



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

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Order F17-48

## BRITISH COLUMBIA ASSESSMENT AUTHORITY

Celia Francis  
Adjudicator

October 26, 2017

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**Summary:** An applicant requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to records related to the 2015 assessment of the Oakridge Centre shopping mall. The BC Assessment Authority (BCA) disclosed 17 pages of records, withholding much of the information under s. 21(2) (information gathered for the purpose of determining tax liability) of FIPPA. The adjudicator found that BCA was required to withhold most of the severed information under s. 21(2) but could disclose the rest.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 21(2).

**Authorities Considered: BC:** Order F05-29, 2005 CanLII 32548 (BC IPC).

## INTRODUCTION

[1] This order concerns the Oakridge Centre shopping mall in Vancouver. In early 2016, the applicant made two requests under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the British Columbia Assessment Authority (BCA) for records related to the 2015 assessed value of Oakridge Centre. Specifically, he asked for records related to the appraisal and the property valuation summary (PVS). BCA disclosed 17 pages of records in severed form, withholding most of the information under s. 21(2) of FIPPA

(information gathered to determine tax liability or to collect a tax).<sup>1</sup> The applicant requested a review of BCA's decision by the Office of the Information and Privacy Commissioner (OIPC).

[2] Mediation by the OIPC resulted in the applicant receiving one page in full<sup>2</sup> but was otherwise unsuccessful. The two matters then proceeded jointly to inquiry. The OIPC invited and received submissions from the applicant, BCA and the third party, Ivanhoe Cambridge, the owner of Oakridge Centre at the time in question.

## ISSUE

[3] The issue before me is whether BCA is required by s. 21(2) to refuse the applicant access to information. Under s. 57(1) of FIPPA, the burden is on BCA to prove that the applicant has no right of access to the withheld information.

## DISCUSSION

### *Preliminary issue*

[4] The applicant argued that s. 13(2)(d) applies to the severed information. Section 13(1) permits a public body to withhold advice or recommendations. Section 13(2)(d) says that a public body must not refuse, under s. 13(1), to disclose an appraisal.<sup>3</sup> However, BCA did not apply s. 13(1) to the severed information. Section 13(2)(d) does not, therefore, come into play and I will not consider it here.

### *Background*

[5] BCA is a provincial Crown corporation responsible under the *Assessment Act* for completing an assessment of each of the nearly two million assessable properties in BC. Municipalities and other taxing bodies use that assessment to determine the amount of property tax a property owner will pay the following year.<sup>4</sup>

[6] The applicant said that, in early 2015, BCA published an assessment of \$867,757,000 for Oakridge Centre but that later it published a revised assessment of \$500,540,000.<sup>5</sup>

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<sup>1</sup> BCA disclosed 17 pages in response to the first request (*i.e.*, regarding BCA's appraisal methods) and three of the same pages in response to the second request (*i.e.*, regarding the PVS).

<sup>2</sup> BCA's letter and the applicant's response submission (at para. 11) indicate that BCA charged the applicant \$100 for this page, which BCA said pertained to the PVS for Oakridge Centre.

<sup>3</sup> Applicant's response submission, paras. 53-58.

<sup>4</sup> BCA's initial submission, paras. 1-2.

<sup>5</sup> Applicant's response submission, paras. 1-7.

**Information in dispute**

[7] The 17 pages of records consist of spreadsheets and tables containing income, expense and leasing information about Oakridge Centre. BCA disclosed the column and row headings but withheld the remaining information, principally dollar figures, under s. 21(2).

[8] After the inquiry closed, the applicant obtained a complete copy of page 1 and BCA disclosed additional information on pages 2 and 3.<sup>6</sup> I determined that the remaining withheld information on pages 2-17 is the information in dispute in this inquiry.

**Does s. 21(2) apply?**

[9] The relevant provisions read as follows:

21 (2) The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) Subsections (1) and (2) do not apply if

(a) the third party consents to the disclosure, or

...

[10] In Order F05-29,<sup>7</sup> former Commissioner Loukidelis found that, for the purposes of s. 21(2), a tax includes property tax.<sup>8</sup> He also had the following to say about BCA's role:

BC Assessment is responsible for the assessment of properties, but not for their actual taxation. Nonetheless, the assessment roll is unquestionably prepared and used for the purpose of determining property tax liability and the statutory scheme for BC Assessment makes it plain that the purpose of property assessment is property taxation. I conclude that information BC Assessment gathers for the purpose of its determination of the assessment roll is information gathered for the purpose of determining tax liability.<sup>9</sup>

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<sup>6</sup> BCA's letter of October 5, 2017. BCA provided me with copies of pages 2 and 3. It said it had determined that categories 7a and 7b "reflect data derived from detailed real estate market research or is now published by third parties." Accordingly, BCA said, it was proactively releasing these data elements to the applicant.

<sup>7</sup> Order F05-29, 2005 CanLII 32548 (BC IPC).

<sup>8</sup> At para. 86. He also noted that former Commissioner Flaherty had made the same finding in two previous cases.

<sup>9</sup> At para. 89. Commissioner Loukidelis noted that his predecessor took the same view in Investigation Report P98-11.

[11] The Commissioner also held that the word “gathered” in s. 21(2) “does not cover information that is generated, or created, by a public body by applying skills, techniques and professional judgement to information that it has gathered (even where underlying information that is analyzed to create the disputed information has been gathered directly from a taxpayer).”<sup>10</sup>

[12] I agree with and have taken this approach in dealing with the parties’ arguments in this case.

### ***Parties’ submissions***

[13] BCA and Ivanhoe Cambridge said that all of the withheld information was “gathered” from Ivanhoe Cambridge, its agent and other sources for the purpose of determining tax liability and must be withheld under s. 21(2). Ivanhoe Cambridge also argued that the information does not lose its character as “gathered” information simply because BCA inserts that information into a new document “or performs a mechanical calculation on that information that would readily permit the underlying Ivanhoe Cambridge-provided information to be deduced or extracted.”<sup>11</sup>

[14] The applicant argued that the information in dispute was not obtained or gathered for the purposes of s. 21(2) but rather was “ultimately analyzed and developed” by BCA.<sup>12</sup>

### ***Application of s. 21(2) to the records***

[15] There is no suggestion or evidence that the disputed information was “obtained on a tax return”. Thus, the issue is whether it was gathered for the purpose of “determining tax liability” or “collecting a tax”.

[16] **Pages 6-17** – BCA and Ivanhoe Cambridge said that BCA gathered the disputed information on these pages directly from Ivanhoe Cambridge in July 2014.<sup>13</sup> BCA’s senior appraiser says that this information is income, expense and leasing information on Oakridge Centre, which was provided to BCA on Ivanhoe Cambridge’s letterhead in response to a demand under s. 16 of the *Assessment Act*.<sup>14</sup> The demand was made for the purpose of determining the 2015 assessment of Oakridge Centre for the City of Vancouver.<sup>15</sup> The applicant did not

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<sup>10</sup> Order F05-29 at para. 96.

<sup>11</sup> BCA’s initial submission, paras.12-14. Ivanhoe Cambridge’s initial submission, paras. 8-10, 17-24.

<sup>12</sup> Applicant’s response submission, paras. 22-59.

<sup>13</sup> BCA’s initial submission, para. 5(d); Affidavit of BCA’s senior appraiser, para. 4. Ivanhoe Cambridge’s initial submission, para. 8.

<sup>14</sup> This provision states, among other things, that BCA must be given access to books, accounts, appraisals and other materials for assessment purposes.

<sup>15</sup> Affidavit of BCA’s Senior Appraiser, para. 4.

dispute that the information on these pages came from Ivanhoe Cambridge. In light of the evidence, I am satisfied that the information in dispute on pages 6-17 was gathered for the purpose of determining tax liability under s. 21(2). Nothing in the records, the evidence or submissions indicates that this information was gathered for any other purpose.

[17] **Pages 4 and 5** – BCA and Ivanhoe Cambridge said that the spreadsheets on these pages contain information that Ivanhoe Cambridge’s agent provided directly to BCA. The applicant believes that BCA generated the information on these pages.<sup>16</sup> However, I accept the evidence of BCA’s senior appraiser that she received these pages directly from Ivanhoe Cambridge’s agent to use in determining potential adjustments to the 2015 assessment of Oakridge Centre.<sup>17</sup> I find that the severed information on pages 4 and 5 was gathered for the purposes of determining tax liability under s. 21(2).

[18] **Pages 2 and 3** – BCA and Ivanhoe Cambridge said that these pages contain spreadsheets that BCA created.<sup>18</sup> BCA’s senior appraiser describes the information that is still in dispute as follows:

- Information that appears in its original format as provided by Ivanhoe Cambridge or its agent. (6a)
- Information that is an input the senior appraiser used in making her calculations. BCA said that the term “input” refers to data from Ivanhoe Cambridge and/or its agent that BCA used to calculate the value of the Oakridge Shopping Centre.<sup>19</sup> (6b)
- Information that is a result of the senior appraiser’s calculations. (6c)

[19] I accept BCA’s evidence that the information it identified as falling into categories 6a and 6b on pages 2 and 3 was gathered for the purposes of determining tax liability under s. 21(2). I therefore find that s. 21(2) applies to this information.

[20] BCA argued that the remaining information (category 6c) was “adjusted through calculations which would still expose the underlying raw input”.<sup>20</sup> However, neither BCA nor Ivanhoe Cambridge explained how underlying “gathered” information would be revealed by disclosure of the information in category 6c. It is also not clear how one might determine this from the records themselves, for example, without the information in categories 6a and 6b. BCA has not persuaded me that the information in category 6c on pages 2 and 3 was

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<sup>16</sup> Applicant’s request for review of April 15, 2016.

<sup>17</sup> BCA’s initial submission, para. 5; Affidavit of BCA’s Senior Appraiser, para. 5. Ivanhoe Cambridge’s initial submission, para. 9.

<sup>18</sup> BCA’s initial submission, para. 5; Affidavit of BCA’s Senior Appraiser, paras. 6-7. Ivanhoe Cambridge’s initial submission, para. 10.

<sup>19</sup> BCA’s letter of October 5, 2017.

<sup>20</sup> BCA’s initial submission, para. 13.

“gathered” for the purpose of determining tax liability. BCA has not met its burden respecting this information. I find that s. 21(2) does not apply to it.

*Conclusion on s. 21(2)*

[21] For reasons given above, I find that s. 21(2) applies to the severed information on pages 4-17 and to the information in categories 6a and 6b on pages 2 and 3. I also find that s. 21(2) does not apply to the information in category 6c on pages 2 and 3.

**CONCLUSION**

[22] For reasons above, I make the following orders under s. 58 of FIPPA:

1. Under s. 58(2)(c), I require BCA to refuse the applicant access to the severed information on pages 4-17 and to the information in categories 6a and 6b on pages 2 and 3.
2. Under s. 58(2)(a), I require BCA to give the applicant access to the information in category 6c on pages 2 and 3 by December 7, 2017. BCA must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

October 26, 2017

**ORIGINAL SIGNED BY**

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Celia Francis, Adjudicator

OIPC File Nos.: F16-65928  
F16-65930