



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F09-12

BC PAVILION CORPORATION

Celia Francis, Senior Adjudicator

July 29, 2009

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Summary: The *Vancouver Sun* requested any reports on the long term viability of BC Place. PavCo's decision to apply s. 13(1) to information in a 2006 report on infrastructure improvements is confirmed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 13(1).

Authorities Considered: **B.C.:** Order 02-38, [2002] B.C.I.P.C.D. No.38; Order 02-50, [2002] B.C.I.P.C.D. No. 5; Order F09-02, [2009] B.C.I.P.C.D. No. 3.

Cases Considered: *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564.

1.0 INTRODUCTION

[1] The *Vancouver Sun* ("applicant") requested access under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to any reports produced by or for BC Pavilion Corporation ("PavCo") since January 2001 "on the long-term viability of BC Place, in particular the roof". PavCo responded by disclosing copies of responsive records with some information withheld under ss. 13, 17 and 21 of FIPPA. The applicant requested a review of PavCo's decision to apply s. 13 to a report and, although PavCo later disclosed some more information during mediation, the applicant's request for review did not settle. The matter then proceeded to inquiry under Part 5 of FIPPA.

[2] The Office invited representations from the applicant and PavCo (public body) and, as appropriate persons, the Ministry of Tourism, Culture and the Arts ("Ministry"), the Ministry to which PavCo is responsible, and the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games

(“VANOC”). VANOC withdrew from the inquiry soon after the Office issued the notice for this inquiry. PavCo and the Ministry made a joint submission.

2.0 ISSUE

[3] The issue before me is whether PavCo is authorized by s. 13(1) to withhold information. Under s. 57(1) of FIPPA, PavCo has the burden of proof.

3.0 DISCUSSION

[4] **3.1 Background**—PavCo was incorporated in 1984 and operates BC Place Stadium, which PavCo described as a “multi-purpose facility” in Vancouver. In May 2008, the Premier announced a major renovation of BC Place that would, among other things, “expand the city’s sport, culture and entertainment district” and provide a waterfront site for the Vancouver Art Gallery.¹ As part of a Letter of Expectations between PavCo and the Ministry, the Ministry agreed to “review and approve minimum cost upgrade options” that PavCo developed with VANOC for refurbishing BC Place prior to the 2010 Olympic and Paralympic Games.² The upgrades are scheduled to take place in two phases, before and after the Games.³

[5] The 15-page record in question dates from June 2006 and is titled “Infrastructure Improvements to BC Place Stadium”. PavCo disclosed a few sentences on p. 1, including the information that “improvements are required” to BC Place’s infrastructure. Except for a few headings, PavCo withheld the rest of the report under s. 13(1).

[6] **3.2 Application of Section 13**—The relevant provisions read as follows:

Policy advice, recommendations or draft regulations

- 13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.
 - (2) The head of a public body must not refuse to disclose under subsection (1)
 - (a) any factual material, ...
 - (3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

[7] Section 13 has been the subject of numerous orders.⁴ I have taken the same approach here without repetition.

¹ Paras. 4.01-4.09, PavCo’s initial submission.

² Paras. 4.25-4.26, PavCo’s initial submission.

³ News release of May 16, 2008 attached as Exhibit “A” to the Jacobs affidavit.

⁴ See for example Order 02-38, [2002] B.C.I.P.C.D. No.38, and Order 02-50, [2002] B.C.I.P.C.D. No. 5, and Order F09-02, [2009] B.C.I.P.C.D. No. 3.

[8] **3.3 Does s. 13(1) apply?**—The applicant believes that PavCo applied s. 13(1) too broadly. While “recommendations” may be withheld, it argued, factual information about the stadium’s condition may not. It suspects that PavCo has applied s. 13(1) to factual information on the infrastructure problems at BC Place.⁵

[9] PavCo submits that the withheld information consists of its advice to the Ministry on suggested courses of action, that is, what infrastructure improvements were, in PavCo’s opinion, required to BC Place and its advice on how much those improvements were estimated to cost. PavCo argued that the record itself supports the application of s. 13(1), because the disputed information constitutes explicit advice or recommendations or it would be possible to accurately infer such information. PavCo noted that previous orders have said it does not matter who created the advice or recommendations and also argued that ss. 13(2) and (3) do not apply.⁶

[10] Both parties also drew my attention to the BC Court of Appeal decision, *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*.⁷

Advice or recommendations?

[11] I have carefully reviewed the applicant’s concern that PavCo has misapplied s. 13(1) by withholding “factual information” contrary to s. 13(2)(a). PavCo has however accurately characterized the withheld information as either implicitly or explicitly revealing advice or recommendations, as past orders have interpreted these terms. I am therefore satisfied that s. 13(1) applies to it. I also find that ss. 13(2) and (3) do not apply here.

4.0 CONCLUSION

[12] For reasons given above, I confirm PavCo’s decision to withhold the disputed information under s. 13(1).

July 29, 2009

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File No. F07-32538

⁵ Applicant’s initial submission.

⁶ Paras. 4.27-4.43, PavCo’s initial submission; Jacobs affidavit. Some of PavCo’s argument and evidence was received *in camera* as it would reveal information in dispute.

⁷ [2004] O.J. No. 163 (Div. Ct.), *aff’d* [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564.