24</sup> Order 01-39, 2001 CanLII 21593 (BC IPC) at paras. 43-46, upheld on judicial review in *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, 2002 BCSC 603 at para. 79.

<sup>25</sup> *Vancouver Whitecaps FC LP v British Columbia (Information and Privacy Commissioner)*, 2020 BCSC 2035 (CanLII) at para. 29. Order F15-04, 2015 BCIPC 4 (CanLII) at para. 15.

<sup>26</sup> Order F23-77, 2023 BCIPC 92 at para. 26

<sup>27</sup> *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, 2002 BCSC 603 (CanLII) at para. 75.

evidence in Northern’s submissions to show that all or part of the information at issue in the Agreement was “supplied” within the meaning of s. 21(1)(b) rather than negotiated or susceptible to change, as would normally be the case with the contents of a contract.

[24] Based on my review of the records, it is clear the redacted information was part of a contract. As well, the information in dispute appears to be information that would have been susceptible to change during negotiations or discussions. For example, the parties would have negotiated or had to agree about terms, mark-ups and pricing. It is not apparent, and none of the parties sufficiently explained or provided supporting evidence that establishes the information at issue here is a fixed or immutable cost or how this information would reveal underlying confidential information supplied by a third party. Without sufficient explanation or evidence, I am not persuaded an exception to the general rule about negotiated contract information applies. Therefore, I find the redacted information was not supplied for the purposes of s. 21(1)(b). Accordingly, I find the s. 21(1)(b) requirement is not met for all the information redacted in the Agreement.

#### *Conclusion on s. 21(1)*

[25] To conclude, I find some but not all the information at issue in the Agreement qualifies as commercial and financial information under s. 21(1)(a)(ii). However, I find none of the information at issue was supplied for the purposes of s. 21(1)(b). This finding ultimately determines the issue of whether the City is required to withhold the information at issue under s. 21(1). Since all parts of the s. 21(1) test must be met, it is not necessary for me to consider whether the third party supplied that information to the public body in confidence or whether disclosure of the information at issue could reasonably be expected to cause one of the harms listed under s. 21(1)(c).<sup>28</sup> Ultimately, I find s. 21(1) does not apply to any of the information in dispute.

## **CONCLUSION**

[26] For the reasons discussed above, I find the City is not required to refuse to disclose the redacted information at issue under s. 21(1) of FIPPA, and I make the following orders:

1. Under s. 58(2)(a), I require the City to give the applicant access to all of the information redacted in the Agreement.

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<sup>28</sup> The BC Supreme Court approved this approach in *Vancouver Whitecaps FC LP v British Columbia (Information and Privacy Commissioner)*, 2020 BCSC 2035 (CanLII) at para. 53.

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2. Under s. 58(4), I require the City to provide the OIPC's Registrar of Inquiries (Registrar) with proof that it has complied with the terms of this order.

[27] Under s. 59(1), the City is required to comply with this order by May 7, 2025.

[28] In accordance with s. 58(5)(c), the Registrar will provide Northern with a copy of this order because they were an appropriate person given notice under s. 54(b).

March 24, 2025

**ORIGINAL SIGNED BY**

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Lisa Siew, Adjudicator

OIPC File No.: F23-91896