Order F09-04

MINISTRY OF FINANCE

David Loukidelis, Information and Privacy Commissioner

April 2, 2009

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Summary: Section 25 does not require the Ministry to disclose information in an outsource service contract in the public interest. Section 21(1) does not require the Ministry to refuse to disclose information as claimed by the third-party contractor. The Ministry is obliged to respond to the applicant on the applicability of all exceptions to disclosure, not just s. 21(1), since the third-party review requested by the contractor froze only the Ministry's duty to respond to the access request for the information that was the subject of the third-party review.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 2(1), 4, 7, 21(1), 25(1).

Authorities Considered: B.C.: Order 00-22, [2000] B.C.I.P.C.D. No. 25; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 01-39, [2001] B.C.I.P.C.D. No. 40; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order 03-02, [2003] B.C.I.P.C.D. No. 2; Order 03-03, [2003] B.C.I.P.C.D. No. 3; Order 03-04, [2003] B.C.I.P.C.D. No. 4; Order F04-06, [2004] B.C.I.P.C.D. No. 6; Order F06-20, [2006] B.C.I.P.C.D. No. 36; Order F07-15, [2007] B.C.I.P.C. No. 21; Decision F08-07, [2008] B.C.I.P.C.D. No. 25; Order F08-22, [2008] B.C.I.P.C. D. No. 40.

Cases Considered: *Jill Schmidt Health Services Inc. v. British Columbia (Information and Privacy Commissioner)*, [2001] B.C.J. No. 79, 2001 BCSC 101; *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, [2002] B.C.J. No. 848, 2002 BCSC 603; *British Columbia Teachers' Federation v. British Columbia (Information and Privacy Commissioner)*, [2006] B.C.J. No. 155, 2006 BCSC 131.

1.0 INTRODUCTION

[1] This order concerns a request, made under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), seeking access to the Revenue

Management Project contract ("RMP contract") between the British Columbia government, as represented by the Ministry of Provincial Revenue ("Ministry"),[1] and EDS Advanced Solutions Inc. ("EDS"). The RMP contract is a 10-year agreement, signed in 2004, for EDS to build and operate a system for government revenue management.

[2] The access request was made to the Ministry of Management Services, which processed access requests for the Ministry and other ministries. The request covered several large government services contracts, including the RMP contract, and privacy impact assessments in relation to those contracts. In addition to seeking access to the RMP contract, the access applicant asked the Ministry to disclose the contract under s. 25 of FIPPA, which provides for mandatory disclosure of information in the public interest.

[3] From the documentation associated with the RMP contract, the Ministry determined that the documents listed in Appendix "A" to this order—essentially, the Master Services Agreement ("MSA") and its schedules, the Master Transfer Agreement ("MTA") and its schedules, and various side letters—responded to the access request.

[4] The Ministry gave EDS notice under s. 23 of FIPPA, inviting representations to the Ministry on whether s. 21(1), the disclosure exception for third-party business information, required the Ministry to withhold any information. EDS took the position that s. 21(1) did require the Ministry to refuse to disclose the entire RMP contract, except the following documents:

- MSA: Schedule 32 – EDS Articles
  Schedule 38 – EDS Code of Conduct
  Schedule 39 – JSRFP [Joint Solution Request for Proposal]
- Letter Re: Principal Key Positions
- Letter Re: Notification of Hotline Number
- Letter Re: Service Plan
- Province Letter Re: Contract Signing for the Public Service Pension Plan
- EDS Letter Re: Contract Signing for the Public Service Pension Plan – excluding one individual's name and telephone number near the bottom of the letter
- MTA: Schedule 6 – Province Benefit Plans

[5] The Ministry did not accept EDS's position and issued a decision under s. 24(1) to give partial access to the contract. As required by s. 24(2), the Ministry notified both EDS and the applicant of this decision. EDS then requested a third-party review, under s. 52(2), of FIPPA on the ground that the Ministry had applied s. 21(1) too narrowly. Because the matter was not resolved

[1] This was the ministry that represented the provincial government when the RMP contract was entered into. When this inquiry was held, the provincial government was represented by the Ministry of Small Business and Revenue. The revenue functions of that ministry were transferred to the Ministry of Finance early this year.

by mediation, a written inquiry was held under Part 5 of FIPPA, the parties being EDS, the Ministry and the access applicant. At that point, EDS maintained that s. 21(1) applied to more information than the Ministry had decided, but abandoned its initial position that s. 21(1) required virtually the entire contract to be withheld.

2.0 ISSUES AND EVIDENCE

[6] The Notice of Inquiry said the inquiry was being held to consider whether the Ministry was required to refuse to disclose "any portions of the contract under section 21" and whether, as argued by the applicant, disclosure of the contract was required by s. 25. In this order, I will first determine the applicability of s. 25, as it is a mandatory disclosure obligation that stands apart from the other issues, then address the application of s. 21(1).

[7] The wording of the Notice of Inquiry aside, EDS approached the issue of applicability of s. 21(1) as referring to the information on which EDS and the Ministry disagreed. EDS's submissions said it would "address or substantiate those items currently in dispute as between itself [EDS] and the public body [the Ministry] regarding disclosure".[2] Accordingly, EDS's submissions were directed to the parts of the RMP contract to which EDS said s. 21(1) applied, but the Ministry decided it did not. Of the information that EDS put in issue under s. 21(1), the Ministry had marked only the following for withholding under some other disclosure exception:

- MSA, s. 6.3(b)(i) (phrase) (s. 17)
- MSA, s. 22.6 (last sentence) (s. 17)
- MSA, (definitions and schedules), Schedule 2, all of Schedule D (6 pages) (s. 17)
- MSA, (definitions and schedules), Schedule 25, s. 18(b) (specific references) and s. 18(f) (two lines) (s. 15 or s. 17, or both).

[8] Accordingly, EDS's submissions were directed to the parts of the contract to which EDS alone, and not the Ministry, said s. 21(1) applied and EDS made no submissions on the information to which the Ministry and EDS agreed s. 21(1) applied. For this procedural reason only, this order is limited to the applicability of s. 21(1) to information to which EDS claims it applies and the Ministry decided it did not.

[9] I also sought the parties' submissions on whether the Ministry was obliged, having regard to ss. 7(6), 8, 23, 24, 52(2), 56 and 58 of FIPPA, to respond respecting the applicability of any other disclosure exceptions, not just s. 21(1). I will address this issue at the end of this order.

[10] Each party provided written submissions. The only sworn evidence was from the Ministry. This was an affidavit of the Ministry's Manager of Information

[2] EDS initial submission, p. 1; EDS supplementary submission, pp. 1-2.

and Privacy providing a factual narrative of the processing of, and response to, the access request. Four paragraphs in the affidavit also attested, on information and belief from a lawyer involved in the contract negotiations, to a strong expectation and desire by EDS to keep the entire contract confidential.

[11] In addition to the parties' submissions and this affidavit, I had before me the contract and contract documentation marked with the Ministry's severing, to the exclusion of the applicant. Apart from these materials, no *in camera* materials were tendered or received in the inquiry.

3.0 DISCUSSION

[12] **3.1 Public Interest Disclosure**—Section 25 imposes a positive obligation on public bodies to disclose information in certain circumstances involving risk of harm or other clear public interest, whether or not there is an access request and despite any of FIPPA's exceptions to the right of access to information:

> **Information must be disclosed if in the public interest**
>
> 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
>
> (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
>
> (b) the disclosure of which is, for any other reason, clearly in the public interest.
>
> (2) Subsection (1) applies despite any other provision of this Act.

[13] Section 25(1) requires an urgent and compelling need for disclosure before it is triggered. As I said in Order 02-38:

> The s. 25(1) requirement for disclosure "without delay", whether or not there has been an access request, introduces an element of temporal urgency. This element must be understood in conjunction with the threshold circumstances in ss. 25(1)(a) and (b), with the result that, in my view, those circumstances are intended to be of a clear gravity and present significance which compels the need for disclosure without delay.[3]

[14] It would be an unusual case for the disclosure obligation in s. 25(1) to be triggered by an outsourcing contract. This question arose in Order 01-20 regarding a university's long-term exclusive sponsorship agreement with a cold beverage company. Despite public interest in disclosure of the terms of the agreement, the elements of urgent and compelling public need for immediate disclosure were not present:

[3] Order 02-38, [2002] B.C.I.P.C.D. No. 38, para. 53.

> [38] …Section 25 applies despite any other provision of the Act, whether or not an access request has been made. It requires disclosure "without delay" where information is about a risk of significant harm to the environment or to the health and safety of persons or where disclosure is for any other reason clearly in the public interest. Although the words used in s. 25(1)(b) potentially have a broad meaning, they must be read in conjunction with the requirement for immediate disclosure and by giving full force to the word "clearly", which modifies the phrase "in the public interest".
>
> [39] Even if I assume, without deciding, that disclosure of contractual and financial information is capable of being "clearly in the public interest" within the meaning of s. 25(1)(b), the required elements of urgent and compelling need for publication are not present in this case. Again, the applicant believes the agreement should be disclosed because UBC is a publicly-funded educational institution, such that the student body, general public and media ought to have the widest ability to scrutinize an exclusive commercial commitment by UBC to substantial funding from a private source. Even if this position is well-founded as a matter of public policy, it does not give rise to an urgent and compelling need for compulsory public disclosure despite any of the Act's exceptions. In my view, no particular urgency attaches to disclosure of this record. Nor is there a sufficiently clear and compelling interest in its disclosure.[4]

[15] In Order 01-20, I found that s. 25(1) did not require disclosure of the exclusive sponsorship agreement, but also found that the access applicant was entitled to access because the disclosure exceptions in s. 17 and s. 21 did not authorize or require the university to refuse disclosure.

[16] This case fits squarely within the s. 25(1) analysis in Order 01-20 and I conclude that s. 25(1) does not require the Ministry to disclose the information in the RMP contract.

[17] **3.2 Harm to EDS's Interests**—The s. 21(1) disclosure exception creates a three-part test, each of which must be satisfied before a public body is required to refuse to disclose information. It reads as follows:

> **Disclosure harmful to business interests of a third party**
>
> 21(1) The head of a public body must refuse to disclose to an applicant information
>
> (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

[4] Order 01-20, [2001] B.C.I.P.C.D. No. 21, paras. 38-39.

> (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,
>
> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
>
> (iii) result in undue financial loss or gain to any person or organization, or
>
> (iv) reveal information supplied to, or in the report of an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquiry into a labour relations dispute.

[18] A central goal of FIPPA, which has been in force for over 15 years, is to make public bodies more accountable to the public through a right of public access to records, subject to only limited exceptions.[5] FIPPA should be administered with a clear presumption in favour of disclosure and, as I said in Order F07-15, nowhere is the right of access more important for the accountability of public bodies to the public than in the arena of public spending through large-scale government outsourcing of public services to private enterprise. Businesses that contract with government must fully appreciate that the transparency of those dealings has no comparison in fully private transactions.

[19] Many orders have held that s. 21(1) does not require access to be refused to contracts between public bodies and third parties.[6] It is clear that little, if any, of their contents will qualify under s. 21(1)(b), which is intended to capture immutable, confidential third-party business information and not negotiated contract terms. Nor will mere heightening of competition for future contracts be significant or undue harm under s. 21(1)(c).

[20] EDS made a brief submission about each part of the RMP contract to which it claimed s. 21(1) applied. It provided no sworn or other formal evidence. The Ministry and the applicant oppose EDS's claims, which it has the burden of proving under s. 57(3)(b). I have concluded that none of EDS's claims about disclosure of information are sustainable for the following non-exhaustive reasons:

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[5] See ss. 2(1) and 4.

[6] Order 00-22, [2000] B.C.I.P.C.D. No. 25 (affirmed in *Jill Schmidt Health Services Inc. v. British Columbia (Information and Privacy Commissioner)*, [2001] B.C.J. No. 79, 2001 BCSC 101; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 01-39. [2001] B.C.I.P.C.D. No. 40 (affirmed in *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner)*, [2002] B.C.J. No. 848, 2002 BCSC 603); Order 03-02, [2003] B.C.I.P.C.D. No. 2; Order 03-03, [2003] B.C.I.P.C.D. No. 3; Order 03-04, [2003] B.C.I.P.C.D. No. 4; Order F04-06, [2004] B.C.I.P.C.D. No. 6; Order F07-15, [2007] B.C.I.P.C. No. 21; Order F06-20, [2006] B.C.I.P.C.D. No. 36; Order F08-22, [2008] B.C.I.P.C. D. No. 40.

- MSA: s. 1.14 (subsection (b)) – This is a provision for cooperation between the parties. EDS submits that subsection (b) relates to commercial information supplied in confidence, the disclosure of which could either harm its competitive position or result in undue financial loss. EDS says it supplied the overall contractual language during the negotiation process and its underlying substance remained unchanged in the contract. Even if this information falls under s. 21(1)(a) and it was introduced (or imposed) by EDS in negotiations, it is negotiated contractual information, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 1.15 (subsection (c)) and s. 18.11 (phrase) – EDS submits that this information about potential scope of the contract relates to commercial information supplied in confidence, the disclosure of which could either harm its competitive position or result in undue financial loss by triggering competitors to offer their services to the detriment of EDS's ability to maximize the scope of the services it delivers under the contract. Even if this information falls under s. 21(1)(a), it is negotiated contractual information, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: ss. 2.5, 2.6 and 2.8 (dates) – EDS submits that dates for notice, negotiation and execution of a renewal contract and for notice of extension of the initial or a renewal term of the contract are commercial information supplied in confidence, the disclosure of which could either harm EDS's competitive position or result in undue financial loss. The dates, even if they are commercial information about EDS under s. 21(1)(a), are negotiated contractual information, not information supplied in confidence under s. 21(2)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 4.11 (entire text) – EDS submits that this standard of care provision is commercial or labour relations information, or both, supplied in confidence *by the public body* (not EDS), the disclosure of which could either harm EDS's competitive position or result in undue financial loss. EDS says this provision constitutes extremely sensitive and valuable commercial information that could irreparably harm its future negotiating position in the public and private sector. Even if this information falls under s. 21(1)(a), it is negotiated contractual information (apparently derived from the Ministry), not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 6.3 (phrase) – EDS maintains that a four-word phrase referring to an aspect of pricing provisions in another schedule is commercial information or financial information, or both, supplied in confidence, the disclosure of which

could seriously either harm EDS's competitive position or negotiating positions. It also says this information "has been relatively immutable, even through any negotiations." Even if this information falls under s. 21(1)(a), it is negotiated contractual information, not immutable in nature or confidentially supplied under s. 21(1)(b). There is also no evidence that disclosure of this phrase could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 11.24 (entire text) – EDS submits that this provision relates to commercial information supplied in confidence, the disclosure of which could either harm its competitive position or result in undue financial loss to its competitors. Even if this information falls under s. 21(1)(a), it is negotiated contractual information, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c), and in my view the speculative harm suggested in EDS's submission, even if it was realized, would not qualify under s. 21(1)(c).

- MSA: ss. 15.3, 15.5, 15.7 and 15.8 (phrase); MSA (definitions and schedules): Schedule 1 (two definitions) and Schedule 25: s. 6 (phrase) – EDS submits that reference to a particular law relates to commercial information supplied in confidence, the disclosure of which would cause serious harm to EDS's future negotiating positions by its private sector clients imposing the stipulations in the contract about this law. Even if these provisions fall under s. 21(1)(a), they, including references to the law in question, are negotiated contract terms, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 15.14 (sentence) – EDS submits that the second sentence of this provision respecting the organizational structure and corporate control of EDS is commercially sensitive information supplied in confidence, the disclosure of which could either seriously harm its competitive position or negotiating positions. Even if this information falls under s. 21(1)(a), it is negotiated contractual information, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 15.16 (entire text) and s. 22.1(d) (phrase) – EDS submits that it introduced s. 15.16 during contract negotiations as a means of addressing certain concerns of the provincial government, that the wording remained substantially unchanged and that its disclosure would set a disadvantageous precedent for EDS regarding future private or public sector deals. The phrase in s. 22.1(d) is a reference back to s. 15.16. Even if this information falls under s. 21(1)(a), these are negotiated contract terms, quite clearly not immutable in nature or supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 16.16 (phrase) – EDS argues that reference to a particular type of audit examination and report by the Province relates to commercial information supplied in confidence, the disclosure of which could harm EDS's competitive position. Even if this phrase falls under s. 21(1)(a), it is part of a negotiated contract term, and not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 20.11(b) (phrase) – EDS submits that its obligation to deliver certain information to the Province on termination of the contract relates to commercial information supplied in confidence, the disclosure of which would result in significant harm to EDS's competitive position, because knowledge of the information would be damaging to its commercial interests. Even if this reference to certain information falls under s. 21(1)(a), it is part of a negotiated contract term, and not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c). I add that s. 20.11(b) describes EDS's obligation to provide certain information to the Province on termination of the contract. In no way does it disclose the substance of that information.

- MSA: s. 22.6 (entire text) – EDS submits that this provision limiting representations and warranties of the Province to EDS relates to commercial information supplied in confidence, the disclosure of which would result in significant harm to EDS's competitive position. Even if this provision falls under s. 21(1)(a), it is a negotiated term of the contract, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 26.3 (certain references) – EDS submits that references to two section headings regarding contract pricing and costs should be withheld "for consistency".[7] Even if this provision falls under s. 21(1)(a), it is part of a negotiated term of the contract, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 27.12 (entire text) – EDS submits that this provision concerning the consequences of a force majeure event relates to commercial information supplied in confidence, the disclosure of which would result in significant harm to EDS's competitive position. Even if this provision falls under s. 21(1)(a), it is a negotiated term of the contract, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA: s. 30.2 (entire text) – EDS submits that this provision concerning its obligations to the Province under the contract was supplied by the public body (not EDS) and if disclosed could either harm EDS's competitive position or

[7] EDS initial submission, Appendix "A", p. 7.

result in undue financial loss. Even if this information falls under s. 21(1)(a), it is negotiated contractual information (apparently derived from the Ministry), not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA (definitions and schedules): Schedule 1 (one definition) – EDS objects to disclosure of a definition relating to service level requirements on the basis that it is commercial information, the disclosure of which would harm EDS's competitive position and that "the underlying structure of the commercial information could be distilled from it".[8] Even if this information falls under s. 21(1)(a), this definition is part of negotiated contract terms. It is quite clearly not information that is immutable in nature or revealing of immutable business information or supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA (definitions and schedules): Schedule 2 (entire text) – EDS submits that this schedule consisting of the JSDA (Joint Solution Definition Agreement) between EDS and the Ministry ought to be excepted from disclosure as information about negotiations by or for the Ministry or the Province under s. 17(1)(e) of FIPPA. Section 17(1)(e) is a discretionary exception to disclosure available to the Ministry, not EDS.[9] It does not create a third-party right to confidentiality under s. 21(1). The JSDA is also a negotiated agreement, not information supplied in confidence under s. 21(1)(b), and there is no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA (definitions and schedules): Schedule 25: s. 18 (subsections (b) and (f)) and s. 36 (phrase) – EDS submits that several phrases about security levels and obligations in this schedule on Privacy Obligations, relate to commercial information supplied in confidence, the disclosure of which would result in harm to EDS's competitive or negotiating position. Even if this information falls under s. 21(1)(a), it is part of negotiated terms in the contract and is not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MSA (definitions and schedules): Schedule 32 (entire text) – EDS submits that this schedule consisting of its corporate articles is protected from disclosure because it is available for purchase by the public through the office of the Registrar of Companies of British Columbia, within the meaning of s. 20(1)(a) of FIPPA. Section 20(1)(a) is a discretionary exception to

[8] EDS initial submission, Appendix "A", p. 7.
[9] The Ministry also made this point, with reference to *British Columbia Teachers' Federation v. British Columbia (Information and Privacy Commissioner)*, [2006] B.C.J. No. 155, 2006 BCSC 131, at para. 88.

disclosure available to the Ministry, not EDS. It does not create a third-party right to confidentiality under s. 21(1). Equally importantly, EDS's articles were incorporated into a negotiated contract and, as a public document, the articles could not be supplied in confidence under s. 21(1)(b). Nor could their disclosure reasonably be expected to result in harm under s. 21(1)(c).

- MSA (definitions and schedules): Schedule 39 (entire text) – EDS submits that this schedule consisting of the JSRFP (Joint Solution Request for Proposal) is excepted from disclosure under s. 17(1)(e) of FIPPA as information about negotiations by or for the Ministry or the Province. Section 17(1)(e) is a discretionary exception to disclosure available to the Ministry, not EDS. It does not create a third-party right to confidentiality under s. 21(1). Furthermore, the JSRFP is the Ministry's request to potential proponents for proposals for its Revenue Management Project. This is clearly a Ministry document about its intended Revenue Management Project. It is not about EDS. It was not supplied by or confidential to EDS. Disclosure of its contents is not harmful to EDS.

- MTA: Schedule 25 (entire text) and Schedule 26 (entire text) – EDS submits that these schedules consisting of a corporate guarantee and performance guarantee from related companies relate to commercial information or financial information, or both, supplied in confidence, the disclosure of which could either harm EDS's (or, alternatively, other unnamed third parties') competitive or negotiating positions or would likely result in similar information no longer being supplied to the Ministry. Even if these schedules fall under s. 21(1)(a), they are part of the negotiated terms of the contract, not information supplied in confidence under s. 21(1)(b). There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

- MTA: Schedule 58 (entire text) – EDS submits that this schedule consisting of whistleblower hotline telephone numbers respecting breach of personal privacy obligations under the contract are protected from access because their disclosure would create an unduly burdensome and undesirable strain on resources, which is likely to severely affect the economic interests of EDS and the Ministry. The information in this schedule is about the Ministry and from the Ministry, not EDS. There is also no evidence that disclosure could reasonably be expected to result in harm under s. 21(1)(c).

[21] I conclude that s. 21(1) does not require the Ministry to refuse to disclose any of the information claimed by EDS in this inquiry.

[22] **3.3 Other Disclosure Exceptions**—As noted earlier, I also sought submissions from the parties on whether the Ministry had been obliged to respond to the applicant on the applicability of all disclosure exceptions, not just s. 21(1).

[23] The Ministry replied that, although the contract was annotated with severing under other disclosure exceptions—ss. 15, 17 and 22—it would not be in a position to respond to the access request until EDS's third-party review was completed. Only then, the Ministry said, could other disclosure exceptions be put in issue, through a request for review by the applicant. The Ministry submitted that FIPPA, specifically ss. 7 and 8, contemplate a public body not responding to the applicant until the completion of a third-party review, with the result that the Ministry could wait and invoke other exceptions to disclosure later.

[24] In Decision F08-07[10], I considered this very issue, *i.e.*, whether, when there is a third-party request for review, the public body must still respond to the access request in respect of other exceptions to disclosure. The context was the same as in this case—a third-party review concerning the application of s. 21(1) to a large-scale government outsource contract. I concluded in Decision F08-07 that the third-party review freezes only the public body's duty to respond to the access request respecting the information that is the subject of the third-party review. For the rest of the requested records, the public body is obliged to respond to the applicant and to give access to the extent that information protected by any other disclosure exception can reasonably be severed under s. 4(2).

[25] Decision F08-07 applies here. The Ministry should have proceeded with its response to the applicant by providing access to those parts of the contract that were not protected by s. 21(1), as decided by the Ministry and as claimed by EDS in its third-party review, or any other relevant exception to disclosure.

[26] I would add that the Ministry did not deny that it was required to decide the applicability of s. 21(1) to the whole of the requested contract. However, as explained above, EDS's understanding of the scope of the inquiry caused it to limit its submissions to the parts of the contract to which it alone, and not the Ministry, said s. 21(1) applied. For that procedural reason, this order is confined to the applicability of s. 21(1) to the information covered by EDS's submissions.

4.0 CONCLUSION

[27] I find that s. 25(1) does not require the Ministry to refuse to disclose the RMP contract.

[28] I find that s. 21(1) does not require the Ministry to refuse to disclose any of the information in the contract to which EDS claimed it applied in this inquiry. Under s. 58(2)(a) and s. 58(3)(a), I order that:

1. The Ministry is required to give the applicant access to the information to which EDS claimed s. 21(1) applied in this inquiry, except that which the

[10] [2008] B.C.I.P.C.D. No. 25. There is a pending application for judicial review of this decision.

Ministry had marked for withholding under another disclosure exception;[11] and

2. The Ministry is required to respond to the applicant under s. 7, in compliance with s. 8, respecting all remaining aspects of the access request.

April 2, 2009

ORIGINAL SIGNED BY

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David Loukidelis
Information and Privacy Commissioner
for British Columbia

OIPC File No. F05-25189

[11] That other information being the following, also identified above under heading 2.0: MSA, s. 6.3(b)(i) (phrase) (s. 17); MSA, s. 22.6 (last sentence) (s. 17); MSA, (definitions and schedules), Schedule 2, all of Schedule D (6 pages) (s. 17); MSA, (definitions and schedules), Schedule 25, s. 18 (b) (specific references) and s. 18(f) (two lines) (s. 15 or s. 17, or both).

Appendix "A" to Order F09-04

Ministry-determined documents responsive to the access request for the Revenue Management Project

BCP/DRP = Business Continuity Planning/Disaster Recovery Plan
CITS = Common Information Technology Services
JSDA = Joint Solution Definition Agreement
JSRFP = Joint Solution Request for Proposal
MSA = Master Services Agreement
MTA = Master Transfer Agreement
NDA = Non-Disclosure Agreement
RMOP = Revenue Management Operating Plan
SOW = Statements of Work

Tab No.	Document Description
20.	Master Services Agreement, Articles 1 to 32 (154 pp.) and:

Schedule 1 – Definitions
Schedule 2 – JSDA and Selection Letters
Schedule 3 – Work-in-Progress Projects
Schedule 4 – Provincial Policies
Schedule 5 – SOW Overview
Schedule 6 – SOW, Level 1 (Transition)
Schedule 7 – SOW 2, Level 1 (Revenue Services)
Schedule 8 – SOW 3, Level 1 (IM/IT Services)
Schedule 9 – SOW 4, Level 1 (RMS Build and Transform Services)
Schedule 10 – Delivery of SOW Level 3 Documents
Schedule 11 – Service Locations
Schedule 12 – Service Catalogue and Business Model
Schedule 13 – BCP/DRP Strategy
Schedule 14 – Province Service Levels
Schedule 15 – EDS Service Levels
Schedule 16 – Outcomes
Schedule 17 – Key Positions
Schedule 18 – Governance
Schedule 19 – RMOP
Schedule 20 – Province Software
Schedule 21 – Technology Plan
Schedule 22 – Brand Permission
Schedule 23 – Base Fees and Benefits
    NDA – Financial Monitor
    NDA – Province Individuals
Schedule 24 – Growth and Marketing
Schedule 25 – Privacy Obligations
Schedule 26 – Competitors
Schedule 27 – Privacy Management Plan
Schedule 28 – Non-Disclosure Agreement
Schedule 29 – Records protocols
Schedule 30 – Reporting Requirements

Schedule 31 – Termination fees
Schedule 32 – EDS Articles
Schedule 33 – Approved Material Subcontractors
Schedule 34 – EDS Corporate Guarantee
Schedule 35 – Performance Guarantee
Schedule 36 – Designated Expedited Arbitrators
Schedule 37 – Uninterruptible Services
Schedule 38 – EDS Code of Conduct
Schedule 39 – JSRFP [at Tab No. 70]
Schedule 40 – Province Shared Infrastructure and CITS Services
Schedule 41 – Information Sharing Agreements

21. Master Transfer Agreement, Articles 1 to 13 (22 pp.) and:

Schedule 1 – Definitions
Schedule 2 – Form of Assignment Agreement
Schedule 3 – [see Tab No. 94]
Schedule 4 – Offer Tracking Spreadsheet
Schedule 5 – Province Employee Agreements
Schedule 6 – Province Benefit Plans
Schedule 7 – [see Tab No. 95]
Schedule 8 – Collective Agreement Disclosures
Schedule 9 – [see Tab No. 96]
Schedule 10 – [see Tab No. 97]

25. EDS Corporate Guarantee
26. Performance Guarantee

Side Letters, Certificates and Ancillary Documents:

46. Swing Space Agreement
47. Letter Re: Swing Space and Security
48. Letter Re: Service Locations

51. Letter Re: SAP Consent, Skip Tracing Tools

55. Letter Re: Special Payments
56. Letter Re: EDS Key Position
57. Letter Re: Province Key Positions
58. Letter Re: Notification of Hotline Number
59. Letter Re: Service Plan
60. Letter Re: Termination payments to staff upon expiry of the Agreement
61. Letter Re: BearingPoint Overhead
62. Letter Re: Privacy Obligations
63. Letter Re: Intria
64. Letter Re: BC Mail
65. Letter Re: BearingPoint Agreement to Negotiate
66. Letter Re: Sierra Systems (Termination Notice)
67. Letter Re: Sierra Systems (Assigned Contract Status)

71. Letter Re: Entire Agreement clause
Pension Documents:

72. Province Letter Re: Contract Signing for the Public Services Pension Plan
73. EDS Letter Re: Contract Signing for the Public Services Pension Plan

Updated Schedules:

94. MTA Schedule 3 – In-Scope Employee Re: Transferred Employees
95. MTA Schedule 7 – Employee Claims
96. MTA Schedule 9 – Contracts and Licenses
97. MTA Schedule 10 – Independent Contractor Agreements