Order F25-51

# CITY OF WHITE ROCK

Alexander Corley
Adjudicator

June 24, 2025

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**Summary:** A third party requested a review of the public body's decision to disclose records in response to an applicant's access request under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The third party asserted the public body must refuse to disclose information in the records under s. 21(1) (harm to third party's business interests) of FIPPA. The adjudicator found that s. 21(1) applied to some, but not all, of the information in dispute and ordered the public body to disclose the information in dispute that was not subject to s. 21(1) to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act* [RSBC 1996, c. 165] at ss. 21(1)(a)(i), 21(1)(a)(ii), 21(1)(b), 21(1)(c)(i), and Schedule 1 (definition of "trade secret").

## INTRODUCTION

[1] An individual (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA)[1] to the City of White Rock (City) for records related to a Request for Proposals issued by the City (RFP).

[2] Because of the nature of some of the requested records, the City notified a third party, Green For Life Environmental (GFL), of the request pursuant to s. 23 (notice to third party) and sought GFL's input on the access request. GFL advised the City of its position that the records must be withheld in their entirety under ss. 21 (harm to third party business interests) and 22 (unreasonable invasion of privacy) of FIPPA.

[3] The City did not agree with GFL's interpretation and notified GFL under s. 24 (notice of decision) that it intended to release some information in the records to the applicant. In response, GFL requested that the Office of the

[1] RSBC 1996, c. 165. Through the remainder of this order references to sections of an enactment are references to FIPPA unless otherwise stated.

Information and Privacy Commissioner (OIPC) review the City's decision to provide information to the applicant. Mediation by the OIPC investigator did not resolve the issues between the City and GFL, so GFL requested that the matter proceed to this inquiry.

[4] The applicant decided not to participate in the inquiry and I have no information before me regarding their position. GFL and the City each provided one submission in this inquiry with GFL providing an initial submission, the City providing its response, and GFL declining to reply to the City's response submission.

[5] In its inquiry submission, GFL indicates it is no longer arguing that s. 22(1) applies to any information, so I find that s. 22(1) is not in dispute in the inquiry and I will not consider it further.

### *Preliminary matter – What information is in dispute?*

[6] The City and GFL agree that s. 21(1) requires the City to withhold much of the information in the records.[2] Further, as noted, the applicant decided not to participate in the inquiry and, therefore, I have no information before me regarding the applicant's position or whether they intend to seek the release of that information. As such, I find that the information which GFL and the City agree the City must withhold under s. 21(1) is not in dispute in this inquiry. I will only consider below the City's decision to disclose the information that remains in dispute between the City and GFL.

## ISSUE

[7] The issue to be decided in this inquiry is whether the City is required to withhold the information in dispute between the City and GFL pursuant to s. 21(1).

[8] Section 57(3)(b) places the burden on GFL to establish that s. 21(1) applies to the information GFL asserts the City is required to withhold.

## DISCUSSION

### *Background and record in dispute*

[9] The City issued the RFP seeking competitive bids for the management of its solid waste collection services for multi-family and commercial properties and large item pick-up services. GFL prepared a bid and submitted it to the City for consideration (Proposal). From the information before me, it appears the

[2] Records at pp. 8, 10-11, 14 (certain information), 22-31, 34, 37, 41, 45, 47, 55, 59-62, 64, 67-68, 73, 75, 77, 158, 160, 165-166, 169, 172-174, 177-178.

Proposal was the successful bid and GFL and the City entered into an agreement for GFL to provide the services specified in the RFP.

[10] The record in dispute in this inquiry is the Proposal.

***Section 21(1) – harm to third party business interests***

[11] Section 21(1) requires a public body to withhold information if its disclosure could reasonably be expected to harm the business interests of a third party. The following parts of s. 21(1) are relevant to consider in this case:

> 21(1) The head of a public body must refuse to disclose to an applicant information
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> (a) that would reveal
>
> (i) trade secrets of a third party, or
>
> (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
>
> […].

[12] Further, Schedule 1 defines "trade secret" for purposes of s. 21(1)(a)(i) as follows,

> **"trade secret"** means 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.

[13] The principles for applying s. 21(1) are well established.[3] GFL must show that all three of the following criteria are met for s. 21(1) to apply:

- The disputed information is of a type listed in s. 21(1)(a);
- The disputed information was supplied to the City in confidence under s. 21(1)(b); and
- Disclosure of the disputed information could reasonably be expected to cause one or more of the harms listed in s. 21(1)(c).

*Type of information – s. 21(1)(a)*

Positions of the parties

[14] GFL submits that all the information in dispute is either "proprietary trade secrets" under s. 21(1)(a)(i) or "commercially sensitive information" under s. 21(1)(a)(ii).

[15] In the first place, GFL submits that the form of the Proposal, and therefore all the information in dispute, is itself proprietary and a trade secret. In addition to this, GFL suggests in the alternative that some of the information in dispute may independently qualify as "trade secrets" but does not specify the nature or content of that information or where exactly it appears in the Proposal. Rather, GFL broadly refers to "important specifications that would be of interest to GFL's competitors."[4]

[16] GFL also says that some information on pages 14, 17, 53-54, and 171 of the Proposal is commercial information for purposes of s. 21(1)(a)(ii) and briefly explains why it thinks this information falls within the scope of that section.[5]

[17] Finally, GFL says that it "is willing to consent to the release of portions of" the Proposal but does not explain what portions it is referring to or how this submission interacts with its stated position that the entire Proposal is a "proprietary trade secret."

[18] In response, the City points out that the Proposal was drafted in a standard format mandated by the City and distributed to all the RFP

[3] Order F22-33, 2022 BCIPC 37 at para. 25.
[4] I also note that GFL has not provided any affidavit evidence of the sort that could have allowed a knowledgeable representative to appropriately explain GFL's position.
[5] I note GFL only *expressly* states that the information referred to in this paragraph, which GFL defines as the "Disputed Areas" of the record, meets each stage of the s. 21(1) test notwithstanding GFL's other submissions regarding the need for the City to withhold GFL's "trade secrets." See GFL's Initial Submission at paras. 12, 16, 18, and 22.

proponents. Therefore, the City says the "form" of the Proposal cannot qualify as a "trade secret" because in order to meet FIPPA's definition of that term, the relevant information must not be "generally known to the public." The City does not take a position regarding GFL's other submissions under s. 21(1)(a).

[19] As noted above, GFL chose not to reply to the City's submission.

Analysis and conclusion - s. 21(1)(a)

**Trade secrets – s. 21(1)(a)(i)**

[20] I find that GFL's submission that the "form" of the Proposal is itself a "proprietary trade secret" is not supported by the evidence. The City provides an affidavit from its Director of Corporate Administration which, at Exhibit "B", includes a copy of the RFP. From reviewing the RFP I can see that, at s. 5.2, the City specified the form that RFP proposals must take in order for them to be accepted by the City.

[21] I can also see that, as the City says, the Proposal broadly follows the form specified by the City. Therefore, I do not see, and GFL does not adequately explain, how the form of the Proposal could meet the definition of a "trade secret." As such, I will not further consider GFL's submission that the "form" of the Proposal is itself the type of information listed in s. 21(1)(a)(i).

[22] I also find that GFL has not provided sufficient evidence or persuasive argument to establish that certain other information in the Proposal consists of "proprietary trade secrets." As I read GFL's inquiry submission, the entirety of its argument on this point is as follows,

> The [Proposal] also contains trade secrets and proprietary information relating to GFL's products and services, including important specifications that would be of interest to GFL's competitors. Information about GFL's products and service specifications has been consistently treated by GFL as a trade secret. The information contained in the [Proposal] is not available from sources otherwise accessible by the public and could not be obtained by observation or independent study by a member of the public acting on his or her own.[6]

[23] I accept that this submission broadly addresses the requirements in FIPPA's definition of "trade secret." For instance, GFL seems to submit that at least some of the information it included in the Proposal:

- is also used by it to obtain commercial advantage;
- is not publicly known or derivable and holds economic value on this basis;

[6] GFL's Initial Submission at para. 17.

- has been "treated as a trade secret," which I take to mean that GFL has tried to "prevent it from being generally known"; and,
- would improperly benefit GFL's competitors if it were disclosed publicly.

[24] The issue, as I see it, is that GFL does not tie this submission to specific information in the Proposal or provide concrete evidence establishing such a connection. In my view, this kind of broad and unsupported submission is insufficient for GFL to meet its burden of showing that specific information in the Proposal qualifies as "trade secrets" and, thereby, falls within the scope of s. 21(1)(a)(i).

[25] Taking all of the above together, I find that GFL has not met its burden of establishing that any of the information in dispute qualifies as "trade secrets" for purposes of s. 21(1)(a)(i).

**Commercial information – s. 21(1)(a)(ii)**

[26] FIPPA does not define "commercial" information but prior orders have considered the term. "Commercial" information is information that relates to a commercial enterprise, in the sense that the information is associated with the buying, selling or exchange of goods or services. "Commercial" information may also include information about a third party's methods of providing the services it has contracted to perform or marketed to current or prospective clients.[7]

[27] GFL says that the specific information it highlights on pages 14, 17, 53-54, and 171 of the Proposal qualifies as its "commercial" information under s. 21(1)(a)(ii). Having reviewed this information and what GFL says about it, I have no trouble concluding that it is GFL's "commercial" information so s. 21(1)(a)(ii) applies to it. In each case, it is clear to me that the information relates directly to a specific aspect of how GFL goes about providing services to its clients and this is sufficient to bring it within the interpretation of "commercial" information set out just above.[8]

[28] However, I find that GFL has not provided sufficient evidence or persuasive argument establishing that s. 21(1)(a)(ii) applies to any of the other information in dispute. So, I will not consider any of that information further in this order because all three stages of the s. 21(1) test must be met for information to be withheld under that section.

[29] Given the above, I will move on to consider whether the commercial information pointed to by GFL on pages 14, 17, 53-54, and 171 of the Proposal meets the remaining stages of the s. 21(1) test.

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[7] See, for example, Order F05-09, 2005 CanLII 11960 (BC IPC) at paras. 9-10.
[8] The City does not challenge this aspect of GFL's submission.

*Supplied in confidence – s. 21(1)(b)*

[30] The second step in the s. 21(1) analysis is for me to determine whether GFL supplied the commercial information in dispute to the City in confidence. This analysis has two parts. First, I must determine whether GFL "supplied" the commercial information on pages 14, 17, 53-54, and 171 of the Proposal to the City. If so, I must determine whether GFL supplied that information "in confidence."[9]

[31] Previous OIPC orders have consistently said that information about the terms of agreements or contracts between a public body and a third party does not generally qualify as information that has been "supplied" to the public body for purposes of s. 21(1)(b).[10] This is because while certain information may initially only be possessed by the third party, or an agreement's terms may be initially drafted by the third party alone, if the public body must agree to those terms in order for the agreement to move forward, then the information in the agreement is considered to have been negotiated between the parties as opposed to being "supplied" to the public body by the third party.[11]

[32] Put simply, s. 21(1) does not protect information that could have been altered during negotiation but, fortuitously, was not altered because the public body agreed to the terms proposed by the third party without requesting changes.[12]

[33] Notwithstanding this, past orders recognize two exceptions to this rule. Pursuant to those orders, information about the terms of a contract or agreement may qualify as "supplied" to the public body if the evidence establishes that:

1) The information was immutable or not susceptible to alteration during negotiation and it was incorporated into the agreement or contract unchanged; or

2) The information would allow someone to draw an accurate inference about underlying confidential information which the third party "supplied" to the public body but that is not itself contained in the agreement or contract.[13]

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[9] See Order F19-39, 2019 BCIPC 44 at para. 57.
[10] See Order F22-33, *supra* note 3 at para. 33 and the authorities cited therein at note 12.
[11] See Order 01-39, 2001 CanLII 21593 (BC IPC) at para. 44, upheld on judicial review in *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, 2002 BCSC 603.
[12] Order 01-39, *ibid*.
[13] *Ibid*.

Positions of the parties

[34] GFL says it supplied the information in the Proposal to the City with a reasonable expectation of confidence, including with respect to the City facing requests to release the Proposal pursuant to FIPPA. In support of its position, GFL points out that the Proposal includes a clear confidentiality notice on page one. Further, GFL says that while the Proposal was later incorporated into an agreement between GFL and the City, it does not come within the OIPC's usual rules regarding the "supply" of information contained in contracts between public bodies and third parties and cites to two decisions of the Ontario OIPC in support of its position.[14]

[35] The City challenges both of GFL's submissions regarding s. 21(1)(b).

[36] First, the City says that the commercial information in dispute was not "supplied" to it by GFL because the terms of the Proposal could have been "altered during negotiation with the City in the process of reaching a final contract with [GFL]." Therefore, the City says, the information in dispute is not immutable.[15] The City also says GFL has not made any clear submission on whether the information in dispute could reveal additional confidential information GFL supplied to the City but which is not contained in the Proposal, and in the absence of such a submission there is no reason to consider this aspect of the analysis.

[37] Second, the City acknowledges that the Proposal includes a confidentiality notice but says this is, on its own, insufficient to establish the kind of "mutuality of understanding" regarding confidentiality between it and GFL that prior OIPC orders have said is necessary to satisfy s. 21(1)(b).[16] Further, the City says that the RFP itself included language indicating the City could not guarantee confidentiality if the Proposal were the subject of a FIPPA access request. The City says the RFP language "preceded and overrode" the confidentiality notice in the Proposal. In the alternative, the City provides evidence that some of the commercial information in dispute is publicly available and submits it was not supplied to the City in confidence on that basis.

[38] I note, as above, that GFL did not reply to the City's submissions regarding s. 21(1)(b).

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[14] Orders PO-4183, 2021 CanLII 84021 (ON IPC) and MO-3058-F, 2014 CanLII 32457 (ON IPC). However, I note GFL does not directly address the exceptions regarding the "supply" of information incorporated into a contract between a third party and a public body, set out above.
[15] The City also points out that in the RFP it reserved for itself the unqualified right to negotiate with proponents regarding all aspects of their bids before awarding a contract.
[16] For instance, Order F13-20, 2013 BCIPC 27 at para. 25.

Analysis and conclusion – s. 21(1)(b)

[39] GFL maintains that it supplied the commercial information in dispute to the City in confidence. The City says the information was not "supplied" to it by GFL because the information was incorporated into a later-executed contract between GFL and the City and is not "immutable" in the relevant sense. In the alternative, the City says that even if the information was "supplied" to it, it was not "supplied in confidence" because the City made clear to GFL that the City could be required in future to disclose the information under FIPPA and therefore could not guarantee its confidentiality. The City also says that some of the information in dispute is already publicly available and was not supplied to it in confidence on that basis.

[40] Turning first to whether the information in dispute was "supplied" to the City, I find that it was. It is clear to me that the City came to possess that information when GFL included it in the Proposal and submitted the Proposal to the City. While the parties agree that the Proposal may have been incorporated into a contract between them at a later date, it is the Proposal itself and not that contract that is the subject of this inquiry. I agree with GFL that the fact that information in a record may have later been incorporated into a contract between a third party and a public body does not mean that record is itself subject to the special "supply" analysis applied to contractual information under s. 21(1)(b).[17]

[41] Turning next to whether GFL supplied the commercial information to the City "in confidence," I am not persuaded by the City's submission that its general statement in the RFP that it could not guarantee confidentiality because of its disclosure obligations under FIPPA overrode any expectation of confidentiality between the parties.

[42] In my view, the fact that a public body may ultimately be compelled by law to disclose information received from a third party does not automatically negate an understanding between those parties that the information will be treated as confidential until an order compelling disclosure is made by a court or other competent tribunal. In this case, GFL and the City agree that GFL expressly requested that the City treat the Proposal as confidential and I find the City would have been aware of this request when it received the Proposal because the language requesting confidentiality is found on the first page of that record.[18]

[43] Further, the City agrees with GFL that large portions of the Proposal must be withheld under s. 21(1) and, therefore, implicitly agrees that GFL supplied *that*

[17] Further, the parties have not provided me with a copy of the executed contract as part of their evidence so I am unable to assess whether and in what form the relevant commercial information in the proposal may have been incorporated into the contract.
[18] None of the evidence or other information before me indicates the City disclaimed GFL's request for confidentiality after the City received the Proposal.

information to the City in confidence. As such, I find it is inconsistent for the City to argue that the spectre of its FIPPA disclosure obligations overrode confidentiality regarding some information in the Proposal but not other information.

[44] Notwithstanding this, I do find that GFL did not supply some of the commercial information in dispute to the City in confidence because I am satisfied that the City's uncontested evidence demonstrates that the information is publicly available.[19] This is all of the information on pages 17 and 53-54, and most of the information on page 171 of the Proposal.[20] I find that the public availability of this information rebuts what GFL says regarding its confidentiality.

[45] All three stages of the s. 21(1) test must be satisfied in order for that section to apply to information, so it is not necessary for me to further consider whether the City must withhold the relevant commercial information on pages 17, 53-54, and 171 of the Proposal and I decline to do so. Section 21(1) does not require the City to withhold that information.

[46] However, I find that GFL supplied the remaining commercial information in dispute on pages 14 and 171 to the City and, in doing so, had a reasonable expectation that the City would hold that information in confidence.

*s. 21(1)(c) – Reasonable expectation of harm*

[47] Under s. 21(1)(c), GFL must demonstrate that releasing the commercial information in dispute on pages 14 and 171 that I found was supplied in confidence will give rise to a reasonable expectation that one or more of the harms set out in that subsection will occur.[21] A "reasonable expectation of probable harm", as the standard is often expressed, is a "middle ground between that which is probable and that which is merely possible," and meeting the standard requires a party to provide evidence which goes "well beyond" or "considerably above" establishing a mere possibility of harm.[22]

[48] In this case, the relevant provision of s. 21(1)(c) is s. 21(1)(c)(i), which concerns information the release of which could reasonably be expected to "harm significantly the competitive position or interfere significantly with the negotiating position of the third party."

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[19] See Affidavit of the City's Director of Corporate Administration at Exhibits "**D**", "**E**", "**F**", and "**G**" (p. 147 of affidavit); information on pp. 17, 53-54, and 171 of the records.
[20] The exceptions are the information contained in bullet points 4 and 5 and the final paragraph on page 171 which the City's evidence does not demonstrate is publicly available.
[21] See *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.
[22] *Ibid*, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras. 197 and 199.

Positions of the parties

[49] GFL says that releasing the information remaining in dispute would significantly harm its competitive position because that information would provide GFL's competitors with insight into the kinds of equipment GFL has at its disposal and the kinds of services GFL offered to provide to the City.

[50] GFL says that future competitive RFP proposals it submits will likely involve the same kinds of commitments regarding the services it will provide and the equipment it will rely on in providing those services. Therefore, GFL says the confidential commercial information remaining in dispute could be used by its competitors to develop an in-house strategy for competing against GFL regarding municipal RFPs and this would clearly harm GFL's competitive position in future bids.

[51] The City does not make any submissions relevant to s. 21(1)(c).

Analysis and conclusion – s. 21(1)(c)(i)

[52] I agree with GFL that releasing the commercial information on page 14 that I found was supplied in confidence would grant GFL's competitors a competitive advantage against GFL. This information is a breakdown of the technical assets which GFL committed to employ if it won the contract and GFL's ownership status regarding those assets. I can see that if GFL's competitors were granted access to this information, this would lead to an informational asymmetry between them and GFL.

[53] It is clear to me that this kind of asymmetry could significantly harm GFL's position when submitting future municipal RFP proposals because it would allow other bidders to more effectively compete against GFL's bids. Therefore, I find that s. 21(1)(c)(i) applies to the confidentially supplied commercial information on page 14 of the Proposal.

[54] However, I am not persuaded by what GFL says that releasing the confidentially supplied commercial information on page 171 would give rise to a reasonable expectation that the harm set out in s. 21(1)(c)(i) will occur. That information is about pre-existing operations by GFL within the City's limits and is either very similar to information which I have already found above is publicly available or is vague and non-specific. GFL does not explain in any detail how this information is sufficiently distinct from information about GFL's operations which its competitors can already access by simply observing the world around them. GFL also does not clearly explain how releasing the information would give rise to anything beyond a speculative possibility of harm and I do not see that it would.

[55] Therefore, I find that s. 21(1)(c) does not apply to the information in dispute on page 171 of the Proposal.

*Conclusion – s. 21(1)*

[56] I have found above that none of the information in dispute consists of "trade secrets" under s. 21(1)(a)(i). However, I have found that a small amount of the information in dispute on pages 14, 17, 53-54, and 171 of the Proposal is GFL's "commercial" information under s. 21(1)(a)(ii).

[57] Turning to s. 21(1)(b), I have found GFL did supply the commercial information in dispute to the City. However, I have found that much of that information is already publicly available and therefore that GFL has not established that it supplied that information to the City "in confidence." Ultimately, I have found that GFL did supply a small amount of the commercial information on pages 14 and 171 of the Proposal to the City in confidence, so s. 21(1)(b) applies to that information.

[58] Finally, I have found that releasing the confidentially supplied commercial information on page 14 of the Proposal could reasonably be expected to significantly harm GFL's competitive position under s. 21(1)(c)(i). Therefore, I find that the City must withhold that information under s. 21(1). I have also found that s. 21(1)(c) does not apply to any of the other confidentially supplied commercial information remaining in dispute, so the City is not authorized or required to withhold that information under s. 21(1).

## CONCLUSION

[59] In conclusion, in this inquiry it was only necessary to consider whether s. 21(1) applied to the "information in dispute," which was the information the City and GFL did not agree must be withheld under s. 21(1). The following order does not apply to the information that they agreed should be withheld under s. 21(1) because I made no decision about that information.

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

1. Subject to item 2, below, I confirm that the City is not required to withhold the information in dispute under s. 21(1).

2. The City is required under s. 21(1) to withhold the information in dispute I have highlighted in pink on page 14 of the copy of the record provided to the City alongside this order.

3. The City must provide the applicant access to all the information in dispute that is not highlighted in pink in accordance with item 2, above.

4. The City must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the information it discloses to the applicant in compliance with item 3, above.

[61] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **August 7, 2025**.

June 24, 2025

**ORIGINAL SIGNED BY**

Alexander Corley, Adjudicator

OIPC File No.: F23-92771