



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

Order F25-31

## BC TRANSIT

Lisa Siew  
Adjudicator

April 24, 2025

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**Summary:** An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records related to BC Transit's new electronic fare payment system. BC Transit provided the applicant with partial access to the requested records by withholding some information from those records 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 BC Transit's decision to refuse access under s. 21(1), and the matter was later forwarded to inquiry. The adjudicator determined the requirements of s. 21(1) had not been met and ordered BC Transit to disclose all the redacted information in the responsive records to the applicant.

**Statute Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 21(1), 21(1)(a), 21(1)(b), 21(1)(c), 21(1)(c)(i), 21(1)(c)(iii) and Schedule 1 (definitions of "third party" and "trade secret").

## INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) requested BC Transit provide access to records related to BC Transit's new electronic fare payment system and the vendor chosen to create that system. The applicant was interested in "all price bids submitted by the vendors as part of their proposals and records of evaluations of the proposals, including score sheets" and "the contract of the winning vendor" which was Cubic Transportation Systems Inc. (Cubic).<sup>1</sup>

[2] BC Transit located several records responsive to the applicant's access request. Some of the information in those records was about Cubic, while other information was about Conduent Solutions (Conduent). Conduent had submitted a competing proposal for the project. BC Transit consulted with both Cubic and

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<sup>1</sup> Applicant's revised access request dated May 5, 2022.

Conduent about the applicant's access request. Both companies requested BC Transit refuse access to some information in the responsive records.

[3] BC Transit disclosed some information in the records to the applicant but withheld, under s. 21(1) (disclosure harmful to a third party's business interests), the information that either Cubic or Conduent did not want disclosed. BC Transit also decided to withhold some information under s. 21(1) related to Conduent that Conduent did not ask BC Transit to withhold.

[4] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review BC Transit's decision to refuse access under s. 21(1). As a result of the OIPC's review and mediation process, BC Transit disclosed some additional information in the records to the applicant. However, the dispute between the parties was not resolved and the applicant requested the matter proceed to this inquiry.

[5] During the inquiry, the OIPC notified both Cubic and Conduent of the applicant's request for review and invited them to participate in this inquiry.<sup>2</sup> Both Cubic and Conduent made written submissions.

[6] As well, during the inquiry, BC Transit requested s. 17(1) (harm to financial or economic interests) be added as an issue to the inquiry. As the Commissioner's delegate assigned to decide that matter, I refused BC Transit's request to add s. 17(1) to the inquiry.<sup>3</sup>

## **PRELIMINARY ISSUES**

[7] As I will explain below, there are several preliminary issues that I need to address regarding the records and information at issue in this inquiry. There is also an additional matter raised in the applicant's submission that was not listed in the notice of inquiry.

### *Information that is no longer at issue*

[8] BC Transit provided the applicant with the responsive records in three batches, which I will refer to throughout this order as Records Package #1, #2 and #3. The applicant says he does not "oppose the redactions" in Records Package #2.<sup>4</sup> Therefore, I conclude the information redacted in Records Package #2 is no longer at issue in this inquiry and I will not consider, as part of this

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<sup>2</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>3</sup> OIPC letter to BC Transit and the other parties, dated March 27, 2025.

<sup>4</sup> Applicant's email submission dated November 15, 2024.

inquiry, whether BC Transit is required to withhold that information under s. 21(1).

*Information already disclosed to the applicant*

[9] In its inquiry submission, Cubic objects to the disclosure of the following information in the responsive records: (1) Cubic’s “Acceptable Use of Technology” policy;<sup>5</sup> and (2) Cubic’s insurance coverage regarding the project.<sup>6</sup> However, BC Transit has already disclosed this information to the applicant. During the inquiry, I asked the parties to clarify their positions regarding this withheld information and whether BC Transit had consulted with Cubic about this information before disclosing it to the applicant.

[10] Cubic says it was unaware BC Transit had already disclosed this information to the applicant and that this information should not have been released.<sup>7</sup> Cubic argues, “for any subsequent release under this current FOI request, these pages should not be provided to the applicant” and that it “reserve[s] all rights in respect of potential further recourse to be taken.”<sup>8</sup>

[11] On the other hand, BC Transit says that it did consult with Cubic about this information.<sup>9</sup> BC Transit explains that Cubic initially opposed disclosing its “Acceptable Use of Technology” policy but later changed its mind when BC Transit asked Cubic to reconsider and explain how s. 21(1) applied to the information in the policy. BC Transit says Cubic eventually agreed that the information in the policy could not be withheld under FIPPA; therefore, BC Transit disclosed the entire policy to the applicant.

[12] Regarding the information about Cubic’s insurance coverage, BC Transit says it had also consulted with Cubic about this information and that Cubic objected to the release of that information. BC Transit explained that it originally agreed to withhold the insurance coverage information, but later changed its mind during mediation and disclosed this information to the applicant.<sup>10</sup> Initially, BC Transit did not explain whether it had consulted with Cubic when it later decided to disclose the insurance coverage information to the applicant.<sup>11</sup> However, after further communication with the parties,<sup>12</sup> BC Transit explained and provided evidence that shows it consulted with Cubic about this information and that Cubic agreed it could be disclosed to the applicant.<sup>13</sup>

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<sup>5</sup> Information located in Records Package #2 on pp. 101-113.

<sup>6</sup> Information located in Records Package #2 on pp. 204-206.

<sup>7</sup> Cubic’s email dated December 10, 2024.

<sup>8</sup> Cubic’s email dated December 10, 2024.

<sup>9</sup> BC Transit’s email dated December 16, 2024.

<sup>10</sup> BC Transit’s email dated December 16, 2024.

<sup>11</sup> BC Transit’s email dated December 16, 2024.

<sup>12</sup> OIPC letter dated January 14, 2025.

<sup>13</sup> BC Transit’s email dated January 14, 2025.

[13] Taking all the above into account, I find the issue of whether the information about Cubic’s “Acceptable Use of Technology” policy and its insurance coverage should be withheld under s. 21(1) of FIPPA is not at issue in this inquiry. This information has already been disclosed to the applicant, and I accept BC Transit’s explanation and evidence that it consulted with Cubic before disclosing this information to the applicant. Cubic did not dispute BC Transit’s assertion that it had agreed this information could be disclosed to the applicant, nor did Cubic sufficiently explain why its position about this information has changed.<sup>14</sup> Therefore, without sufficient explanation or evidence, I am not persuaded there is a reason to include as part of this inquiry the information already disclosed to the applicant about Cubic’s “Acceptable Use of Technology” policy and its insurance coverage.

*Additional issue in the applicant’s submission – s. 25(1)(b) arguments*

[14] The applicant’s submission raises a matter not set out in the OIPC investigator’s fact report or the notice of inquiry. The applicant submits the public has a right to know why BC Transit chose Cubic to create its new electronic fare payment system and how taxpayer dollars, which were used to fund this project, are being spent. The applicant believes this right is much more important than any harm that would purportedly be done to any of the third parties’ commercial interests or their competitive and negotiating position for future contracts.<sup>15</sup>

[15] The applicant also says the redacted information should be released as soon as possible and is “losing value to the public the longer it is not disclosed.”<sup>16</sup> Although the applicant does not explicitly say so, these types of arguments refer to s. 25(1)(b) of FIPPA which requires a public body to disclose information without delay, if the disclosure is clearly in the public interest. This section applies despite any other provision of FIPPA, including s. 21(1).<sup>17</sup>

[16] Section 25(1)(b) was not listed as an issue for this inquiry; therefore, the applicant is introducing a new issue. When parties attempt to introduce new issues at the inquiry stage, it undermines the integrity and effectiveness of the mediation phase of FIPPA’s review process.<sup>18</sup> This process is designed to benefit the parties by clarifying and solidifying the issues and potentially resolving them and determining if they warrant proceeding to inquiry.<sup>19</sup> It is also at this stage that the parties are given the opportunity to raise any additional issues for

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<sup>14</sup> Despite being given an opportunity to do so, neither Cubic nor the applicant responded to BC Transit’s email dated January 14, 2025.

<sup>15</sup> Applicant’s email dated November 15, 2024.

<sup>16</sup> Applicant’s email dated November 15, 2024.

<sup>17</sup> Section 25(2).

<sup>18</sup> Decision F08-02, 2008 CanLII 1647 (BCIPC) at para. 30.

<sup>19</sup> Decision F08-02, 2008 CanLII 1647 (BCIPC) at para. 28, Order F21-21, 2021 BCIPC 26 at para. 10 and Order F20-38, 2020 BCIPC 44 at para. 7.

consideration at mediation or inquiry.<sup>20</sup> That process and its intended benefits are bypassed when a party seeks to add a new issue at inquiry. Therefore, the OIPC's prior consent is required and there must be a valid reason to warrant introducing issues for the first time at the inquiry stage.<sup>21</sup>

[17] The applicant did not seek the OIPC's permission to add this new issue to the inquiry or explain why they did not raise this issue earlier during mediation or why they should be permitted to add this additional issue at the inquiry stage. There is also no evidence the applicant informed the OIPC investigator that the fact report should be amended to include this additional issue. There is also nothing in the parties' submissions that persuades me there is a valid reason for adding this new issue at this late stage and for circumventing the OIPC's mediation and review process and its intended benefits. Therefore, for all those reasons, I decline to add s. 25(1)(b) to this inquiry.

## **ISSUE AND BURDEN OF PROOF**

[18] The issue I must decide in this inquiry is whether BC Transit is required to refuse to disclose the information at issue under s. 21(1).

[19] Section 57 of FIPPA sets out which party bears the burden of proof in an inquiry. After initially consulting with both Cubic and Conduent, BC Transit decided to withhold all the information at issue in this inquiry under s. 21(1), which includes information that Conduent did not ask BC Transit to withhold.<sup>22</sup> Given BC Transit's decision, s. 57(1) places the burden on BC Transit to prove the applicant has no right of access to the information withheld under s. 21(1).<sup>23</sup>

## **DISCUSSION**

### ***Background***

[20] Around 2022, BC Transit announced it was interested in implementing a new electronic fare collection system for the province's public transportation system. As a part of that project, BC Transit sought proposals from interested vendors. Cubic and Conduent each submitted a proposal to BC Transit. BC Transit assessed and ranked those proposals and chose Cubic as the winning vendor.

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<sup>20</sup> Decision F08-02, 2008 CanLII 1647 (BCIPC) at para. 29.

<sup>21</sup> Order F20-38, 2020 BCIPC 44 at para. 7.

<sup>22</sup> BC Transit's email dated December 16, 2024.

<sup>23</sup> If BC Transit had decided to give the applicant access to all or part of the disputed records, then s. 57(3)(b) places the burden on the third party to prove the applicant has no right of access under s. 21(1).

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

[21] The information at issue in this inquiry is found on four pages in Records Package #1 and two pages in Records Package #3 for a total of six pages. Those records and their contents are openly described by the parties or in the records themselves as price bids made by Cubic and Conduent and BC Transit's assessment and ranking of those bids.

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

[22] 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 Cubic and Conduent are third parties under FIPPA. For ease of reference, I will refer to them together as the “Third Parties.”

[23] Past jurisprudence has established the principles and analysis for determining whether s. 21(1) applies.<sup>24</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?*

[24] Section 21(1)(a)(i) applies to information that would reveal trade secrets of a third party. I understand Cubic is arguing disclosing some of the information at issue would reveal its trade secrets. 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, and (d) 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.

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<sup>24</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.

[25] 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. I understand BC Transit and the Third Parties are arguing that disclosing the information at issue would reveal commercial, financial or technical information of, or about, a third party.

[26] FIPPA does not define the terms “commercial information” or “financial information” or “technical” information; however, previous OIPC orders have defined those terms as follows:

- 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>25</sup>
- Information is “financial” information under s. 21(1)(a) 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>26</sup>
- Technical information under s. 21(1)(a)(ii) is information belonging to an organized field of knowledge falling under the general categories of applied science or mechanical arts such as architecture, engineering or electronics.<sup>27</sup> It usually involves information prepared by a professional with the relevant expertise and describes the construction, operation or maintenance of a structure, process, equipment or entity.<sup>28</sup>

[27] The information at issue is found in the following documents: (1) price bids made by Cubic and Conduent;<sup>29</sup> (2) BC Transit’s summary of those bids;<sup>30</sup> and (3) BC Transit’s ranking of those bids and their components.<sup>31</sup> The information in these records is organized into tables, each with several columns and rows.

[28] BC Transit contends its ranking of Conduent’s bid would reveal commercial or technical information under s. 21(1)(a)(ii) because “it provides insights into Conduent’s performance in comparison to others.”<sup>32</sup> Among other things, BC Transit says its ranking of Conduent’s bid would reveal commercial information because “it may reveal Conduent’s competitive standing, strengths,

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<sup>25</sup> For example, Order F09-17, 2009 CanLII 59114 at para. 17.

<sup>26</sup> For example, Order F17-41, 2017 BCIPC 45 (CanLII) at paras. 59-61.

<sup>27</sup> Order F12-13, 2012 BCIPC 18 (CanLII) at para. 11.

<sup>28</sup> Order F13-19, 2013 BCIPC 26 (CanLII) at paras. 11-12.

<sup>29</sup> Information located on p. 1 of Records Package #1 and p. 1 of Records Package #2.

<sup>30</sup> Information located on p. 2 of Records Package #1 and p. 2 of Records Package #2.

<sup>31</sup> Information located on pp. 3 and 4 of Records Package #1.

<sup>32</sup> BC Transit’s submission dated March 14, 2025, referring to p. 4 of Records Package #1. BC Transit made no submissions about p. 3 of Records Package #1 which is related to Cubic.

and weaknesses in the bidding process” or “expose valuable insights into Conduent’s technical strategies, performance, and approach.”<sup>33</sup> BC Transit also argues this information “includes technical assessments, as it evaluates the feasibility, innovation and cost-effectiveness of Conduent’s proposal.”<sup>34</sup>

[29] As for the rest of the information withheld in the disputed records, BC Transit did not provide sufficient explanation or evidence on how this other information would reveal the type of information listed in ss. 21(1)(a)(i) or (ii). However, Cubic argues there is information withheld in the disputed records that would reveal commercial information about itself.<sup>35</sup> Cubic describes this information as “specific line item pricing” and “detailed data on Cubic’s labor rate, cost of materials, year over year escalation, resources required for execution, etc.”<sup>36</sup> In discussing harm under s. 21(1)(c), Cubic also says, “Should a competitor gain access to this information, there is a tangible risk of commercial harm to Cubic and risk of Cubic trade secrets being revealed.”<sup>37</sup> I assume Cubic is arguing the disclosure of the information at issue would reveal its trade secrets under s. 21(1)(a)(i).

[30] Conduent argues some of the information withheld in the disputed records would reveal its “financial and pricing information” and “pricing strategy for competing in fare collection solution tenders.”<sup>38</sup> Although it does not explicitly say so, I understand Conduent is arguing that disclosing some of the information at issue would reveal financial and commercial information about itself under s. 21(1)(a)(ii).

[31] I find some information withheld in the price bids and the summaries reveals the amount each third party was proposing to charge for their goods and services to create a new electronic fare collection system for BC Transit. I am, therefore, satisfied this information relates to the proposed buying and selling of goods and services between BC Transit and the Third Parties. It also reveals the proposed prices for those goods and services and the Third Parties’ anticipated implementation costs and operating expenses. As a result, consistent with past orders, I conclude some of the information withheld in the price bids and summaries reveals commercial or financial information of or about a third party under s. 21(1)(a)(ii). Having found this information reveals commercial and financial information under s. 21(1)(a)(ii), it is not necessary for me to also consider Cubic’s argument that this information would reveal 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 (a)(ii).

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<sup>33</sup> BC Transit’s submission dated March 14, 2025.

<sup>34</sup> BC Transit’s submission dated March 14, 2025.

<sup>35</sup> Information on pp. 1-3 of Records Package #1.

<sup>36</sup> Cubic’s email dated October 23, 2024.

<sup>37</sup> Cubic’s email dated December 6, 2024.

<sup>38</sup> Information on pp. 1-2 of Record Package #3. Conduent’s email dated January 20, 2025.



[32] I note, however, that BC Transit already disclosed some of this commercial and financial information.<sup>39</sup> Having compared the records, I find some of the information at issue under s. 21(1) has already been disclosed to the applicant. BC Transit did not explain this inconsistency with its severing of the responsive records. Given this information has already been disclosed to the applicant, the question is whether disclosing it to the applicant a second time would “reveal” that information in accordance with s. 21(1).

[33] Previous OIPC orders have determined that when it comes to ss. 12(1) and 13(1), both of which also contain the word “reveal”, the disclosure of information that has already been released to an applicant does not “reveal” that information.<sup>40</sup> I agree with that conclusion and adopt the same approach. It makes no logical sense to protect information that has already been disclosed to the applicant. Therefore, I find it would not “reveal” commercial or financial information under s. 21(1)(a) when the redacted information at issue has already been disclosed to the applicant elsewhere in the responsive records. Accordingly, I find the s. 21(1)(a) requirement is not met for this already disclosed information.<sup>41</sup>

[34] I turn now to consider BC Transit’s ranking of the Third Parties’ bids. BC Transit withheld the following information about its ranking of the bids: (1) the total points available to be awarded for specific project requirements; and (2) the numerical score that BC Transit assigned to each third party for how well their bids met those requirements.<sup>42</sup> BC Transit disclosed the name of each requirement being assessed in the Third Parties’ bids such as project management, pricing, technical requirements, and supply management. Cubic argues BC Transit’s ranking of its bid would reveal its trade secrets.<sup>43</sup>

[35] On the other hand, BC Transit submits the information that it redacted in its ranking of the bids would reveal commercial or technical information under s. 21(1)(a)(ii). Among other things, BC Transit says its ranking of Conduent’s bid would reveal commercial information because the information “represents BC Transit’s subjective evaluation of Conduent’s proposal” and has “commercial value as it reflects how Conduent’s proposal was evaluated relative to others.”<sup>44</sup> BC Transit also argues the redacted information is technical information because it includes technical assessments.

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<sup>39</sup> Information withheld on p. 2 but disclosed on p. 1 of Records Package #1 and Information withheld on p. 2 but disclosed on p. 1 of Records Package #3.

<sup>40</sup> Order F24-73, 2024 BCIPC 83 (CanLII) at para. 79 and the orders cited there.

<sup>41</sup> Information located on p. 2 of Records Package #1 and p. 2 of Records Package #3.

<sup>42</sup> Information located on pp. 3-4 of Records Package #1.

<sup>43</sup> Cubic’s email dated December 6, 2024.

<sup>44</sup> BC Transit’s submission dated March 14, 2025.

[36] A previous OIPC order has considered whether information that reveals a public body's scoring or evaluation of a third party's bid proposal is commercial information under s. 21(1)(a). In Order F15-37, the information at issue in that inquiry included the "grade or score" that a public body gave to several third parties' bid proposals (referred to as the scoring information) and the "evaluation categories and the scoring weight" the public body assigned to each category (referred to as the evaluation criteria).<sup>45</sup> Adjudicator Alexander found the scoring information was "commercial information" under s. 21(1)(a)(ii) because it was related to the "buying, selling or exchange of merchandise or services" and was "sufficiently 'about' the proponents" who submitted the bids even though the information was generated by the public body.<sup>46</sup> However, he concluded s. 21(1)(a) did not apply to the evaluation criteria because it was not information "of or about a third party."<sup>47</sup>

[37] In the present case, BC Transit withheld the total points that it determined would be awarded for each project requirement. I find this information is part of BC Transit's evaluation criteria for assessing the bids and only reveals BC Transit's determination of the scoring weight to be assigned for each project requirement rather than any information of or about the Third Parties or their bids. Therefore, consistent with Order F15-37, I find the s. 21(1)(a) requirement is not met for this information because it is not information of or about a third party.

[38] The rest of the information at issue in BC Transit's ranking of the Third Parties' bids is the numerical score that BC Transit assigned to each Third Party for how well their bids met the project's various requirements. This information is like the scoring information considered in Order F15-37 which Adjudicator Alexander concluded was commercial information because it was related to the buying, selling or exchange of merchandise or services. Similarly, the scoring information at issue here was related to the proposed buying and selling of goods and services between BC Transit and the Third Parties. The scoring information also reveals BC Transit's evaluation of the Third Parties' bids and viewed together, it reveals how they performed against each other in a commercial bidding process. Therefore, consistent with Order F15-37, I conclude disclosing the scoring information would reveal commercial information about the Third Parties under s. 21(1)(a)(ii). Given my conclusion, it is not necessary for me to also consider Cubic's argument that this scoring information would reveal trade secrets of a third party under s. 21(1)(a)(i) or BC Transit's submission that it would reveal technical information under s. 21(1)(a)(ii).

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<sup>45</sup> Order F15-37, 2015 BCIPC 40 (CanLII) at para. 41.

<sup>46</sup> Order F15-37, 2015 BCIPC 40 (CanLII) at para. 58, citing Ontario Order PO-3148, 2012 CanLII 81934 (ON IPC) at para. 132.

<sup>47</sup> Order F15-37, 2015 BCIPC 40 (CanLII) at para. 59.

[39] To conclude, I find the s. 21(1)(a) requirement is met for some, but not all the information withheld in the price bids and summaries and BC Transit's ranking of the Third Parties' bids.

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

[40] Having found some of the information at issue reveals commercial or financial information about the Third Parties under s. 21(1)(a)(ii), the next step is to consider whether that information was supplied in confidence under s. 21(1)(b). This step of the s. 21(1) test 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, the second part of the analysis is to determine whether the third party supplied that information, implicitly or explicitly, in confidence.<sup>48</sup>

Did the third parties supply the information at issue to BC Transit?

[41] BC Transit made no recognizable arguments about s. 21(1)(b); however, the Third Parties made submissions about s. 21(1)(b). Cubic says it provided all the disputed information about itself to BC Transit.<sup>49</sup> On the other hand, Conduent submits it provided the information in the price bids and summary to BC Transit, but that it did not supply any of the information redacted in BC Transit's ranking of its bid.

[42] As I will explain, I find some, but not all the redacted information was supplied for the purposes of s. 21(1)(b). The records and their contents indicate the Third Parties made an initial offer and then a revised offer to BC Transit. The Third Parties provided this information to BC Transit in response to its request for bid proposals. Therefore, I find each Third Party supplied the redacted information that is related to their initial and revised offer to BC Transit.

[43] Turning now to the information redacted in BC Transit's ranking of the bids, none of the parties sufficiently explain how this information was provided to BC Transit by one of the Third Parties. Instead, Conduent says the redacted information about itself in this record "represents BC Transit's subjective assessment and does not include proprietary, commercially sensitive, or confidential information supplied by Conduent."<sup>50</sup> I agree with Conduent's description of the redacted information. BC Transit created the scoring system and assigned the various scores; therefore, BC Transit generated this information. Where a public body has created or generated the redacted information, as is the case here, then that information would not have been supplied in confidence by a third party under s. 21(1)(b).<sup>51</sup> Therefore, I find the

<sup>48</sup> See Order F15-71, 2015 BCIPC 77 at para. 11.

<sup>49</sup> Cubic's email dated Dec 6, 2024.

<sup>50</sup> Conduent's email dated January 20, 2025.

<sup>51</sup> Order F05-29, 2005 CanLII 32548 (BC IPC) at paras. 63-69.

s. 21(1)(b) requirement is not met for the information redacted in BC Transit's ranking of the Third Parties' bids.<sup>52</sup>

Did the third parties supply the information in confidence to BC Transit?

[44] I found the Third Parties supplied the redacted information that is related to their initial and revised offer to BC Transit.<sup>53</sup> Therefore, the next step in the s. 21(1)(b) analysis requires that I consider whether the Third Parties supplied that information to BC Transit explicitly or implicitly in confidence. It is not necessary for me to consider whether the information that I found did not meet the "supplied" test was also supplied "in confidence" by each Third Party.

[45] The test for whether a third party supplied information in confidence is objective. It must be shown that the information was supplied under an objectively reasonable expectation of confidentiality by the supplier of the information at the time the information was provided; evidence of the supplier's subjective intentions alone with respect to confidentiality is insufficient.<sup>54</sup> In other words, "the focus of the confidentiality assessment is on whether the information in the disputed records was provided in confidence and whether, assessed objectively, it can be said that there was a reasonable expectation that it be maintained in confidence."<sup>55</sup>

[46] Cubic submits it provided information in confidence to BC Transit.<sup>56</sup> Conduent says it provided the information at issue to BC Transit "with the expectation of confidentiality, as is standard in competitive procurement processes."<sup>57</sup> However, as noted, a third-party's assertion about confidentiality, on its own and without corroboration from a public body or supported by other objective evidence, is insufficient to establish that the information was provided in confidence under s. 21(1)(b).<sup>58</sup> There must be evidence of a "mutuality of understanding" between the public body and the third parties that the information was supplied "in confidence."<sup>59</sup>

[47] BC Transit does not discuss the information at issue here in its submissions, that is, the information redacted from the Third Parties' price bids and BC Transit's summary of those bids. I have, therefore, reviewed the disputed

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<sup>52</sup> Information located on pp. 3-4 of Records Package #1.

<sup>53</sup> Information located on pp. 1-2 of Records Package #1 and pp. 1-2 of Records Package #3.

<sup>54</sup> Order 01-36, 2001 CanLII 21590 at para. 23 and Order 01-39, 2001 CanLII 21593 (BC IPC) at para. 28.

<sup>55</sup> Order 01-39, 2001 CanLII 21593 (BC IPC) at para. 31.

<sup>56</sup> Cubic's email dated December 6, 2024.

<sup>57</sup> Conduent's email dated January 20, 2025.

<sup>58</sup> Order F12-09, 2012 BCIPC 13 (CanLII) at paras. 19-22, citing Order 04-06, 2004 CanLII 34260 (BC IPC) at paras. 51-53.

<sup>59</sup> Order F12-09, 2012 BCIPC 13 (CanLII) at para. 19 and Order 04-06, 2004 CanLII 34260 (BC IPC) at para. 53.

records to determine whether there are any explicit indicators of confidentiality. Having done so, I find there is no wording or statement in the records that addresses or imposes confidentiality over the information at issue. Further, none of the materials before me in this inquiry shows BC Transit expressly assured the Third Parties that it would receive and hold their bid information in confidence or that any of the Third Parties requested or received an express promise of confidentiality from BC Transit. BC Transit and the Third Parties did not provide any sworn evidence or supporting documents for this inquiry. Therefore, I do not have any evidence about what BC Transit told the Third Parties regarding confidentiality at the time they provided their initial offers and bids, nor do I have a copy of the documents, if any, that BC Transit gave to the Third Parties about the bid process. Without sufficient evidence or explanation, I am unable to find the Third Parties supplied the disputed information to BC Transit explicitly in confidence.

[48] I will now consider whether the Third Parties supplied the information at issue here implicitly in confidence to BC Transit. For other information that it withheld in the responsive records, BC Transit argues an “expectation of confidentiality is implicit within the procurement process.”<sup>60</sup> I find this assertion amounts to an argument that any information the Third Parties provided to BC Transit as part of its bid process was supplied implicitly in confidence.

[49] To determine whether information was supplied implicitly in confidence, all the circumstances must be considered, including whether the information was:

1. communicated to the public body on the basis that it was confidential and that it was to be kept confidential;
2. treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the public body;
3. not otherwise disclosed or available from sources to which the public has access; or
4. prepared for a purpose which would not entail disclosure.<sup>61</sup>

[50] None of the parties provided sufficient explanation or evidence that assists me in understanding the specific circumstances under which the Third Parties provided the information at issue to BC Transit. BC Transit also did not sufficiently explain or provide details about its bid process for the project or how it

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<sup>60</sup> BC Transit’s submission dated March 14, 2025 at p. 1 of the pdf, regarding the information that is about BC Transit’s ranking of Conduent’s price bid, which I found was not supplied by a third party to BC Transit in accordance with s. 21(b).

<sup>61</sup> Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 26.

handled the information arising out of that bidding process or any other objective evidence, except to say “the procurement process itself presumes confidentiality to protect competitive fairness.”<sup>62</sup> Therefore, what I am left with is general assertions from BC Transit and the Third Parties about the confidential supply of the information at issue here based on what is said to be an industry practice or expectation.

[51] This is not the first time that a public body or a third party has argued there is a general industry expectation that bid proposals provided as part of a public body’s request for proposal process are supplied in confidence. However, each case was decided on its own unique sets of facts and on the arguments and evidence the parties presented during the inquiry. In some cases, the adjudicator was satisfied the information was supplied in confidence,<sup>63</sup> but in most cases the parties provided evidence to support their positions such as copies of the documents provided to vendors as part of the bid process or affidavit evidence specifically discussing how the information at issue was received and kept confidential by the public body and not publicly disclosed.<sup>64</sup> In the present case, I do not have that type of evidence. BC Transit and the Third Parties did not provide any affidavit evidence, supporting documents or any other objective evidence to support their positions and arguments on s. 21(1).

[52] Moreover, the applicant submits “other North American transit agencies routinely release this type of information in response to public-records requests,” which includes other access requests the applicant says they made involving Cubic.<sup>65</sup> The applicant’s submission raises questions about BC Transit’s practice regarding bidding information and casts doubt on BC Transit’s assertion that an “expectation of confidentiality is implicit within the procurement process.”<sup>66</sup> Despite being given the opportunity, neither BC Transit nor any of the Third Parties addressed the applicant’s submission about this matter or refuted his claims. Therefore, I am left with unresolved questions regarding the confidential supply of the information at issue here. Without sufficient explanation or evidence, I am not persuaded the Third Parties supplied the redacted information at issue here in confidence to BC Transit.

[53] To conclude, for the reasons given, I am unable to find there was an objectively reasonable expectation of confidentiality at the time the Third Parties provided the information at issue in the disputed records to BC Transit. Based on the materials provided to me for this inquiry, I am not satisfied that the disputed

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<sup>62</sup> BC Transit’s submission dated March 14, 2025 at p. 1 of the pdf, regarding the information that is about BC Transit’s ranking of Conduent’s price bid.

<sup>63</sup> For example, Order F24-11, 2024 BCIPC 15 (CanLII) at paras. 47 and 49.

<sup>64</sup> For example, Order F23-86, 2023 BCIPC 102 (CanLII) at paras. 43-44 and 46 and Order F20-55, 2020 BCIPC 64 (CanLII) at paras. 34, 35 and 40.

<sup>65</sup> Applicant’s email dated November 15, 2024. The applicant did not provide a copy of any of those previous access requests.

<sup>66</sup> BC Transit’s submission dated March 14, 2025 at p. 1 of the pdf.

information was supplied in confidence pursuant to s. 21(1)(b). Accordingly, I find the s. 21(1)(b) requirement is not met for the information redacted in the Third Parties' price bids and BC Transit's summary of those bids.

*Section 21(1)(c): Is there a reasonable expectation of probable harm?*

[54] As none of the disputed information meets the “supplied in confidence” test under s. 21(1)(b), it is not necessary for me to consider whether disclosing any of the information at issue could reasonably be expected to result in harm under s. 21(1)(c). However, to provide the parties with a complete s. 21(1) analysis, I will consider the parties' submissions about harm for the information redacted in the Third Parties' price bids and BC Transit's summary of those bids.

[55] The standard of proof applicable to harms-based exceptions like s. 21(1) is whether disclosure of the information could reasonably be expected to cause the specific harm.<sup>67</sup> The Supreme Court of Canada has described this standard as “a reasonable expectation of probable harm” which falls in “a middle ground between that which is probable and that which is merely possible.”<sup>68</sup>

[56] The party who has the burden of proof 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 or speculative.<sup>69</sup> It 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>70</sup>

[57] Although it has the burden of proving s. 21(1) applies to the information that it redacted in the disputed records, BC Transit did not identify which provisions under s. 21(1)(c) are relevant or make any arguments about how disclosure of the redacted information at issue here could reasonably be expected to result in harm to the Third Parties under s. 21(1)(c).<sup>71</sup> However, both Cubic and Conduent argue s. 21(1)(c)(i) is relevant and Conduent also says s. 21(1)(c)(iii) is applicable. I will consider those provisions and the parties' arguments below.

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<sup>67</sup> Order F13-06, 2013 BCIPC 6 at para. 24.

<sup>68</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

<sup>69</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras. 196 and 206.

<sup>70</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 219.

<sup>71</sup> BC Transit's submission dated March 14, 2025, where BC Transit talks about harm under s. 21(1)(c) regarding the information that is about BC Transit's ranking of Conduent's price bid, which is not the information at issue here.

Harm to competitive position or negotiating position - s. 21(1)(c)(i)

[58] Section 21(1)(c)(i) states the head of a public body must refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm significantly the competitive position or interfere significantly with the negotiating position of a third party. In Order 00-10, former Commissioner Loukidelis concluded that by adding the word “significantly” in s. 21(1)(c)(i), the Legislature clearly indicated that something more than “harm” is needed and that “by choosing a standard of significant harm, the Legislature clearly contemplated situations where disclosure could simply harm the interests of a private business, but still be permitted.”<sup>72</sup>

[59] Cubic’s submissions about harm under s. 21(1)(c)(i) are brief so I quote them here:

...per section 21(1)(c)(i), disclosure could reasonably be expected to harm significantly the competitive position or interfere significantly with the negotiating position of the third party.<sup>73</sup>

Should a competitor gain access to this information, there is tangible risk of commercial harm to Cubic and risk of Cubic trade secrets being revealed – Such specific line item pricing could easily reveal Cubic’s method of operating, level of efforts and resources required for such a project, execution plan, etc.<sup>74</sup>

[60] Conduent alleges disclosure of its commercial and financial information would harm its competitive position in accordance with s. 21(1)(c)(i). Conduent says the public release of its pricing and strategies would enable competitors to:

- Replicate or undercut Conduent’s pricing strategy.
- Exploit identified strengths and weaknesses to undermine Conduent’s competitive position in future fare collection tenders, both with BC Transit and in other jurisdictions.<sup>75</sup>

[61] The applicant argues the redacted information is “vital to understanding why BC Transit awarded this contract to Cubic over a competing vendor” and says this is “especially true since Cubic’s bid price was slightly higher.”<sup>76</sup> The applicant also alleges any arguments about harm is “undercut by the fact that...other North American transit agencies routinely release this type of

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<sup>72</sup> Order 00-10, 2000 CanLII 11042 (BC IPC) at p. 11 of pdf.

<sup>73</sup> Cubic’s email dated October 23, 2024.

<sup>74</sup> Cubic’s email dated December 6, 2024.

<sup>75</sup> Conduent’s email dated January 20, 2025. This quote was the full extent of Conduent’s submission about harm to its competitive position under s. 21(1)(c)(i).

<sup>76</sup> Applicant’s email dated November 15, 2024.



information in response to public-records requests,” which includes other access requests the applicant says they made involving Cubic.<sup>77</sup>

[62] Both Cubic and Conduent argue disclosure could reasonably be expected to harm their competitive positions. However, aside from their assertions, neither Cubic nor Conduent provide detailed and convincing evidence or explanation to support their claims under s. 21(1)(c)(i). For example, Conduent acknowledges its bid “proposal was tailored specifically to BC Transit’s requirements”<sup>78</sup> but neither BC Transit, Cubic nor Conduent sufficiently explain with supporting evidence how disclosing information for a specific bid proposal could reasonably be expected to reduce the Third Parties’ ability to compete for future business, especially where market conditions, the scope and demands of the project, technological changes, the parties and jurisdiction involved, and other factors prevailing at that time will affect any future bids.

[63] Moreover, Conduent says its competitors could use the redacted information to exploit identified strengths and weaknesses which would undermine its competitive position, but it is not clear and Conduent does not identify what specific information in the disputed records would reveal its identified strengths and weaknesses or how competitors could exploit this information.

[64] Cubic also argues disclosure could reasonably be expected to interfere significantly with its negotiating position. As noted, s. 21(1)(c)(i) requires the interference with negotiating position to be significant. Aside from Cubic’s assertions, no evidence was provided as to what negotiations are ongoing or anticipated with existing or potential clients or how disclosing the information at issue could reasonably be expected to interfere significantly with those current or future negotiations.

[65] Ultimately, I find the Third Parties’ assertions about harm under s. 21(1)(c)(i) are speculative and lacking in evidentiary support. Neither BC Transit nor the Third Parties establish a clear and direct link between disclosure of the information in question and a reasonable expectation of probable harm to the Third Parties’ negotiating positions or competitive positions under s. 21(1)(c)(i). They also do not sufficiently explain with evidence how the level of harm would be significant as required under s. 21(1)(c)(i).

Result in undue financial loss or gain - s. 21(1)(c)(iii)

[66] Section 21(1)(c)(iii) states that the head of a public body must refuse to disclose to an applicant information the disclosure of which could reasonably

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<sup>77</sup> Applicant’s email dated November 15, 2024. The applicant did not provide a copy of any of those previous requests.

<sup>78</sup> Conduent’s email dated January 20, 2025.

be expected to result in undue financial loss or gain to any person or organization.

[67] Past orders have said that the ordinary meaning of “undue” financial loss or gain under s. 21(1)(c)(iii) includes loss that is “excessive, disproportionate, unwarranted, inappropriate, unfair or improper, having regard for the circumstances of each case.”<sup>79</sup> Moreover, in Order 00-10, former Commissioner Loukidelis accepted that, “if disclosure would give a competitor an advantage, usually by acquiring competitively valuable information, effectively for nothing, the gain to the competitor will be undue.”<sup>80</sup>

[68] Conduent alleges disclosure of its commercial and financial information would result in undue financial loss or gain in accordance with s. 21(1)(c)(iii) in the following ways:

- Competitors would gain unfair advantage by leveraging Conduent’s pricing strategies, developed through extensive market analysis and investment.
- Conduent would suffer undue loss, as competitors could use this information to circumvent the significant time and resources necessary to develop their own pricing strategies.<sup>81</sup>

[69] Conduent’s arguments about harm under s. 21(1)(c)(iii) rely on its assertion that the redacted information would reveal its pricing strategies. However, Conduent does not identify what specific information in the disputed records would reveal its pricing strategies and it is not apparent from my review of the disputed information and records. For example, I can see some of the redacted information lists the prices and costs that Conduent proposed to charge BC Transit to create a new electronic fare collection system, but it is unclear and Conduent does not sufficiently explain how a competitor could determine anything meaningful about Conduent’s pricing strategy from this information.<sup>82</sup> Instead, I find that information only reveals what Conduent was initially willing to charge BC Transit to create a new electronic fare system and any alleged pricing strategy is not self-evident from this information.

[70] Moreover, aside from Conduent’s assertions, neither BC Transit nor Conduent sufficiently explained or provided evidence which satisfactorily demonstrates how the withheld information is “valuable competitive information”<sup>83</sup>

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<sup>79</sup> Order F16-17, 2016 BCIPC 19 at para. 33 and Order 00-10, 2000 CanLII 11042 (BC IPC) at p. 17 of pdf.

<sup>80</sup> Order 00-10, 2000 CanLII 11042 (BC IPC) at p. 18 of pdf.

<sup>81</sup> Conduent’s email dated January 20, 2025. This is the full extent of Conduent’s submissions about harm under s. 21(1)(c)(iii).

<sup>82</sup> For example, information located on p. 1 of Records Package #1 and p. 1 of Records Package #3.

<sup>83</sup> Order 00-10, 2000 CanLII 11042 (BC IPC).

or how one of Conduent's competitors or anyone else could use the redacted information at issue to obtain a financial gain or cause Conduent or another third party to suffer a financial loss, or how any alleged gain or loss would be "undue" as required under s. 21(1)(c)(iii).

[71] To establish a reasonable expectation of probable harm under s. 21(1)(c), there must be an evidentiary basis to support the assertions of harm and to support the public body's decision to withhold information under s. 21(1).<sup>84</sup> I find the necessary explanation and evidence required to establish harm under s. 21(1)(c)(iii) lacking here. Based on the materials before me in this inquiry, I am unable to conclude there is a clear and direct link between disclosure of the redacted information in question and a reasonable expectation of probable harm under s. 21(1)(c)(iii). Therefore, without sufficient explanation or evidence, I am not persuaded that disclosure of the redacted information at issue here could reasonably be expected to result in harm under s. 21(1)(c)(iii).

#### Conduent's other submission about harm

[72] Conduent alleges it will suffer the following harm if its commercial and financial information in the disputed records were disclosed:

##### **Impact on Client Relationships**

This proposal was tailored specifically to BC Transit's requirements. Disclosure could misrepresent Conduent's broader capabilities, prejudicing future relationships with prospective clients who may incorrectly generalize the content of this solution.<sup>85</sup>

[73] It is unclear what s. 21(1)(c) provision Conduent is arguing this type of alleged harm falls under and it is not appropriate for me to guess. The Legislature specifically set out the harms protected under s. 21(1)(c) and Conduent does not sufficiently identify or explain which s. 21(1)(c) harm provision it is referring to here.<sup>86</sup> Therefore, without sufficient explanation or evidence, I am not satisfied that this alleged harm is one contemplated and protected under s. 21(1)(c).

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<sup>84</sup> *Jill Schmidt v. British Columbia (Information and Privacy Commissioner), et al.*, 2001 BCSC 101 (CanLII) at paras. 37-38.

<sup>85</sup> Conduent's email dated January 20, 2025.

<sup>86</sup> I considered whether Conduent is referring to the harms set out under ss. 21(1)(c)(i) or (iii). However, it is unclear how Conduent's submissions here would be relevant or applicable to the harms under ss. 21(1)(c)(i) and (iii). I also note Conduent listed these submissions about the "Impact on Client Relationships" separately from its submissions about "Harm to Competitive Position" and "Undue Loss and Gain", which I understand means it is referring to a harm that is different from the harms listed under ss. 21(1)(c)(i) and (iii).

*Summary of findings on s. 21(1)*

[74] I find disclosing some, but not all, of the information withheld under s. 21(1) would reveal commercial and financial information about Cubic and Conduent in accordance with s. 21(1)(a)(ii). I also find Cubic or Conduent supplied some of their commercial and financial information to BC Transit. However, I am not persuaded any of the information at issue was supplied in confidence as required under s. 21(1)(b).

[75] As none of the disputed information meets the “supplied in confidence” test under s. 21(1)(b), it was not necessary for me to consider whether disclosing any of the information at issue could reasonably be expected to result in harm under s. 21(1)(c). However, I considered the parties’ submissions about harm under ss. 21(1)(c)(i) and (iii) for the information redacted in the Third Parties’ price bids and BC Transit’s summary of those bids.

[76] I was not persuaded that disclosing any of the information redacted in those records could reasonably be expected to result in harm under ss. 21(1)(c)(i) and 21(1)(c)(iii). Neither BC Transit nor the Third Parties establish a clear and direct link between the disclosure of the information at issue and the harms listed in s. 21(1)(c). Therefore, I conclude BC Transit has not met its burden of proving it must refuse to disclose the information in dispute under s. 21(1). Ultimately, I find s. 21(1) does not apply to any of the information redacted in the disputed records.

## **CONCLUSION**

[77] For the reasons discussed above, I conclude BC Transit is not required to refuse to disclose any of 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 BC Transit to give the applicant access to all the redacted information at issue in the disputed records. To be clear, this information is located on pages 1-4 of Records Package #1 and on pages 1-2 of Records Package #3.
2. Under s. 58(4), I require BC Transit to provide the OIPC’s Registrar of Inquiries (Registrar) with proof that it has complied with this order. If the applicant requested a paper or electronic copy of the records, then BC Transit must provide the Registrar with a copy of the records that it sends to the applicant, along with any attached or relevant correspondence.

[78] Under s. 59(1), BC Transit is required to comply with the terms of this order by **June 6, 2025**.

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[79] In accordance with s. 58(5)(c), the Registrar will provide Cubic and Conduent with a copy of this order because they were appropriate persons given notice under s. 54(b).

April 24, 2025

**ORIGINAL SIGNED BY**

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Lisa Siew, Adjudicator

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