



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F16-05

CAPITAL REGIONAL DISTRICT

Ross Alexander
Adjudicator

February 12, 2016

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Summary: An applicant requested a 2009 Capital Regional District staff report recommending that Stantec Consulting Ltd. be approved as the program management consultant regarding the development of a wastewater treatment plant in Greater Victoria. The CRD disclosed most of the report, but it withheld a small amount of information under s. 17 (disclosure harmful to the financial or economic interests of a public body) and s. 21 (disclosure harmful to the business interests of a third party) of FIPPA. The adjudicator determined that ss. 17 and 21 do not apply to this information, and ordered the CRD to disclose it to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 17 and 22.

Authorities Considered: B.C.: Order F08-22, 2008 CanLII 70316 (BC IPC); Order 02-50, 2002 CanLII 42486 (BC IPC); Order F10-24, 2010 BCIPC 35 (CanLII); Order F13-20, 2013 BCIPC No. 27 (CanLII); Order 01-36, 2001 CanLII 21590 (BC IPC); Order F14-01, 2014 BCIPC No. 1 (CanLII).

Cases Considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3; *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875; *Kamloops Office Systems Ltd. v. Kamloops/Thompson School District No. 73*, 2003 BCSC 619.

INTRODUCTION

[1] This inquiry relates to a journalist's request to the Capital Regional District ("CRD") for a 2009 staff report from CRD staff to the CRD's Core Area Liquid Waste Management Committee ("CALWMC"). The report recommends that Stantec Consulting Ltd. ("Stantec") be approved as the project management consulting firm for a wastewater treatment plant and biosolids recovery centre in Greater Victoria (the "Project").¹

[2] The CRD responded by disclosing portions of the report to the applicant, while withholding other information under s. 12(3) (local public body confidences) and s. 21 (disclosure harmful to the business interests of a third party) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

[3] The applicant requested that the Office of Information and Privacy Commissioner ("OIPC") review the CRD's decision to withhold information.

[4] During the OIPC mediation process, the CRD disclosed additional information to the applicant, and withdrew its application of ss. 12(3) and 21 of FIPPA. It continued to withhold other information under s. 17 of FIPPA (disclosure harmful to the financial or economic interests of a public body).

[5] The applicant requested that this matter proceed to inquiry. Following that request, Stantec wrote to the OIPC and the CRD, asserting that s. 21 of FIPPA applies to the information being withheld under s. 17, and that Stantec opposes its release. The OIPC invited Stantec to participate in the inquiry as a third party. As a result, the issues at inquiry are whether ss. 17 and/or 21 of FIPPA apply to the withheld information.

ISSUES

[6] The issues in this inquiry are as follows:

- a) Is the CRD authorized to refuse access to information under s. 17 of FIPPA because disclosure could reasonably be expected to harm the financial or economic interests of a public body?
- b) Is the CRD required to refuse access to information under s. 21 of FIPPA because disclosure could reasonably be expected to harm the business interests of a third party?

[7] In its reply submissions, Stantec asserts that s. 22 of FIPPA (disclosure harmful to personal privacy) also applies to the information in dispute. Since this

¹ This recommendation has already been disclosed to the applicant.

is a mandatory provision, I will address s. 22 if I determine that ss. 17 and 21 of FIPPA do not apply.

[8] Pursuant to s. 57 of FIPPA, the burden of proof for ss. 17 and 21 of FIPPA is on the parties opposing disclosure. In contrast, the burden is on the applicant under s. 22 to prove that the disclosure of personal information would not be an unreasonable invasion of a third party's personal privacy.

DISCUSSION

[9] **Background**—For many years, the CRD has been planning the Project in conjunction with the federal and provincial governments.

[10] In March 2009, the CRD issued a request for qualifications (“RFQ”) for program management consulting work for the Project. The RFQ stated that the successful program management consultant would not be eligible to bid on other competitive processes related to the wastewater treatment plant or the biosolids recovery centre.²

[11] Five proponents responded to the RFQ. CRD staff prepared the staff report recommending that CALWMC choose Stantec as the successful proponent. The report was provided to CALWMC during an *in camera* meeting in June 2009.

[12] Stantec was chosen as the successful proponent, and it subsequently entered into a seven year contract with the CRD to provide program management consulting services for the Project. This contract expires on December 31, 2016.

[13] The Project construction has been delayed due to siting and zoning issues. This has extended the Project completion date, and created the need for a program management consultant beyond December 31, 2016. The CRD says it has not yet decided whether it is going to renew Stantec's contract or conduct another RFQ process.³

[14] **Information in Dispute**—The only record at issue is the CRD staff report to CALWMC recommending that Stantec be approved as the Project management consultant. The CRD has disclosed nearly all of the information in this report to the applicant, including the fact that Stantec is the recommended proponent. The only withheld information is two sentences under the heading “Financial Implications”.

² Affidavit of the CRD's Financial Manager at para. 16.

³ Affidavit of the CRD's Financial Manager at para. 20.

[15] The CRD states that it is withholding these two sentences because it would reveal commercial and financial information of Stantec to the public. One sentence compares Stantec's pricing to that of an unidentified proponent.⁴ In my view, the other sentence appears on the face of the record to more likely relate to a general cost estimate for the Project than a statement about Stantec, but I will proceed on the basis that it relates to Stantec based on the CRD's statement.

Harm to the Financial or Economic Interests of a Public Body – s. 17

[16] Section 17 relates to disclosure harmful to the financial or economic interest of a public body. It states in part:

- 17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
- ...
- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
 - (e) information about negotiations carried on by or for a public body or the government of British Columbia;
 - (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[17] The issue under s. 17 is whether disclosure “could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy”. Sections 17(1)(a) to (f) are examples of this harm, but disclosing information that does not fit into these enumerated examples may still constitute harm under s. 17(1). As for how to interpret ss. 17(1)(a) to (f), former Commissioner Loukidelis stated in Order F08-22 that:

The intent and meaning of the listed examples are interpreted in relation to the opening words of s. 17(1), which, together with the listed examples, are interpreted in light of the purposes in s. 2(1) and the context of the statute as a whole.⁵

⁴ While the proponent is unidentified in the withheld excerpt, the proponent is likely identifiable when combined with other information.

⁵ Order F08-22, 2008 CanLII 70316 (BC IPC) at para. 43.

[18] The standard of proof for s. 17 is whether disclosure could reasonably be expected to result in the specified harm. The Supreme Court of Canada has described this standard as requiring a reasonable expectation of probable harm from disclosure of the information.⁶ It is a middle ground between what is probable and that which is merely possible. A public body must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach this standard. The determination of whether the standard of proof has been met is contextual, and the quantity and quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences".⁷

[19] The CRD submits that s. 17 applies to the withheld information because disclosure could reasonably be expected to result in undue financial loss to, or harm the negotiating position of, the CRD or Stantec. It states that disclosing the withheld information would allow Stantec's competitors to calculate Stantec's unit rates and learn its pricing strategy to compete against Stantec. It points out that there are only a limited number of firms capable of carrying out a project of this scope,⁸ and that releasing the withheld information into such a small pool of candidates has the potential to create different results that are prejudicial to either Stantec or the CRD. It states that disclosure would enable Stantec's competitors to use this information to tailor their bids to successfully outbid Stantec in future competitive processes, including for a new RFQ if one is issued for the Project management consulting work.

[20] The CRD submits that disclosing the withheld information could reasonably be expected to harm its ability to negotiate the best and most financially responsible contract. It submits that this is a situation where there are ongoing negotiations, and disclosing the disputed information will likely compromise its negotiating position. The CRD is concerned that Stantec may decide not to bid on a new RFQ because Stantec believes its position has been compromised by the disclosure, or that a competitor of Stantec's will be awarded the Project consulting work because it unfairly uses the disclosed information to outbid Stantec. The CRD states that changing consultants would harm the CRD because it would cost approximately \$200,000 to recruit and bring a new consultant up to speed with the Project.⁹ The CRD submits, in the alternative, that other firms may not submit a proposal to the CRD if they review the disclosed information and feel that they cannot compete with Stantec.

⁶ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54 regarding the remainder of this paragraph.

⁷ *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para 94 citing *F.H. v. McDougall*, 2008 SCC 53, at para. 40.

⁸ The CRD states that only five proposals were received in response to the RFQ, with one of them no longer being eligible to bid.

⁹ Affidavit of the CRD's Financial Manager at para. 26.

[21] The applicant submits that detailed information from which Stantec's hourly rates for the Project could be calculated have already been released into the public domain, so disclosure of the information at issue here would not result in harm. For instance, the applicant submits that Stantec's hourly rates can be calculated from the existing contract between the CRD and Stantec, which he says has already been disclosed in response to another access to information request. He also provided "work task orders" from Stantec to the CRD that contain the estimated work hours and costs for a number of different tasks, such as "program management" and "technical support". The applicant further submits it is unlikely that the release of whatever outdated information is in dispute would play a significant role in what either Stantec or the CRD decides regarding the future management consulting work. He also submits that even assuming this information would give competitors an edge over Stantec, it is hard to see how it would harm the CRD if Stantec's competitors provide the CRD with more competitive bids.

[22] In reply, the CRD states that the withheld information differs from the information identified by the applicant as having been released, and that the withheld information must be considered on its own merits. It states that the withheld information could reveal Stantec's financial strategy for bidding on projects of this type, thus provide an unfair advantage to Stantec's competitors. Further, Stantec states that the financial information provided by the applicant reveals, at most, Stantec's blended hourly rate for each task, but not the individual hourly rates for Stantec's personnel.

Analysis

[23] The CRD submits that ss. 17(1)(d), (e) and (f) apply to the withheld information. However, its submissions focus on the threshold issue of harm under s. 17(1) rather than the specific harms listed in those individual clauses. Therefore, I will address the general issue of harm under s. 17(1), while keeping in mind ss. 17(1)(d), (e) and (f).

[24] The primary concern identified by the CRD and Stantec is that disclosing the withheld information will reveal Stantec's hourly rates and pricing strategy. However, in my view the withheld information is not specific enough to reveal Stantec's hourly rates. It does not directly state Stantec's hourly rates. Further, the evidence does not establish that there is available information that could be combined with the withheld information to reveal Stantec's hourly rates,¹⁰ notwithstanding that some of the withheld information compares Stantec's hourly

¹⁰ First assuming that the withheld Project cost estimate information specifically relates to Stantec's pricing, it is possible that there is available information that could be combined with this withheld information to reveal a general range of an aggregate of Stantec's hourly rates (but not individual hourly rates).

rates to a competitor in general terms.¹¹ It is certainly not sufficiently detailed that it would reveal the hourly rates of Stantec's individual personnel, even when combined with other information. Further, neither Stantec nor the CRD explain how disclosure would reveal Stantec's pricing strategy, and it is not apparent to me how disclosure of the withheld information would reveal its pricing strategy. For these reasons, I am not satisfied that there is a reasonable expectation that disclosure of the withheld information would impact the Project or other projects, or that there would be harm from disclosure within the meaning of s. 17 of FIPPA.

[25] However, even if I am wrong and Stantec's competitors could use the withheld information to calculate an aggregate hourly rate for Stantec or determine Stantec's pricing strategy, I am not satisfied that there is a reasonable expectation of harm to any party from disclosure of this information. One reason is that anything that might be revealed is dated (the information is from 2009), so the market and pricing conditions have likely changed.¹² Therefore, even if Stantec's competitors were able to glean general information about Stantec's past hourly rates and pricing strategy, such information would have limited use to its competitors in attempting to predict Stantec's bid for future competitive processes.

[26] Further, for s. 17 to apply, it is the release of the withheld information itself that must give rise to a reasonable expectation of harm.¹³ However, in this case, the applicant's evidence establishes that the withheld information is less specific than information about Stantec's Project pricing that is already publicly available. Therefore, assuming there is a potential harm from disclosure of the withheld information, such harm already exists and it would not arise from disclosure of the withheld information.

[27] In addition, it is speculative to suggest that the CRD would need to switch consultants for reasons outside of its control due to disclosure of the withheld information. Stantec does not assert that it will not want to continue as the Project consultant – or that it would not submit a proposal for another RFQ – if the withheld information is disclosed. I find there is no reasonable prospect that disclosure of the withheld information would result in Stantec not making a competitive bid on a future Project RFQ, considering the context of this case. Moreover, even if one of Stantec's competitors underbid Stantec's pricing in a second RFQ, the evidence does not suggest that the CRD would be forced to select the proponent with the lowest quoted hourly rate(s), as opposed to evaluating and selecting the proponent that provides the best overall value to the

¹¹ Even assuming that the competitor is identifiable, I note that the comparison information in the staff report contains qualifying language.

¹² I note that Stantec does not state that its pricing remains the same as it was in 2009.

¹³ *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at paras. 43 and 44.

CRD. This makes the argument that disclosure may result in the CRD needing to switch consultants (resulting in harm to the CRD) even more speculative.

[28] The CRD submits that the situation here is like the one in Order 02-50,¹⁴ in that the CRD's has ongoing negotiations that will likely be compromised if the withheld information is disclosed. I disagree.

[29] In Order 02-50, a First Nation requested land and timber appraisals which had been prepared for government. The lands that were the subject of the appraisals had been offered to the First Nation by the Governments of Canada and British Columbia during treaty negotiations. In Order 02-50, former Commissioner Loukidelis determined that s. 17 applied because these appraisals related to the same lands government was offering in ongoing treaty negotiations, so it was "about negotiations carried on by public bodies or the government of British Columbia"¹⁵ as set out in s. 17(1)(e).¹⁶

[30] In my view, Order 02-50 does not support the CRD's position that s. 17 applies in this case because the circumstances and withheld information at issue are materially different. The withheld information in this case consists of general statements regarding pricing information submitted by Stantec and another proponent regarding the RFQ. In my view this information does not reveal the CRD's negotiating techniques, strategies, criteria, positions or objectives for the 2009 RFQ, let alone a future RFQ. This is in contrast to Order 02-50, where the information at issue revealed information held by government about the value of its settlement offer.

[31] The CRD's alternative submission is that disclosing the withheld information could result in a reduction to the already limited pool of proponents if Stantec's competitors feel that they cannot compete with Stantec for this work. The CRD states that this would "have an obvious detrimental impact" on the CRD's ability to negotiate its best and most financially responsible contract.

[32] In my view, the prospect that disclosure of the withheld information may lead to a potential proponent not submitting a proposal is speculative. Firstly, this is only a concern in the event that the CRD issues a RFQ rather than directly awarding another contract to Stantec. Further, this is a multi-million dollar project, so it seems speculative that potential proponents would forego submitting a proposal because they are worried that Stantec will have a lower bid price, based on general statements relating to Stantec's bid price from 2009.

¹⁴ Order 02-50, 2002 CanLII 42486 (BC IPC).

¹⁵ Section 17(1)(e). Previous orders have stated that the purpose of this provision is to protect information related to negotiating techniques, strategies, criteria, positions or objectives: Order F10-24, 2010 BCIPC 35 (CanLII) at para. 60.

¹⁶ The s. 17 issue in Order 02-50, 2002 CanLII 42486 (BC IPC) was determined based on s. 17(1)(e). There were also other issues in this order.

Moreover, Stantec's competitors are already able to make calculations using public information to learn more detailed information about Stantec's pricing than could be determined from the withheld information, so it is not apparent why disclosure of the withheld information may result in other potential proponents not submitting proposals.

[33] This is not a case where the evidence establishes that there is a reasonable expectation of harm to the CRD's negotiating leverage from disclosure of the withheld information. It is clear from the materials that the CRD prefers for Stantec to continue as its Project consultant, due to the estimated \$200,000 in costs and delays in switching consultants. However, the CRD's concerns about its negotiating leverage regarding disclosure of the withheld information do not seem to relate to its negotiations with Stantec, as the CRD has already disclosed the withheld information to Stantec. Further, there is no evidence that the CRD negotiates price and/or other valuable terms with the selected proponent after the RFQ process is complete,¹⁷ so it is not apparent how the strength of the proposals other than the selected proponent would give the CRD negotiating leverage.

[34] For the above reasons, I find that disclosure of the withheld information could not reasonably be expected to harm the financial or economic interests of the CRD within the meaning of s. 17(1) – including ss. 17(1)(d), (e) and (f) – so s. 17 of FIPPA does not apply.

Harm to Third-Party Business Interests - s. 21

[35] Section 21 of FIPPA requires public bodies to refuse to disclose information that could reasonably be expected to harm the business interests of a third party. Section 21(1), which sets out the three-part test that must be met for the section to apply, states in part:

The head of a public body must refuse to disclose to an applicant information

- (a) that would reveal
 - ...
 - (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,

¹⁷ Also, see *Kamloops Office Systems Ltd. v. Kamloops/Thompson School District No. 73*, 2003 BCSC 619 for a discussion of Contract A and Contract B tender obligations in the context of requests for proposals.

- (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,
- ...

[36] The CRD and Stantec submit that s. 21 applies to all of the information withheld under s. 17 on the basis that disclosure could reasonably be expected to significantly harm or interfere with Stantec's competitive position, or cause it an undue financial loss. The applicant submits that s. 21 does not apply because Stantec's hourly rates have already been publicly revealed, and it seems unlikely that the release of the small amount of outdated financial information contained in the disputed record could reasonably be expected to cause Stantec an undue financial loss.

Commercial or financial information – s. 21(1)(a)

[37] Section 21(1)(a) applies to, among other things, commercial or financial information of or about a third party. The withheld information, which is listed in the staff report under the heading "Financial Implications", is clearly commercial or financial information. While it is unclear on the face of the staff report if one of the withheld sentences is about Stantec as opposed to general cost estimates for the Project, as previously stated I am accepting the CRD's statement that it relates to Stantec and proceeding on the basis that it is about Stantec. The other withheld information is about Stantec and another proponent. Therefore, both sentences are commercial or financial information of or about a third party within the meaning of s. 21(1)(a).

Supplied in confidence – s. 21(1)(b)

[38] For s. 21(1)(b) to apply, the information must have been supplied, either implicitly or explicitly, in confidence by a third party. This is a two-part analysis. The first step is to determine whether the information was supplied to a public body. The second step is to determine whether the information was supplied "in confidence".

Supplied

[39] In determining whether the information was supplied, it is necessary to consider the content and not just the form of the information.¹⁸ In this case, some of the withheld information is intertwined information about two proponents

¹⁸ *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 158.

that was combined by the CRD. While the CRD drafted the staff report and created this comparison, I am nonetheless satisfied that this information was supplied by third parties because the proponents were the originating source of the information. Given that I am proceeding on the basis that the other withheld information is about Stantec, I find that it too was supplied by Stantec to the CRD.

In Confidence

[40] For s. 21(1)(b) to apply, the information must be supplied, explicitly or implicitly, in confidence. The test for “in confidence” is objective, and the question is one of fact. Evidence of a third party’s subjective intentions with respect to confidentiality is not sufficient.¹⁹ As stated in Order F13-20, the determination of whether information is confidential depends on its contents, its purposes and the circumstances under which it was compiled.²⁰

[41] The CRD submits that the disputed information was supplied implicitly in confidence. It states that there was no express statement of confidentiality regarding this information, but that Stantec’s hourly rates have been treated as having been supplied in confidence since they were received by the CRD. It states that none of the proposals received in response to the RFQ were opened or discussed publicly, the submissions of the unsuccessful proponents were destroyed after the process was complete, and the hourly rates Stantec is charging the CRD have not been published by either the CRD or Stantec. It states that the withheld information is not the same as the information cited by the applicant as having been released, and therefore the disputed information must be considered on its own merits. Stantec states that it implicitly supplied this information “in confidence”.

[42] The withheld information relates to the bid prices submitted in response to the RFQ. The RFQ neither promises confidentiality, nor states that the CRD may disclose the information.²¹ Further, there is no evidence that either Stantec’s or the other proponent’s response to the RFQ contained a confidentiality statement,²² and there is no evidence of other discussions or promises regarding confidentiality. In short, there is no evidence that the information was supplied expressly in confidence. Therefore, I will consider whether it was supplied implicitly in confidence.

¹⁹ Order F13-20, 2013 BCIPC No. 27 (CanLII) at para. 22.

²⁰ Order F13-20, 2013 BCIPC No. 27 (CanLII) at para 27; Also see Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 27.

²¹ Affidavit of a CRD financial manager at Exhibit “F”.

²² There is no evidence regarding the other proponent’s proposal, other than that all unsuccessful proposals were destroyed after the procurement process was completed.

[43] In determining whether information was implicitly supplied in confidence, former Commissioner Loukidelis stated in Order 01-36 that:

All of the circumstances must be considered in such cases in determining if there was a reasonable expectation of confidentiality. The circumstances to be considered include 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;
4. prepared for a purpose which would not entail disclosure.²³

[44] Considering the above factors, the withheld information was not communicated to the CRD on the express basis that it was to be kept confidential. However, the CRD consistently treated it as confidential. Further, this information was prepared for a purpose which would not ordinarily entail disclosure, except to the extent that the proponent is successful and the information becomes part of a resulting contract.²⁴ While there are factors both for and against finding that the information was supplied in confidence, I find that the information at issue in this inquiry was implicitly supplied in confidence within the meaning of s. 21(1)(b) of FIPPA.

Reasonable Expectation of Harm from Disclosure – Section 21(1)(c)

[45] I will now consider whether disclosure of the disputed information could reasonably be expected to result in harm to a third party pursuant to s. 21(1)(c). Section 21(1)(c) states in part:

- 21(1) The head of a public body must refuse to disclose to an applicant information
- ...
- (c) the disclosure of which could reasonably be expected to

²³ Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 26.

²⁴ Orders of this office have consistently determined that information in a contract is not supplied because it is negotiated. For example, see Order F14-01, 2014 BCIPC No. 1 (CanLII). There are exceptions to information in a contract not being supplied because it is negotiated, but they do not generally apply to the agreed price (including hourly rates) between the parties to the contract.

- (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
- ...
- (iii) result in undue financial loss or gain to any person or organization, or ...

[46] The CRD and Stantec both submit that disclosing the information at issue would result in harm to third parties in accordance with ss. 21(1)(c)(i) and (iii).

[47] The standard of proof under ss. 17 and 21 is the same. For the reasons discussed above with respect to s. 17, I am not satisfied that disclosure of the information in dispute could reasonably be expected to result in harm to Stantec, the other proponent whose information is at issue, or any other third party within the meaning of s. 21(1)(c) of FIPPA.

[48] This finding above extends to Stantec's argument that disclosure of the withheld information could reasonably be expected to cause its potential clients to expect Stantec to offer them the same hourly rates that it provided the CRD for the Project, without Stantec having an opportunity to negotiate its rates. As previously stated, the withheld information is insufficiently detailed to disclose Stantec's hourly rates and pricing strategies, and there is already publicly available information that reveals more detailed information about Stantec's Project hourly rates than the withheld information. Moreover, in any event, the withheld information is dated information from 2009, which further diminishes the possibility that Stantec's potential clients could use this information as negotiating leverage. The evidence does not establish that disclosure of the withheld information could reasonably be expected to significantly harm Stantec's negotiating position, or result in undue financial loss or gain to anyone.

[49] I therefore find that s. 21 does not apply to the withheld information.

Unreasonable Invasion of Third-Party Personal Privacy – s. 22

[50] Section 22 of FIPPA states that the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. Stantec submits in its reply submissions that s. 22 applies in this case because the withheld information is potentially capable of revealing the individual hourly rates and income for Stantec's personnel.

[51] Numerous orders have considered the analytical approach to s. 22. The first step is to determine if the information in dispute is "personal information" as defined by FIPPA. FIPPA defines personal information as "recorded information about an identifiable individual other than contact information". I find

that the information in this case is not personal information because it is not about any identifiable individuals. I therefore find that s. 22 of FIPPA does not apply.

CONCLUSION

[52] For the reasons given above, under s. 58 of FIPPA, I order that the CRD is required to give the applicant access to the information it is withholding under ss. 17 and 21 of FIPPA by **March 25, 2016** pursuant to s. 59 of FIPPA. The CRD must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

February 12, 2016

ORIGINAL SIGNED BY

Ross Alexander
Adjudicator

OIPC File No.: F14-57878