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Order F17-41

CITY OF VANCOUVER

Celia Francis
Adjudicator

September 25, 2017

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Summary: An applicant requested EasyPark's 2010-2015 financial statements and records showing its directors' names, remuneration and expenses. The applicant said that disclosure of the records is clearly in the public interest under s. 25(1)(b) (public interest override). The City of Vancouver (City) refused access to the financial statements under s. 21(1) (harm to third-party financial interests). It also said that EasyPark was not a public body and that the records related to EasyPark's directors were not in its custody or under its control. The adjudicator found that s. 25(1)(b) did not apply. The adjudicator also found that s. 21(1) did not apply to the financial statements and ordered the City to disclose them. Finally, the adjudicator found that EasyPark is not a public body, that the City does not control EasyPark and that the records related to EasyPark's directors are not in the custody or under the control of the City.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 3(1), 4(1), 21(1)(a)(ii), 21(1)(c), 25(1)(b).

Authorities Considered: BC: Order F09-08, 2009 CanLII 21710 (BC IPC); Order F07-23, 2007 CanLII 52748 (BC IPC); Order 02-38, 2002 CanLII 42472 (BC IPC); Order F17-20, 2017 BCIPC 21 (CanLII); Order 00-16, 2000 CanLII 7714 (BC IPC); Investigation Report F15-02, 2015 BCIPC 30 (CanLII); Investigation Report F16-02, 2016 BCIPC 36 (CanLII); Order 02-30, 2002 CanLII 42463 (BC IPC); Order No. 308-1999, 1999 CanLII 2976 (BC IPC); Order F15-65, 2015 BCIPC 71 (CanLII); 02-29, 2002 CanLII 42462 (BC IPC); Decision F10-01, 2010 BCIPC 5 (CanLII); Order F11-31, 2011 BCIPC 37 (CanLII); Order No. 77-1996, 1996 CanLII 482 (BC IPC); Order 03-02, 2003 CanLII 49166 (BC IPC), Order 03-15, 2003 CanLII 49185 (BC IPC); Order 01-39, 2001 CanLII 21593 (BC IPC); Order 00-22, 2000 CanLII 14389 (BC IPC); Order F05-05, 2005 CanLII 14303 (BC IPC); Order F13-06, 2013 BCIPC 6 (CanLII);

Order F13-07, 2013 BCIPC 8 (CanLII); Order F15-53, 2015 BCIPC 56 (CanLII); Order F16-17, 2016 BCIPC 19 (CanLII); Order 04-06, 2004 CanLII 34260 (BC IPC); Order 01-36, 2001 CanLII 21590 (BC IPC); Order F13-22, 2014 BCIPC 31 (CanLII); Order F14-58, 2014 BCIPC 62 (CanLII); Order 00-10, 2000 CanLII 11042 (BC IPC); Order F14-04, 2014 BCIPC 31 (CanLII); Order F06-20, 2006 CanLII 37940 (BC IPC); Order 01-20, 2001 CanLII 21574 (BC IPC); Order 02-50, 2002 CanLII 42486 (BC IPC).

Cases Considered: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3; *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC); *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25; *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241; *Simon Fraser University v. British Columbia (Information and Privacy Commissioner)*, 2009 BCSC 1481; *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875.

INTRODUCTION

[1] This order concerns a request for records related to the Vancouver Parking Corporation (EasyPark). In 2015, the applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Vancouver (City) for the following: EasyPark's annual financial statements for the years 2010-2015 (financial statements); and records showing the name, titles, remuneration and expenses for EasyPark's Board of Directors (director records). The City responded by telling the applicant that EasyPark is a separate corporation from the City, the City does not control EasyPark and EasyPark is not a "public body" as defined in FIPPA. Accordingly, the City said, records belonging to EasyPark are not in the City's custody or control.

[2] The applicant followed up, asking whether the City owns EasyPark. He also suggested that disclosure of the records is clearly in the public interest and that s. 25(1)(b) of FIPPA (public interest override) therefore applies. The City repeated its earlier response. The applicant then requested a review of the City's response by the Office of the Information and Privacy Commissioner (OIPC). Mediation by the OIPC did not resolve the issues and the applicant requested an inquiry. The OIPC issued a notice of inquiry stating that the issues in the inquiry would be whether the requested records are in the custody or under the control of the City for the purposes of ss. 3(1) and 4(1) of FIPPA and whether s. 25(1) requires the City to disclose the records.

[3] During the inquiry, the City changed its position and informed the OIPC that EasyPark's financial statements were in its custody or control. It gave notice to EasyPark of the request under s. 23 of FIPPA. EasyPark argued that disclosure of its financial statements would cause EasyPark harm under s. 21(1)

(harm to third-party financial interests).¹ The City informed the OIPC that it would not disclose the records.²

[4] Accordingly, the OIPC added EasyPark as a third party and issued an amended notice of inquiry adding the issue of whether s. 21(1) applies to the financial statements. The amended notice also stated that the inquiry would consider whether “some of the records” (*i.e.*, the director records) were in the custody or under the control of the City. After I had reviewed the inquiry submissions, I invited and received additional submissions from the parties on the issue of whether EasyPark is a “public body” as defined in FIPPA.

ISSUES

[5] The issues before me in this inquiry are the following:

1. Whether EasyPark is a “public body” as defined in FIPPA.
2. Whether the City must disclose the requested records under s. 25(1)(b).
3. Whether the director records are in the custody or under the control of the City.
4. Whether s. 21(1) requires the City to withhold the financial statements.

[6] Section 57 of FIPPA sets out the burden of proof in inquiries. Although the City argued that EasyPark has the burden of proof regarding s. 21(1),³ it is the City’s decision that is under review. Under s. 57(1), it is therefore up to the City to prove that the applicant has no right of access to the financial statements.

[7] Section 57 is silent respecting the burden of proof regarding the other three issues. However, past orders have said that, in the absence of a statutory burden of proof regarding a given issue, as a practical matter, all the parties should provide evidence and argument to support their respective positions.⁴ I agree.

¹ EasyPark’s letter of November 30, 2016 to the City.

² City’s letter of December 12, 2016 to OIPC.

³ City’s initial submission, para. 33.

⁴ See, for example, Order F07-23, 2007 CanLII 52748 (BC IPC), Order 02-38, 2002 CanLII 42472 (BC IPC), and Order F17-20, 2017 BCIPC 21 (CanLII).

DISCUSSION

EasyPark

[8] Under a 1997 Management Agreement, EasyPark operates and manages most of the City’s off-street parking facilities. It is not responsible for on-street parking. EasyPark also operates parking facilities owned by other entities.⁵

Records

[9] The financial statements comprise 93 pages of audited financial statements for the period 2010-2015. The City said that it does not have the director records.⁶

Is EasyPark a “public body”?

[10] FIPPA applies to public bodies. The definition of “public body” in FIPPA includes a “local public body”, which in turn is defined to include a “local government body”. The term “local government body” is defined in Schedule 1 of FIPPA as follows:

- (a) a municipality,
- ...
- (n) any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in paragraphs (a) to (m) and all the members or officers of which are appointed or chosen by or under the authority of that body,
- ...

[11] There is no dispute that the City, as a municipality, is a public body. The question is whether EasyPark is a public body because (1) it is owned or created by the City and (2) all of its officers are appointed or chosen by or under the authority of the City.⁷

⁵ The City said the names of the directors are available via a corporate records search and provided a printout listing EasyPark’s directors. City’s initial submission, paras. 1-7. Affidavit of the City’s Branch Manager, Parking Management, paras. 2-3 and Exhibit A. EasyPark’s initial submission, paras. 7-8. Affidavit of EasyPark’s Director of Finance and Administration, paras. 4-9, and Exhibit E.

⁶ City’s initial submission, paras. 25-29; Exhibit A to Affidavit of City’s Branch Manager, Parking Management.

⁷ The City and EasyPark referred only to EasyPark’s “officers” in their submissions. The term “members” does not appear to apply in this case where I am considering a corporation, not another body listed in para. (n). For the same reason, the adjudicator in Order F09-08, 2009 CanLII 21710 (BC IPC), did not need to consider the term “members” when deciding whether certain companies were public bodies.

How EasyPark's officers are appointed or chosen

[12] The City and EasyPark submitted that the City does not appoint or choose all of EasyPark's officers.⁸ The applicant suggested that, because certain individuals with "close ties to Vancouver City Council" were also on EasyPark's Board of Directors, the City exerts control over the Board's decisions.⁹ The applicant did not, however, explain how these individuals' presence on EasyPark's Board of Directors is relevant to whether the City appoints or chooses EasyPark's officers.

[13] Past orders on this issue have considered whether a municipality appointed all of a corporation's officers. In Order F09-08,¹⁰ for example, the adjudicator had evidence that the Village of Burns Lake appointed the entire Board of Directors of the corporation at issue and that the Board in turn selected the corporation's officers. The adjudicator found that the officers were therefore all appointed under the authority of the Village.¹¹

[14] By contrast, in this case, the evidence is that the City gets to appoint one of the members of EasyPark's Board of Directors.¹² In addition, the City has one Class A voting share, which entitles it to cast a single vote in the election of the non-appointed directors. EasyPark's directors in turn appoint EasyPark's officers and exert control over their functions and duties.¹³

[15] I conclude from the City's limited role on EasyPark's Board that all of EasyPark's officers are not appointed or chosen by or under the authority of the City. It is therefore not necessary for me to consider whether EasyPark is owned or created by the City. For these reasons, I find that EasyPark is not a "local government body" and is therefore not a "public body" as defined by FIPPA. Therefore, FIPPA does not apply to EasyPark.

⁸ City's additional submission, paras. 5-13; Affidavit #2 of legal assistant to City's legal counsel and Exhibits F and G; Affidavit #1 of City's Director, Access to Information. EasyPark's additional submission, paras. 10-12.

⁹ Applicant's additional submission of July 24, 2017 and attachments.

¹⁰ Order F09-08.

¹¹ The adjudicator also found that, for the same reasons, the corporation's subsidiaries were also public bodies.

¹² The other appointed director is appointed by the Downtown Vancouver Association; s.7.1, EasyPark's bylaws, Exhibit F, Affidavit #2 of legal assistant to City's legal counsel.

¹³ Under s. 11.1 of EasyPark's bylaws, the directors appoint an executive committee (its officers) which includes a chair, vice chair, secretary and treasurer. Under s. 12.1 of the bylaws, EasyPark's directors may decide on the officers' functions and duties, and may remove or appoint an officer. EasyPark provided evidence that EasyPark's Board of Directors appointed five officers at a June 2017 meeting. The material before me indicates that four of the officers are also on EasyPark's Board of Directors and that the fifth officer is EasyPark's chief executive officer; Exhibit A to Affidavit #1 and Exhibits F and G to Affidavit #2 of EasyPark's Director of Finance and Administration, paras. 2-4. Exhibit B, Affidavit of the City's Director, Access to Information.

Does s. 25(1)(b) apply to the requested records?

[16] In Order 00-16, former Commissioner Loukidelis considered whether s. 25(1) applied to records independently of his conclusion that the records were excluded from the scope of FIPPA under s. 3(1):

It would appear from the wording of s. 25(2) that s. 25(1) may apply to a public body despite the exclusions in s. 3(1) of the Act. This was the conclusion of Levine J. in Adjudication Order No. 3 (June 30, 1997), under s. 62 of the Act, where she stated:

Counsel for the Commissioner submits that Section 25 does not apply to the present records because they are excluded from the operation of the Act under Section 3. I disagree. Section 25(2) makes it clear that Section 25(1) applies despite any other provision of the Act. Section 25 is accordingly paramount over section 3. However, only information, not the entire operational record, that satisfies either the significant harm or clear public interest tests must be disclosed by the Commissioner pursuant to Section 25.

I have therefore approached this issue independent of my conclusions on the applicability of s. 3(1)(b) to some of the records requested by the applicant. ...¹⁴

[17] I have taken the same approach in considering whether s. 25(1) applies to the requested records.

[18] Section 25(1)(b), commonly known as the “public interest override”, reads as follows:

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

...

(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.

[19] Section 25(1)(b) overrides all of FIPPA’s discretionary and mandatory exceptions to disclosure. Consequently, there is a high threshold before it can properly come into play.¹⁵ Previous orders have explained this concept as follows: “... the duty under section 25 only exists in the clearest and most serious of situations. A disclosure must be, not just arguably in the public interest, but *clearly* (*i.e.*, unmistakably) in the public interest ...”¹⁶

¹⁴ Order 00-16, 2000 CanLII 7714 (BC IPC), at pp. 13-14.

¹⁵ See Investigation Report F15-02, 2015 BCIPC 30 (CanLII), pp. 28-29.

¹⁶ Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 45; italics in original.

[20] More recently, former Commissioner Denham expressed the view that “clearly means something more than a ‘possibility’ or ‘likelihood’ that disclosure is in the public interest.” She added that s. 25(1)(b) “requires disclosure where a disinterested and reasonable observer, knowing what the information is and knowing all of the circumstances, would conclude that disclosure is plainly and obviously in the public interest.” The Commissioner provided a non-exhaustive list of factors public bodies should consider in determining whether s. 25(1)(b) applies to information.¹⁷

[21] The City argued that the records are “standard business records for a privately held corporation doing business with the City”. In its view, the information in the records does not approach the “level of magnitude or broader public significance required to engage” s. 25(1)(b) and that this section therefore does not apply to the records.¹⁸ EasyPark agreed with the City, noting that, for example, the requested records have not been the subject of debate. In its view, the records do not meet the high threshold required for disclosure under s. 25(1)(b).¹⁹

[22] The applicant noted that EasyPark manages city-owned land. He added that EasyPark’s financial statements were publicly available up to 2009 and argued they should remain available for public scrutiny.²⁰

[23] In my view, the former Commissioner’s s. 25(1)(b) factors do not apply here. I recognize that the applicant is interested in how EasyPark manages the City’s off-street parking. However, there is no evidence that the requested records have been the subject of widespread public debate. Nor do I see how they would add in a substantive way to the information the applicant already has about EasyPark. The records would also not contribute to educating the public on those matters. It is not, in my view, clearly in the public interest for the records to be disclosed. For these reasons, I find that s. 25(1)(b) does not apply to the requested records.

Are the director records in the custody or under the control of the City?

[24] The City said the director records are not in its custody or under its control.²¹ My finding above that EasyPark is not a public body means that FIPPA does not apply to EasyPark and there is no right under FIPPA to request access to the director records directly from EasyPark itself. That does not end the matter, however. It is still necessary to consider whether the director records are

¹⁷ These factors include whether the information would contribute to educating the public about the matter or contribute in a substantive way to the body of information already available about the matter. Investigation Report F16-02, 2016 BCIPC 36 (CanLII), pp. 26-27.

¹⁸ City’s initial submission, paras. 40-41.

¹⁹ EasyPark’s initial submission, para. 17; EasyPark’s reply submission, paras. 7-11.

²⁰ Applicant’s response submission.

²¹ City’s initial submission, para. 18.

in the custody or under the control of the City and thus subject to the access rights under FIPPA.

[25] Sections 3(1) and 4(1) of FIPPA set out the right of access to records that are in the custody or under the control of a public body. Section 3(1), which defines the scope of FIPPA, states:

3(1) This Act applies to all records in the custody or under the control of a public body ...

[26] Section 4(1) of FIPPA incorporates the element of custody or control into the right of access to records:

4(1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

[27] FIPPA does not define “control” or “custody”.

[28] Following the modern approach to statutory interpretation, the words of a provision are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of legislators.²²

[29] With regards to the objects of FIPPA, s. 2(1) states: “The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy.” Further, with regards to the first of those two objects, the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)*²³ said:

The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry. [para 61]

[30] Either custody or control over a particular record will suffice to bring it within the scope of s. 3(1). Both are not required.

²² See, for example: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3.

²³ *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), at para. 61.

Are the director records in the City's custody?

[31] The indicators of custody include the following: whether the public body has possession of the records; whether the records are integrated with other records the public body holds; and whether the public body has any rights or responsibilities for the records, including respecting their use, disclosure or destruction. Past orders have said that physical possession of records is not enough to establish custody and that a public body will only have custody if it has "some right to deal with the records and some responsibility for their care and protection".²⁴

[32] The City said that the director records are not in its custody. For example, it said, it has no right to deal with the director records and has no responsibility for their care and protection. The City provided further evidence on the custody issue as follows:

- it searched its records and did not locate any records responsive to the request for the director records (*i.e.*, the names, titles, remuneration and expenses of EasyPark's directors for 2010-2015);
- to the best of its knowledge, the City does not have possession of the director records;
- the financial statements do not contain the requested information on EasyPark's directors;
- while the City appoints a City councillor to EasyPark's Board of directors, that City councillor does not have the director records;
- EasyPark provides the City councillor with certain records in his capacity as a director for EasyPark, which he generally reviews on a website hosted by EasyPark. He returns to EasyPark any hardcopies of records he has been provided during meetings. He does not retain any copies or give copies to the City;
- the City councillor receives cheques and an annual statement of remuneration from EasyPark but he does not provide these records to the City. He does not report on their contents to the City and he does not store them on City property or co-mingle them with City records;
- the City has not requested the records the City councillor obtains as part of his duties as an EasyPark director and there is no reason for him to provide them to the City; and
- the City councillor is required to disclose the fact that he receives compensation from EasyPark. He has voluntarily disclosed that he receives \$360 per meeting and has not claimed any expenses since he was appointed in 2008.²⁵

²⁴ See, for example, Order 02-30, 2002 CanLII 42463 (BC IPC); Order No. 308-1999, 1999 CanLII 2976 (BC IPC), and Order F15-65, 2015 BCIPC 71 (CanLII).

²⁵ City's initial submission, paras. 45-53; Affidavit of City's Director, Access to Information, paras. 11-16 and Exhibits C and E; Affidavit of City's Branch Manager, Parking Management, paras. 8-11 and Exhibit A. The City's evidence respecting the City councillor was in the Access

[33] The applicant did not expressly address the custody issue and did not dispute the City's evidence that the director records are not in the City's physical possession. However, he argued that it is in the public interest to know what additional compensation the councillor receives as a result of his "political" appointment as Director of EasyPark.²⁶ The applicant did not comment on the City's evidence about the councillor's compensation.

[34] None of the indicators of custody, as set out in past orders, is present here. I am satisfied from the City's evidence that, for example, it does not possess, and never has possessed, the director records; that the City has no right to request them; and the City has no responsibility for them. I find that the City does not have custody of the director records.

Are the director records under the City's control?

[35] The City argued that the director records are not under its control and the applicant argued that they are. EasyPark did not provide a submission on this issue.

[36] I have determined that the interpretation of "control" that the Supreme Court of Canada used in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*²⁷ [*Minister of National Defence*] is the appropriate one to follow. In *Minister of National Defence*, the Court considered the meaning of "control" in relation to s. 4(1) of the federal *Access to Information Act*, which states that a requestor has a right to access "any record under the control of a government institution". The Court made the following observations about "control":

[48] As "control" is not a defined term in the Act, it should be given its ordinary and popular meaning. Further, in order to create a meaningful right of access to government information, it should be given a broad and liberal interpretation. Had Parliament intended to restrict the notion of control to the power to dispose or get rid of the documents in question, it could have done so. It has not. In reaching a finding of whether records are "under the control of a government institution", courts have considered "ultimate" control as well as "immediate" control, "partial" as well as "full" control, "transient" as well as "lasting" control, and "*de jure*" as well as "*de facto*" control. While "control" is to be given its broadest possible meaning, it cannot be stretched beyond reason. Courts can determine the meaning of a word such as "control" with the aid of dictionaries. The *Canadian Oxford Dictionary* defines "control" as "the power of directing, command (under the control of)" (2001, at p. 307). In this case, "control" means that a senior official with the government

Director's affidavit. The City councillor did not provide his own affidavit and the City did not explain why not.

²⁶ Applicant's response submission.

²⁷ *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25.

institution (other than the Minister) has some power of direction or command over a document, even if it is only on a “partial” basis, a “transient” basis, or a “*de facto*” basis. The contents of the records and the circumstances in which they came into being are relevant to determine whether they are under the control of a government institution for the purposes of disclosure under the Act (paras. 91–95).²⁸

[37] In analyzing whether the director records are under the City’s control, I have also considered relevant indicators from previous BC orders. Those indicators, which overlap to some extent with the indicators of custody, include whether: the City controls EasyPark; the record was created by an officer or employee of the City in the course of carrying out his or her duties; the City has statutory or contractual control over the records; the City has possession of the records; the City has relied on the records; the records are integrated within the City’s other records; the City has the authority to regulate the use and disposition of the records; and the content of the record relates to the City’s mandate and functions.²⁹ The list of indicators is not exhaustive and not all will apply in every case.³⁰

[38] Having regard for the findings in previous orders, as noted above, as well as the factors set out in *Minister of National Defence*, I find, based on the evidence and reasoning set out below, that the director records are not under the City’s control for the purposes of ss. 3 and 4 of FIPPA. I will now consider each of the indicators of control in turn.

[39] **Does the City control EasyPark?** – The City argued that EasyPark is a separate legal entity and that it does not control EasyPark or its records. The applicant argued that the City does control EasyPark. I have concluded, based on the evidence and reasoning set out below, that the City does not control EasyPark and EasyPark’s records are not under the City’s control.

[40] Past case law has considered whether a public body controls an entity, thus bringing the entity’s records under the public body’s control. *Simon Fraser University v. British Columbia (Information and Privacy Commissioner)*³¹ [*SFU v. IPC*], a decision which is binding on me, established that the common law test arising from corporate law principles must be applied when determining whether it is appropriate to “lift the corporate veil” for the control analysis under ss. 3(1) and 4(1) of FIPPA. The common law test set out in *SFU v. IPC* is whether the entity is under the control of the parent public body to such an extent that the entity has no independent functions of its own and its records should be

²⁸ In *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241, at paras. 155-160, the Ontario Court of Appeal referred to this passage in its discussion of “control” of certain records.

²⁹ See, for example, Order 02-29, 2002 CanLII 42462 (BC IPC), at para. 18, and Order F15-65.

³⁰ See, for example Decision F10-01, 2010 BCIPC 5 (CanLII), at para. 9.

³¹ *Simon Fraser University v. British Columbia (Information and Privacy Commissioner)*, 2009 BCSC 1481.

considered under the control of the public body for the purposes of ss. 3(1) and 4(1) of FIPPA.

[41] The adjudicator in Order F11-31³² followed the same approach. That case dealt with whether the records of subsidiaries of the University of British Columbia (UBC) were under UBC's control. The adjudicator was satisfied that UBC owned the subsidiaries in question. He found, however, found that the records were not under UBC's control because the evidence did not establish that UBC exerted such a level of control over the subsidiaries that they had no independent functions of their own. He found that it was not appropriate to ignore the subsidiaries' separate existence for the purposes of control under ss. 3 and 4 of FIPPA and that the test for piercing the corporate veil set out in *SFU v. IPC* had not been met. For this and other reasons, the adjudicator found that the subsidiaries' records were not under UBC's control.

[42] It is appropriate, in my view, to consider the test set out in *SFU v. IPC* (and which Order F11-31 followed) in determining if the City controls EasyPark and its records. I will first consider the question of whether the City owns EasyPark. The applicant argued that the City owns EasyPark.³³ The City and EasyPark both submitted that the City does not own EasyPark. Their evidence is that EasyPark was federally incorporated in 1948 by the Downtown Vancouver Association (DVA),³⁴ under the name Downtown Parking Corporation Limited. Under the current share structure, the City owns EasyPark's 90 Class B (non-voting) shares and is entitled to receive dividends, distribution of profits and surplus assets on windup of EasyPark. Of EasyPark's ten Class A (voting) shares, the City holds one.³⁵

[43] In Order F09-08, the adjudicator had evidence that the Village of Burns Lake owned 100% of the shares of the entities in question. He concluded that the entities were therefore wholly-owned subsidiaries of the Village. In Order No. 77-1996,³⁶ former Commissioner Flaherty had evidence that the Town of Smithers held some of the shares in a local ski business. He concluded that the ski business was not "owned in its entirety" by the Town.

³² Order F11-31, 2011 BCIPC 37 (CanLII).

³³ Applicant's response and additional submissions and their attachments.

³⁴ The Downtown Vancouver Association, originally the Downtown Business Association, was a local business association whose purpose was to invigorate Vancouver's downtown; City's additional submission, para. 3; 1986 historical report on EasyPark, attached to Affidavit #2 of the legal assistant to the City's legal counsel.

³⁵ Affidavit #2 of legal assistant to City's legal counsel and its Exhibits, which include EasyPark's bylaws and amended articles of agreement, as well as a 1986 historical report on EasyPark. Affidavit of EasyPark's Director, Finance and Administration and its exhibits which include copies of EasyPark's share certificates.

³⁶ Order No. 77 1996, 1996 CanLII 482 (BC IPC), at p. 3.

[44] I take from these orders that, in order for a public body to “own” an entity, the public body must hold all of the entity’s shares. Partial ownership does not suffice. In this case, while the City owns all of EasyPark’s 90 Class B (non-voting) shares, it holds only one of EasyPark’s ten voting shares. Therefore, the City does not own EasyPark’s shares in their entirety. I conclude as a result that the City does not “own” EasyPark.

[45] I have also considered whether, despite the fact that the City does not own EasyPark, it nevertheless controls EasyPark. The applicant pointed out that the City’s 2016 Statement of Financial Information describes EasyPark as one of several organizations “controlled” by the City.³⁷ The City argued that it does not control EasyPark but, rather, the DVA has maintained the controlling interest in EasyPark since its incorporation.³⁸

[46] The holders of EasyPark’s Class A voting shares have exclusive rights to conduct EasyPark’s affairs.³⁹ The DVA and other members of EasyPark’s Board of Directors hold nine of EasyPark’s ten Class A voting shares.⁴⁰ The City’s 90 Class B non-voting shares give the City no say in EasyPark’s management. Its one Class A share does not, in my view, even remotely give the City a controlling interest in EasyPark or control over the conduct of EasyPark’s affairs.

[47] I note that the City’s appointee on EasyPark’s Board of Directors (a City councillor) represents the City’s interest and provides guidance to the Board.⁴¹ However, the City councillor’s advisory role does not give him authority to tell EasyPark’s Board what to do. The City councillor’s presence on EasyPark’s Board of Directors does not, in my view, give the City control of EasyPark.

[48] I have also considered a 1997 Administrative Report to Vancouver City Council about EasyPark.⁴² This report states that EasyPark had been operating some of the City’s parking facilities but that the City had maintained “relatively tight control” over a number of off-street parking issues (e.g., decisions on pricing and operation of off-street parking facilities). The report goes on to say that EasyPark had requested more responsibility and autonomy in its operations (e.g., setting hours of operation and parking rates; responsibility for capital improvements up to \$100,000; authority to pursue management of non-City owned parking facilities) and that City officials agreed. The report proposed that the City give EasyPark more independence in decision-making and that EasyPark’s mandate be broadened to include the management of most City-owned parking facilities.

³⁷ Applicant’s response and additional submissions and their attachments.

³⁸ City’s and EasyPark’s additional submissions of July 17, 2017.

³⁹ Articles of Amendment for EasyPark, which sets out the rights of EasyPark’s shareholders; Exhibit F, Affidavit #2 of legal assistant to City’s legal counsel.

⁴⁰ City’s initial submission, para. 70; City’s and EasyPark’s additional submissions of July 17, 2017.

⁴¹ Section 2.2, 1997 Management Agreement.

⁴² Schedule A to the 1997 Management Agreement.

[49] Vancouver City Council agreed to the report's proposal.⁴³ The resulting 1997 Management Agreement reflects this increased independence and accountability, for example, as follows:

- EasyPark is authorized to “pursue the management and operation” of non-City owned off-street parking facilities and to enter into agreements for the management and operation of such facilities;⁴⁴
- EasyPark charges and collects fees and is responsible for determining its operating hours, policies, procedures and practices;⁴⁵
- EasyPark must conduct reviews of rates for nearby parking;⁴⁶
- EasyPark may carry out capital projects costing up to \$100,000;⁴⁷
- EasyPark will maintain and repair the facilities it operates and may carry out repairs costing up to \$20,000 to those facilities;⁴⁸
- EasyPark is required to maintain accounting procedures and controls over revenue it collects;⁴⁹ and
- EasyPark shall provide its own staff.⁵⁰

[50] Other provisions of the 1997 Management Agreement indicate that the City retains some power over EasyPark, for example, the following:

- Vancouver City Council sets EasyPark's authority, accountability and relationship with the City;⁵¹
- Vancouver City Council appoints a City councillor to represent the City's interests on, and provide guidance to, EasyPark's Board and officers;⁵²
- EasyPark's “net revenue” goes to the City;⁵³
- The City may terminate the agreement, in which case EasyPark would be wound-up and its assets would go to the City;⁵⁴

⁴³ Minutes of Vancouver City Council meeting of June 26, 1997; Exhibit C, Affidavit of the City's Branch Manager, Parking Management

⁴⁴ Section 11.1. EasyPark must first get the City's approval to enter into these agreements.

⁴⁵ Schedule B, ss. 3, 4.

⁴⁶ Schedule B, s. 5. EasyPark must provide the City with the results of its rate review for comment.

⁴⁷ Section 7.2(b). The Management Agreement indicates that EasyPark budgets its capital projects from its revenues; s. 1.1, item 1 and s. 13.1.

⁴⁸ Section 7.2(c) and Schedule B, s. 7. The 1997 Management Agreement indicates that EasyPark budgets its operating costs from its revenues; s. 1.1, item 1 and s. 13.1. It appears from the 1997 Administrative Report that the City had responsibility for maintenance and repairs before the 1997 Management Agreement existed.

⁴⁹ Schedule B, s. 8. The Administrative Report on EasyPark of June 23, 2009 also states that EasyPark is responsible for its operating budget.

⁵⁰ Schedule B, s. 9. The material before me did not discuss EasyPark's previous staffing process.

⁵¹ Section 2.1.

⁵² Section 2.2.

⁵³ Section 13.2 and Administrative Report on EasyPark of June 23, 2009; attachment to applicant's response submission. EasyPark's net revenue is the revenue from the parking revenues and fees EasyPark charges its parking customers, minus its capital and operating costs; 1997 Management Agreement, s. 1.1, item 13.

⁵⁴ Section 5.1.

- The City may select another operator for its parking facilities;⁵⁵ and
- EasyPark is required to work with the City on the preparation of EasyPark’s budget and plans. It must submit them to the City for approval.⁵⁶

[51] I find that the City has considerable authority over its relationship with EasyPark and retains oversight over many of EasyPark’s financial operations. However, while it is accountable to the City for its budget, EasyPark retains independence over its day-to-day financial and business operations and has authority to pursue other business opportunities (albeit with the City’s prior approval). Moreover, the City does not own EasyPark and only EasyPark’s Board of Directors has authority to conduct EasyPark’s affairs. In my view, the evidence I have discussed above, taken together, falls short of establishing that the City has “complete control” over EasyPark such that EasyPark has no independent functions of its own. Applying the stringent test in *SFU v. IPC*, I find that the City does not control EasyPark or its records, including the director records.

[52] **Other indicators of control** – I have also considered whether the director records relate to the City’s mandate. The City said that the director records concern the internal operations of “a separate legal entity” and that their content does not relate directly to the City’s mandate or functions. The material before me shows that the City manages the City’s on-street parking and that EasyPark manages the City’s off-street parking on the City’s behalf.⁵⁷ I agree with the City that the director records do not relate directly to the City’s mandate of managing on-street parking.

[53] I have also considered whether the City has contractual or statutory control of the director records. Under the 1997 Management Agreement,⁵⁸ EasyPark must submit its monthly revenue statements to the City and the City has a right to inspect EasyPark’s financial records (for audit purposes only). EasyPark’s bylaws restrict shareholders’ access to EasyPark’s records.⁵⁹ In my view, these limited rights of access do not give the City a general right of access to EasyPark’s records. I also note that the 1997 Management Agreement and EasyPark’s bylaws do not specify that the director records are under the City’s control. They also do not give the City any authority to regulate the use and disposition of EasyPark’s records in general or the director records in particular.

⁵⁵ Section 5.3.

⁵⁶ Sections 7.2 and 13 of the 1997 Management Agreement.

⁵⁷ Affidavit of the City’s Branch Manager, Parking Management, para. 1, and 1997 Management Agreement, Exhibit D.

⁵⁸ Section 13 of the Management Agreement allows the City access to EasyPark’s operating and financial records, but only for audit purposes; Exhibit D, Affidavit of the City’s Branch Manager, Parking Management.

⁵⁹ Section 15.1 of the bylaws states that shareholders may not have access to information about EasyPark’s business which in the directors’ opinion “would be inexpedient ... to communicate to the public” and that shareholders have no right to inspect EasyPark’s accounts, books or documents except as conferred by statute or as the Board authorizes; Exhibit G, Affidavit of legal assistant to City’s legal counsel.

[54] As for the other indicators of control, the evidence shows the following:

- the director records were not created by a City employee, an officer or the City councillor whom the City appoints as a board director;
- the City councillor does not possess the director records;
- while the City councillor must disclose to the City the fact that he receives compensation from EasyPark for his role as director, the City has no right to demand production of any records the City councillor has received or had access to in his capacity as an EasyPark director; and
- the City does not possess the director records, they are not intermingled with its records and it has not relied on them.⁶⁰

Conclusion on control issue

[55] I acknowledge the applicant's submission that the City controls EasyPark because, among other things, the City must approve EasyPark's budget and some City documents refer to EasyPark as "City-owned".⁶¹ However, I found above that the City neither owns nor controls EasyPark. I also found that the record was not created by an officer or employee of the City in the course of carrying out his or her duties; the City does not have statutory or contractual control over the records; the City does not possess the records; the records are not integrated within the City's other records; the City does not have the authority to regulate the use and disposition of the records; and the content of the records does not relate to the City's mandate and functions. Taken together, these control indicators all weigh heavily in favour of the conclusion that the director records are not under the City's control. For reasons given above, I find that the director records are not under the City's control.

Does s. 21(1) apply to the financial statements?

[56] The City says that the financial statements are in its custody and under its control, but it is refusing to disclose them under s. 21. The relevant parts of s. 21(1) of FIPPA in this case read as follows:

21(1) 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,

⁶⁰ City's initial submission, paras. 45-53; Affidavit of City's Director, Access to Information, paras. 11-16 and Exhibits C and E; Affidavit of City's Branch Manager, Parking Management, paras. 8-11 and Exhibit A. The City's evidence respecting the City councillor was in the Access Director's affidavit. The City councillor did not provide his own affidavit and the City did not explain why not.

⁶¹ Applicant's response submission and its attachments.

- (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,
 - ...
 - (iii) result in undue financial loss or gain to any person or organization, ...

[57] Previous orders and court decisions have established the principles for determining whether s. 21(1) applies.⁶² All three parts of the s. 21(1) test must be met in order for the information in dispute to be properly withheld. First, the City must demonstrate that disclosing the information in issue would reveal commercial, financial, labour relations, scientific or technical information of, or about, a third party. Next, the City must demonstrate that the information was supplied, implicitly or explicitly, in confidence. Finally, it must demonstrate that disclosure of the information could reasonably be expected to cause one or more of the harms set out in s. 21(1)(c). In assessing the parties' arguments on s. 21(1), I have taken the same approach.

[58] I find below that s. 21(1) does not apply. This is because, while I find that the information falls under s. 21(1)(a), I also find that the parties have not established a reasonable expectation of harm for the purposes of s. 21(1)(c). It was therefore unnecessary to consider whether the information was supplied, implicitly or explicitly, in confidence under s. 21(1)(b).

Is the information “financial information”?

[59] FIPPA does not define “financial” information. Order No. 77-1996 found that a third party's audited financial statements were its financial information. Other orders have held that hourly rates, global contract amounts, breakdowns of these figures, prices, expenses and other fees payable under contract are “financial” information.⁶³

⁶² See, for example, Order 03-02, 2003 CanLII 49166 (BC IPC), Order 03-15, 2003 CanLII 49185 (BC IPC), and Order 01-39, 2001 CanLII 21593 (BC IPC).

⁶³ For example, Order 03-15, 2003 CanLII 49185 (BC IPC) at para. 41, Order 00-22, 2000 CanLII 14389 (BC IPC) at p. 4, Order F05-05, 2005 CanLII 14303 (BC IPC) at para. 46, Order F13-06, 2013 BCIPC 6 (CanLII) at para. 16, Order F13-07, 2013 BCIPC 8 (CanLII) at para. 36, Order F15-53, 2015 BCIPC 56 (CanLII), at para. 11, and Order F16-17, 2016 BCIPC 19 (CanLII), at para. 24. In Order 04-06, 2004 CanLII 34260 (BC IPC), at para. 36, former Commissioner Loukidelis found that such information was also “about” the public body.

[60] EasyPark submitted that the information in the financial statements is its financial information regarding its operations and finances.⁶⁴ The City said it supports EasyPark on this issue.⁶⁵ The applicant did not directly address this issue but did refer to the information as financial.

[61] The records contain EasyPark’s audited financial statements for 2010-2015, including its assets, liabilities, revenues, expenses and cash flows. I am satisfied that they contain EasyPark’s financial information, as past orders have interpreted this term. I therefore find that s. 21(1)(a) applies to the information in the financial statements.

Reasonable expectation of harm under s. 21(1)(c)

[62] Numerous orders have set out the standard of proof for showing a reasonable expectation of harm to a third party’s interests for the purposes of s. 21(1)(c), for example, Order 01-36.⁶⁶ More recently, the Supreme Court of Canada confirmed the applicable standard of proof for harms-based exceptions:

[54] This Court in *Merck Frosst* adopted the “reasonable expectation of probable harm” formulation and it should be used wherever the “could reasonably be expected to” language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and “inherent probabilities or improbabilities or the seriousness of the allegations or consequences”.⁶⁷

[63] Moreover, in *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*,⁶⁸ Bracken J. confirmed that it is the release of the information itself that must give rise to a reasonable expectation of harm and that the burden rests with the public body to establish that the disclosure of the information in question could reasonably be expected to result in the identified harm.

⁶⁴ EasyPark’s initial submission, para. 23.

⁶⁵ City’s initial submission, para. 78.

⁶⁶ Order 01-36, 2001 CanLII 21590 (BC IPC), at paras. 38-39.

⁶⁷ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, at para. 94. See also Order F13-22, 2014 BCIPC 31 (CanLII), at para. 13, and Order F14-58, 2014 BCIPC 62 (CanLII), at para. 40, on this point.

⁶⁸ *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875, at para. 43.

[64] I have taken these approaches in considering the arguments on harm under s. 21(1)(c).

Parties' submissions

[65] The City said it takes no position on s. 21(1)(c), arguing that EasyPark is in the best position to prove whether disclosure could reasonably be expected to cause it harm under this provision.⁶⁹

[66] EasyPark said that, besides operating most of the City's parking lots, it operates parking lots for several other clients, both publicly and privately owned.⁷⁰ EasyPark said that the "operation of parking lots in Vancouver ... is a highly competitive business" in which it competes with other parking companies for its current and any new business.⁷¹ It said that "parking lot management contracts are typically awarded via a competitive process." EasyPark argued that disclosure of the information in the financial statements could cause significant harm to its negotiating and competitive position, and result in undue financial loss to EasyPark and undue financial gain to its clients and competitors. Specifically, it said the following:

- its competitors (whose financial information EasyPark would not have) could unfairly compete with EasyPark by using information in the financial statements (e.g., on EasyPark's labour costs and profitability) to undercut EasyPark's pricing and unfairly take away its business;
- three of EasyPark's major non-city contracts are up for renewal in the next 18 months, likely through a competitive tendering process. The clients could use the information on EasyPark's "global profit" to unfairly demand better terms and prices from EasyPark in future negotiations; and
- EasyPark is currently engaged in collective bargaining and the union could unfairly use the information on labour costs to demand higher wages and benefits.⁷²

[67] The applicant disputed EasyPark's arguments that it would be at a competitive disadvantage if its financial statements were disclosed and argued that "Government controlled entities regularly compete with the private sector." He added that, up until 2009, EasyPark's audited financial statements were made available to the public. He also noted that the City's 2014 Statement of Financial Information includes a "brief description" of EasyPark's net revenues and expenditures. The applicant also provided copies of two 2009 reports to

⁶⁹ City's initial submission, para. 78. The City elsewhere said that EasyPark has the burden under s. 21(1); City's initial submission, para. 33

⁷⁰ EasyPark named its clients; Affidavit of EasyPark's Director of Finance and Administration, paras. 7-9.

⁷¹ EasyPark named several of its competitors; Affidavit of EasyPark's Director of Finance and Administration, para. 15

⁷² EasyPark's initial submission, paras. 35-48; Affidavit of EasyPark's Director of Finance and Administration, paras. 15-23.

Vancouver City Council on EasyPark's budget. The reports include information on EasyPark's revenues and expenses (including wages) for 2008 and 2009, both for City-owned lots and other lots EasyPark managed, as well as revenue information for 2004-2009 and financial projections for 2010.⁷³

[68] The City did not comment on the applicant's submission and did not say why it no longer makes some of EasyPark's financial information publicly available. EasyPark argued that the fact that different records of a similar type were disclosed years ago has no bearing on whether the financial statements should be disclosed.⁷⁴

Analysis and finding

[69] I accept that the operation of parking space in Vancouver is a competitive business and that EasyPark competes with other parking companies. However, despite its assertions about harm, EasyPark has not explained how the anticipated harms could reasonably be expected to occur. The financial statements date back seven years. They contain what appear to be generic statements by the auditors, as well as financial information.

[70] EasyPark did not point to specific information in the financial statements and explain how its competitors, its other clients or the union could use this information to EasyPark's financial detriment – and result in undue gain to these entities – in upcoming competitive bidding processes or union negotiations. The material before me, including the 1997 Management Agreement,⁷⁵ shows that EasyPark's purpose is to operate City-owned parking facilities on the City's behalf, that it operates non-City owned lots for a management fee (which it uses to offset its expenses) and that it turns its net revenue over to the City.⁷⁶ EasyPark did not explain what proportion of its business comes from its non-city clients, although the material before me indicates that the vast majority of EasyPark's revenues comes from its operation of City-owned lots. The Management Agreement shows that EasyPark is encouraged to pursue other clients to offset its expenses and therefore increase profit to the City.

[71] While I thus accept that EasyPark might suffer some financial loss if it were unable to renew a contract with a non-city client, I am not persuaded that it would be "undue" loss. Previous orders have said that the ordinary meaning of "undue" financial loss or gain under s. 21(1)(c)(iii) includes excessive, disproportionate, unwarranted, inappropriate, unfair or improper, having regard for the circumstances of each case. For example, if disclosure would give a competitor an advantage – usually by acquiring competitively valuable

⁷³ Applicant's response submission.

⁷⁴ EasyPark's reply submissions, para. 6.

⁷⁵ Exhibit D to the affidavit of the City's Branch Manager, Parking management.

⁷⁶ See also the 1986 Historical Report, Articles of Amendment, EasyPark's bylaws s. 18.2. These items are all exhibits to Affidavit #2 of the legal assistant to the City's legal counsel.

information – effectively for nothing, the gain to a competitor will be “undue”.⁷⁷ However, EasyPark did not explain the extent of any such potential loss to itself or gain to others, nor how it would be “undue”.

[72] I would add that EasyPark’s clients and the union are already in a position to pressure EasyPark for better terms in future negotiations than they achieved last time. Disclosure of the financial statements would not create such negotiating pressure, if indeed such pressure amounts to harm under s. 21(1)(c). Moreover, to be competitive in any upcoming contract bidding processes, EasyPark might choose of its own accord to offer its clients better terms than it did last time. In any case, EasyPark can be expected to price its services differently according to factors in play in any given future situation and attempt to achieve the best bargain for itself in the process. It also does not have to agree to unfavourable terms.

[73] EasyPark has been operating non-city lots since at least 1997.⁷⁸ The City did not dispute the applicant’s statement that EasyPark’s financial statements used to be publicly available. The 2009 City Council reports, which the applicant provided, also include information on EasyPark’s revenues and expenditures. Evidence that making EasyPark’s financial information publicly available in the past caused it financial harm under s. 21(1)(c) would have been a helpful element for me to consider. EasyPark provided no such evidence. There is of course no requirement to produce such evidence. It would, however, have provided helpful context in establishing whether disclosure could reasonably be expected to cause harm under s. 21(1).

[74] In my view, putting EasyPark in the position of having to price its services competitively is not a circumstance of unfairness or ‘undue’ financial loss or gain for the purposes of s. 21(1)(c).⁷⁹ The mere heightening of EasyPark’s competition is not interference with contractual or other negotiations. As previous orders have said, “[a]n obstruction in actual negotiations must be shown.”⁸⁰ A third party’s resistance to disclosure also does not amount to harm to its competitive position. The reasonable expectation of harm must flow from disclosure of the information in question, not solely from the third party’s opposition to disclosure.⁸¹

⁷⁷ See, for example, Order 00-10, 2000 CanLII 11042 (BC IPC) at pp. 17-19. See also Order F14-04, 2014 BCIPC 31 (CanLII) at paras. 60-63, for a discussion of undue financial loss or gain in the context of a request for a bid proposal.

⁷⁸ Section 11.1 of the 1997 Management Agreement gives EasyPark authority to pursue the management and operation of off-street parking facilities not owned by the City, with the City’s advance approval required in each case.

⁷⁹ See, for example, Order 03-15, 2003 CanLII 49185 (BC IPC), at para. 25, and Order F06-20, 2006 CanLII 37940 (BC IPC), at para. 20, on this point.

⁸⁰ Order 04-06, 2004 CanLII 4260 (BC IPC) at para 61. See also Order F05-05, 2005 CanLII 14303 (BC IPC), at para. 96.

⁸¹ See Order 01-20, 2001 CanLII 21574 (BC IPC), at para. 112.

[75] EasyPark’s argument and evidence amount to little more than assertions and do not persuade me that any of the harms under s. 21(1)(c) could reasonably be expected to result from disclosure. EasyPark and the City have not, in my view, provided objective evidence that is well beyond or considerably above a mere possibility of harm, which is necessary to establish a reasonable expectation of harm under s. 21(1)(c).⁸² They have not demonstrated a clear and direct connection between disclosing the information in dispute and the alleged harm.

[76] I find that s. 21(1)(c) does not apply to the information in the financial statements.

Conclusion on s. 21(1) regarding the financial statements

[77] I found above that the information in the financial statements is EasyPark’s “financial information” and that s. 21(1)(a) applies to it. However, I have ultimately concluded that EasyPark and the City have not established a reasonable expectation of harm from disclosure of the financial statements under s. 21(1)(c). All three parts of the test must be met in order for s. 21(1) to apply. The City has not met its burden of proof respecting s. 21(1). I find that s. 21(1) does not apply to the financial statements.

CONCLUSION

[78] For reasons given above, under s. 58(2)(a), I require the City to give the applicant access to the financial statements by November 8, 2017. The City must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

[79] Given my findings on the other issues (specifically that EasyPark is not a public body as defined by FIPPA; that s. 25(1)(b) does not apply; and that the City does not have custody and control of the director records), no order is necessary respecting those matters.

September 25, 2017

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F15-64330

⁸² See Order 02-50, 2002 CanLII 42486 (BC IPC), at paras. 124-137, which discussed the standard of proof in this type of case and summarized leading decisions on the reasonable expectation of harm.