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Order F19-11

**MINISTRY OF ENVIRONMENT  
AND  
CLIMATE CHANGE STRATEGY**

Celia Francis  
Adjudicator

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**Summary:** An applicant requested records related to a permit application for an organic composting facility near Lytton BC. The Ministry of Environment and Climate Change Strategy (Ministry) decided to disclose the records. The permit applicant requested a review of this decision by the Office of the Information and Privacy Commissioner for BC, arguing that the records are protected by s. 21(1) (harm to third-party business interests) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that s. 21(1) did not apply and ordered the Ministry to disclose the records to the applicant.

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

## **INTRODUCTION**

[1] This case concerns a permit application by Revolution Organics Limited Partnership (Revolution) for an organic composting facility near Lytton BC. In late 2016, an applicant requested that the Ministry of Environment and Climate Change Strategy (Ministry) provide it with copies of records related to Revolution's permit application, including authorizations and inspection reports. The Ministry told Revolution that it intended to disclose the requested records. Revolution objected, saying the records were protected by s. 21(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) (harm to third-party business interests).

[2] Revolution also complained to the Office of the Information and Privacy Commissioner (OIPC) that the Ministry did not provide Revolution with notice of the request under s. 23 of FIPPA and a chance to make written representations to the Ministry explaining why the information should not be disclosed. Further discussions among the parties ensued over the next 18 months, with the OIPC's involvement. During this time, the Ministry gave Revolution s. 23 notice of the request and Revolution provided its representations. The Ministry then told Revolution that it intended to disclose the records. Revolution made a third-party request for review to the OIPC of the Ministry's decision to disclose the records.

[3] Mediation of the issues by the OIPC was unsuccessful and an inquiry proceeded. The Ministry, Revolution and the original access applicant provided submissions during the inquiry.

## **ISSUE**

[4] The issue before me is whether the Ministry is required by s. 21(1) of FIPPA to withhold the requested records. Under s. 57(3)(b) of FIPPA, it is up to Revolution to prove that the applicant has no right of access to the requested records.

## **DISCUSSION**

### ***Background***

[5] In 2009, Revolution began to plan the development of a composting facility near Lytton, in conjunction with an organic farm. Revolution processes organic material at its facilities in Vancouver and Surrey and then sends the material to its facility near Lytton for composting. It produces Class A compost, as defined in the *Organic Matter Recycling Regulation (OMRR)*, which governs the operation of the composting facility. (The OMRR is a regulation under the *Environmental Management Act*.) Revolution later applied to the Ministry for a permit to increase its capacity to produce compost. As part of this process, Revolution carried out consultations with the Lytton community.<sup>1</sup>

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<sup>1</sup> Revolution's initial submission, paras. 6-7, 18; Affidavit of Revolution's Chairman and CEO, paras. 8-15.

**Records in dispute**

[6] The responsive records comprise the following:<sup>2</sup>

**Package 1**

- Composting Facility Notification with attached training plan, revised January 14, 2010 (Notification) (pp. 1-28)
- Permit Application Form (Application) (pp. 97-101)
- Northwest Organics<sup>3</sup> Soil Farm Environmental Impact Study and its appendices (including site location maps and an operations plan of January 2014) (Environmental Impact Study) (pp. 29-93)
- Updated Operations Plans and appendices, updated as of January 2017 (Operations Plans) (pp. 102-160)
- Letter of Assurance of November 2016 (p. 161)
- Surface Water and Groundwater Features and Potential Impact Monitoring of December 2012 (Monitoring Plan) (p. 91)
- Odour Management Plan of November 2016 (Odour Management Plan) (pp. 113-114) and two related letters (May and August 2015)

**Package 2**

- Emails (pp. 1-2)
- Ministry inspection reports and associated correspondence (Inspection Records) (pp. 3-5, 13-16, 19-27, 44-47, 70-140)
- Lab reports and associated correspondence (Lab Reports) (pp. 6-12, 17-18, 28-43, 48-69)

[7] Revolution stated that it does not object to the disclosure of pages 1, 54, 60 and 124-127 in Package 1 of the records.<sup>4</sup> Accordingly, I do not deal with them here. The remaining records are the records in dispute.

**Section 21 – Third-party business interests**

[8] Revolution argued that ss. 21(1)(a), (b) and (c)(i) and (iii) apply to all of the records. The Ministry said that ss. 21(1)(a) and (b) apply, in varying combinations, to some of the records. In the Ministry's view, however, s. 21(1)(c)

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<sup>2</sup> The material before me indicates that there was, for some time, considerable confusion over which records were responsive to the request. I requested and received further clarification in February 2019. The list of responsive records reflects this clarification.

<sup>3</sup> Revolution was formerly Northwest Organics, Limited Partnership.

<sup>4</sup> Revolution's email of February 8, 2019.

does not apply to any of the records. The applicant said that he adopts the Ministry's position.

[9] 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

- (i) trade secrets of a third party, or
- (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(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,

...

[10] Previous orders and court decisions have established the principles for determining whether s. 21(1) applies.<sup>5</sup> All three parts of the s. 21(1) test must be met in order for the information in dispute to be properly withheld. First, Revolution 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, Revolution 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.

[11] I find below that s. 21(1) does not apply. This is because, while I find that ss. 21(1)(a)(ii) and (b) apply to some of the information, Revolution has not established a reasonable expectation of harm under s. 21(1)(c) respecting any of the information.

*Type of information – s. 21(1)(a)*

[12] Revolution said that the information in the records is its scientific, technical, commercial and financial information and that some information is also

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<sup>5</sup> 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).

its trade secrets.<sup>6</sup> The Ministry said that it accepted that some of the information is Revolution's technical information, some is Revolution's commercial information and some is both.<sup>7</sup>

[13] **Technical information:** Previous orders have defined "technical information" under s. 21(1)(a)(ii) as information belonging to an organized field of knowledge falling under the general categories of applied science or mechanical arts. It usually involves information prepared by a professional with the relevant expertise, and describes the construction, operation or maintenance of a structure, process, equipment or entity.<sup>8</sup>

[14] Much of the information describes Revolution's methods for processing organic materials into compost, as well as the design, construction and operation of its facility.<sup>9</sup> The inspection reports describe Ministry staff's findings during their inspection of Revolution's facility, e.g., respecting odour management, processing of compost windrows, aeration methods and actions required.<sup>10</sup> The permit application contains information about technical aspects of Revolution's facility.<sup>11</sup> The emails and letters in package 2 also contain information about Revolution's composting methods, techniques and procedures.<sup>12</sup> Guided by past orders, I am satisfied that this is all "technical information of or about" Revolution and I find that s. 21(1)(a)(ii) applies to it.

[15] The conditional water licences,<sup>13</sup> which contain Ministry and BC provincial letterhead, appear in isolation. They date from 1988-2000 and appear to relate to land on which Revolution's facility is presently located or in its vicinity, although this is not clear. Revolution and the Ministry did not comment on them specifically or explain how they fit within s. 21(1)(a). While I accept that these pages contain "technical information," without more, I am unable to conclude they contain information "of or about" Revolution. I find that s. 21(1)(a)(ii) does not apply to pages 162-173.

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<sup>6</sup> Revolution's initial submission, paras. 34-39. Affidavit of Revolution's Chairman and CEO, paras. 8-15.

<sup>7</sup> Ministry's response submission, paras. 21-30. It did not point to portions of the records to which these provisions apply, in its view.

<sup>8</sup> See, for example, Order F13-19, 2013 BCIPC 26 (CanLII), at paras. 11-12, Order F12-13, 2012 BCIPC 18 (CanLII), at para. 11.

<sup>9</sup> I refer here to the Environmental Impact Study, the operations plans, the odour management plan and associated letters, the letter of assurance and monitoring plan, at pp. 29-93, 102-117, 161, 94-96, 113-114. The environmental impact study includes an earlier version of the operations plan at pp. 46-90.

<sup>10</sup> Pages 3-5, 13-16, 19-27, 44-47, 70-140. A windrow is a long heap of leaves or other material.

<sup>11</sup> Pages 97-101.

<sup>12</sup> For example, pages 1-2, 97, 106 and 130 in Package 2.

<sup>13</sup> Pages 162-173.

[16] **Trade secrets:** I also considered whether the conditional water licences (pages 162-173) are the “trade secrets of” Revolution. The four-part definition of “trade secrets” in Schedule 1 of FIPPA includes the requirement that the information be the “subject of reasonable efforts to prevent it from becoming generally known.” The Ministry said, and Revolution did not dispute, that water licence information is publicly available on its water data base. I do not, therefore, see how the information in these pages meets that element of the definition. In any case, as noted above, it is not clear, and Revolution did not explain, how the conditional water licences are “of” Revolution for the purposes of s. 21(1)(a)(i). I find that s. 21(1)(a)(i) does not apply to pages 162-173.

[17] **Scientific information:** Previous orders have considered the following types of information to be “scientific information” for the purposes of s. 21(1)(a)(ii):

- Marine biological and physical data pertaining to intertidal areas of the Strait of Georgia, e.g., sand, cobble, vegetation and marine invertebrate populations.<sup>14</sup>
- Environmental testing reports from former service station sites, including chemical and soil analysis results and project status reports prepared by a consultant retained by the Third Party.<sup>15</sup>
- Information exhibiting the principles or methods of science, for example, a report on the methodology for testing drugs and a prototype aircraft.<sup>16</sup>

[18] The lab reports contain the results of chemical analysis of Revolution’s compost for levels of various elements.<sup>17</sup> The training plans contain information on the composting process, including characteristics of various compost materials and the optimal chemical and physical conditions for producing good quality compost.<sup>18</sup> The environmental impact study contains information on the wildlife, water quality and physical conditions of the property on which the facility is located.<sup>19</sup> Guided by past orders, I am satisfied that this information is “scientific information” of or about Revolution and I find that s. 21(1)(a)(ii) applies to it.

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<sup>14</sup> Order 03-11, 2003 CanLII 49176 (BC IPC).

<sup>15</sup> Order No. 246-1998, 1998 CanLII 1449 (BC IPC). This order found that this type of information was also “technical information”.

<sup>16</sup> Order No. 57-1995, 1995 CanLII 691 (BC IPC).

<sup>17</sup> Pages 6-12, 17-18, 28-43, 48-69.

<sup>18</sup> Pages 2-28, 64-87, 129-150.

<sup>19</sup> Pages 29-93.

Conclusion on s. 21(1)(a)

[19] I have found that most of the information in dispute is scientific and technical information of or about Revolution. I need not, therefore, consider whether it is also commercial or financial information of or about Revolution.

[20] I have found that some of the information is not trade secrets of Revolution. I also found that this information is not “of or about” Revolution. I need not, therefore, consider whether this information is also commercial or financial information of or about Revolution.

*Supply in confidence – s. 21(1)(b)*

[21] The next step is to determine whether the information in issue was “supplied, implicitly or explicitly, in confidence.” The information must be both “supplied” and supplied “in confidence.”<sup>20</sup> For completeness, I have considered all of the information in dispute.

[22] **Supply:** Revolution said that it supplied the permit application, operations plan, environmental impact study, odour management plan and lab reports to the Ministry. It added that, while the Ministry issued the inspection reports, Revolution supplied the information in the reports to the Ministry.<sup>21</sup>

[23] The Ministry said that it accepted that some of the information was supplied, although it did not say which. The Ministry said, however, that some records, such as the inspection reports, were produced by Ministry staff in the course of their work and that the information in these records was not supplied.<sup>22</sup>

[24] With some exceptions, I find that the information in the responsive records was “supplied” to the Ministry. For example, the environmental impact study states that Revolution was providing it to the Ministry. As another example, the emails associated with the lab reports show that Revolution supplied the lab reports to the Ministry. I am also satisfied that information in Revolution’s emails to the Ministry was “supplied” to the Ministry.<sup>23</sup> I am satisfied that the Ministry did not generate any of this information. This finding is consistent with Order F18-50,<sup>24</sup> in which the senior adjudicator found that the third party had supplied information in its permit application to the public body.

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<sup>20</sup> See, for example, Order F17-14, 2017 BCIPC 15 (CanLII), at paras. 13-21, Order 01-39, 2001 CanLII 21593 (BC IPC), at para. 26, and Order F14-28, 2014 BCIPC 31 (CanLII), at paras. 17-18.

<sup>21</sup> Revolution’s initial submission, paras. 28-33. Affidavit of Revolution’s Chairman and CEO, paras. 8-15.

<sup>22</sup> Ministry’s response submission, para. 33.

<sup>23</sup> For example, page 2, Package 2.

<sup>24</sup> Order F18-50, 2018 BCIPC 54 (CanLII).

[25] However, I do not accept Revolution’s contention that it “supplied” the information in the inspection reports to the Ministry. These reports clearly contain observations, photographs, findings and recommendations that Ministry staff generated during their inspections of Revolution’s facility.

[26] Ministry staff also generated the information in their emails and letters to Revolution.<sup>25</sup> I find that this information was not “supplied” to the Ministry.

[27] I also find that the conditional water licences were not “supplied” to the Ministry. Rather, it is clear on their face that the Ministry created them.

[28] **In confidence:** Revolution said that it supplied all of the information “in confidence”. It pointed to explicit markers of confidentiality on some records and said that, in other cases, the “confidential nature” of the records and its operations was “plainly apparent.”<sup>26</sup> The Ministry said it accepted that some of the information was supplied “in confidence,” although it did not specify which information it meant.<sup>27</sup> I consider below only the information I found was “supplied.”

[29] A number of orders have discussed examples of how to determine if third-party information was supplied, explicitly or implicitly, “in confidence” under s. 21(1)(b), for example, Order 01-36:<sup>28</sup>

[24] An easy example of a confidential supply of information is where a business supplies sensitive confidential financial data to a public body on the public body’s express agreement or promise that the information is received in confidence and will be kept confidential. A contrasting example is where a public body tells a business that information supplied to the public body will not be received or treated as confidential. The business cannot supply the information and later claim that it was supplied in confidence within the meaning of s. 21(1)(b). The supplier cannot purport to override the public body’s express rejection of confidentiality.

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[26] The cases in which confidentiality of supply is alleged to be implicit are more difficult. This is because there is, in such instances, no express promise of, or agreement to,

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<sup>25</sup> For example, pages 123 and 127, Package 2.

<sup>26</sup> Revolution’s initial submission, para. 28-33. Affidavit of Revolution’s Chairman and CEO, paras. 8-15.

<sup>27</sup> Ministry’s response submission, para. 33.

<sup>28</sup> Order 01-36, 2001 CanLII 21590 (BC IPC).



confidentiality or any explicit rejection of confidentiality. 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.

[30] Applying these principles, I find that some of the information in dispute was explicitly supplied “in confidence.” For example, the lab reports are marked “confidential.” In addition, the cover page of the environmental impact study is explicitly marked “strictly private and confidential,” for the Ministry’s use only. I also accept Revolution’s evidence that it supplied, implicitly in confidence, other information, such as its operations plan, odour management plan and the information in its emails to the Ministry.

#### Conclusion on s. 21(1)(b)

[31] I found above that some of the information was “supplied in confidence.” I find, therefore, that s. 21(1)(b) applies to this information.

[32] I also found that some of the information was not supplied”. I find, therefore, that s. 21(1)(b) does not apply to this information.

#### *Standard of proof for s. 21(1)(c)*

[33] Numerous orders have set out the standard of proof for showing a reasonable expectation of harm.<sup>29</sup> 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

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<sup>29</sup> For example, Order 01-36, 2001 CanLII 21590 (BC IPC), at paras. 38-39.

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”.<sup>30</sup>

[34] Moreover, in *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*,<sup>31</sup> 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.

[35] I have taken these approaches in considering the arguments on harm under s. 21(1)(c). For completeness, I have considered all of the information in dispute.

*Discussion and findings on s. 21(1)(c)*

[36] Revolution said that it is a “leader and innovator” in a “dynamic and competitive market.” Revolution said that its “facility is unique and remains the class-leader in the compost industry with respect to the composting of food scraps in Canada, if not the world.”<sup>32</sup> It said that the unique way it combines, applies and employs its methods is proprietary to its facility and that many of its “innovative characteristics, strategies, plans and proposals” are reflected in the records in dispute. It said that disclosure of the records could reasonably be expected to harm its competitive position and interfere with its negotiating position, as the records would reveal to its competitors how Revolution has managed to develop its facility, navigate the OMRR regulatory process and “handle the fastest-growing input component in the industry – food scraps.” In Revolution’s view, disclosure of the records would effectively give its competitors its “business methods, technologies, investment strategies and corporate objectives” for nothing. This would, Revolution argued, result in undue financial loss to Revolution and undue gain to its competitors.<sup>33</sup>

[37] The Ministry countered that similar records, such as environmental impact studies, operations plans, leachate management plans, odour management

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<sup>30</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* [Community Safety], 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.

<sup>31</sup> *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875, at para. 43.

<sup>32</sup> Revolution’s initial submission, para. 43.

<sup>33</sup> Revolution’s initial submission, paras. 45-50. Affidavit of Revolution’s Chairman and CEO, para. 43.

plans and site details, are routinely released to the public. It said it is not aware of any harm resulting from such disclosure and has seen no evidence that Revolution's case is any different.<sup>34</sup>

[38] Revolution gave examples of its supposedly unique and proprietary designs and methods which it said are reflected in the records. It did not, however, explain how they were unique or proprietary. Beyond some general arguments, which I summarize below, it also did not explain how disclosure of the records could reasonably be expected to result in harm to it under s. 21(1)(c).<sup>35</sup>

[39] The Ministry's initial submission did not specifically discuss the harm aspect, except to say s. 21(1)(c) does not apply. However, the material before me includes the Ministry's July 2017 reasons for deciding to disclose the records, in what it described as a "courtesy notice."<sup>36</sup>

[40] I was able to identify some information which appeared to correspond to Revolution's examples. I discuss some of these examples below. My findings on the examples apply equally to the other information in the records.

[41] **Source materials:** Revolution said its facility has a "uniquely developed feedstock system." It said it is among the first to handle "source separated food scraps" which require "many special considerations and unique attributes being built into the Facility to accommodate this kind and composition of feedstock."

[42] The Ministry said that other compost facilities also receive high quantities of food waste that must be ground and mixed with high carbon material to meet OMRR requirements for carbon to nitrogen ratios. It also said that the addition of "bulking materials" to incoming organic material to produce an optimum carbon to nitrogen ratio is not proprietary. It added that mixing and grinding raw organics is also not proprietary and is common to other facilities.

[43] I see that some portions of the records describe compost materials and methods of processing them.<sup>37</sup> However, the OMRR lists several kinds of similar composting materials. It is not clear how the information at issue is unique or proprietary. Revolution did not explain how one might determine proprietary

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<sup>34</sup> Ministry's letter to Revolution, July 6, 2017.

<sup>35</sup> Revolution's examples are drawn from para. 44 of its initial submission and the Affidavit of Revolution's Chairman and CEO.

<sup>36</sup> The Ministry's counter arguments, including quotations, are taken from its letter of July 6, 2017 to Revolution; Exhibit E, Affidavit of legal assistant of Revolution's lawyer. This letter was also included with the access request documents in the binder of inquiry materials. It also refers to requests for redaction of the records that Revolution made in January and February 2017, during the consultation phase of the permit application process.

<sup>37</sup> For example, pages 47, 49 and 50.

information or how harm to it under s. 21(1)(c) might occur on disclosure of this information.

[44] **Liner and road base:** Revolution said its facility is the only one in BC with “an engineered geo-membrane liner” underlying the entire facility, which it said is a unique design aspect. It said it also has a complex road base which covers and protects the liner. It appears Revolution also has concerns about the disclosure of the thickness of its liner.<sup>38</sup>

[45] The Ministry said that liners are “quite common for various industries” such as landfills, mine sites and contaminated soil treatment. It also said that various liners are manufactured for various industries and that liners are purchased based on their proposed use and the proposed thickness requested. The Ministry added that an “engineered liner” is necessary to meet leachate management requirements of the OMRR. The Ministry also said that Revolution’s “road base” (which it understands to be the working surface on top of the engineered liner) is “similar to designs used by contaminated soil treatment facilities and sanitary landfills which use surface materials such as sand to protect the liner, overlaid by gravel to enhance leachate collection.” It said that similar information, including membrane dimensions, is routinely disclosed about other facilities.

[46] I note that some of the withheld information describes site selection and facility design features (including liner membrane thickness) and their role in minimizing leachate run-off.<sup>39</sup> This information appears straightforward. It is not clear how this information is unique or proprietary and Revolution did not explain this. I also note that s. 19(1) of the OMRR requires that managed organic matter be stored so it cannot escape. Section 26 of the OMRR states that, with some exceptions, facilities must store and process material on concrete or a similar impermeable base to prevent escape of leachate. It makes sense that facilities would use some kind of impermeable membrane, overlaid with a filtration substrate, to prevent pollution of the surrounding area. It is also not clear why disclosing the thickness of the liner membrane is a concern to Revolution. I do not see how disclosure of this apparently straightforward information could reasonably be expected to harm Revolution under s. 21(1)(c) and Revolution did not explain.

[47] **Processing:** Revolution said that the processing of the incoming food waste requires “unique processing considerations, hold times, turning frequencies, screening techniques, etc.”

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<sup>38</sup> The Ministry’s letter of July 6, 2017 refers to Revolution’s concerns about the disclosure of the thickness of its liner.

<sup>39</sup> For example, page 48.

[48] The Ministry said that the construction of compost windrows varies little and information on these processes is readily available. It did not say how or to whom.

[49] I see that some of the withheld information is about Revolution's composting process and materials, including timings for some activities, such as turning and monitoring the compost.<sup>40</sup> It is not clear, and Revolution did not explain, how any of this apparently straightforward information is unique or proprietary to Revolution nor how its disclosure could harm Revolution under s. 21(1)(c).

[50] **Equipment:** Revolution said that the nature, configuration and deployment of its equipment are proprietary.

[51] The Ministry said that Revolution does not manufacture any of the equipment listed, it is "readily available" and "there is nothing to suggest that its particular configuration or mode of deployment" is proprietary.

[52] I note references to equipment that Revolution proposed to use at its facility.<sup>41</sup> They appear to be recognized name brands of such equipment and the descriptions of their proposed uses appear to be straightforward. There is no indication that Revolution developed this equipment or has some other proprietary interest in it. Revolution did not explain how disclosure of the names of its equipment or their related uses could cause it harm under s. 21(1)(c).

[53] **Berm:** Revolution said its facility is the only one in BC with "an engineered berm system, which is integrated with its odour management protocols and technologies." It also appears that Revolution has concerns about disclosure of the dimensions of its berms and bio swales.<sup>42</sup>

[54] The Ministry said that berms are quite common for many waste management and water management activities and they can be lined or unlined. It said there is no basis for considering that the berm system and other components are proprietary. It also said that it had no reason to believe that the specific dimensions of the bio swales and berms would be excepted from disclosure.

[55] I see that some of the information is about proposed berms and bio swales, including their proposed dimensions.<sup>43</sup> I also note that s. 19(2) of the OMRR requires that there be berms around a storage site to prevent escape of

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<sup>40</sup> For example, pages 47, 50, 103-106.

<sup>41</sup> For example, pages 50, 113, 115.

<sup>42</sup> The Ministry's letter of July 6, 2017 refers to Revolution's concerns about the disclosure of the dimensions of its proposed berms and bio swales.

<sup>43</sup> For example, pages 39 and 91.

“managed organic matter.” Thus, Revolution was required to install berms at its facility. It is not clear how disclosure of the information on the berms and bio swales, including their dimensions, would be harmful to Revolution. Revolution did not explain what its concerns were with disclosure of this information and this is not evident from the records.

[56] **Odour Management Plan:** Revolution said it has developed a unique odour management plan.

[57] The Ministry said that odour management plans are routinely released to show that a facility has adequate plans to minimize odours. It said that leachate aeration methods and equipment used in odour management are not proprietary.

[58] I identified some information about Revolution’s odour management plan.<sup>44</sup> This information appears to be straightforward, common-sense information on how Revolution proposes to minimize odour in the vicinity of its composting facility. Revolution did not explain how this information was proprietary or unique or how its disclosure could cause it harm under s. 21(1)(c). This is not evident from the records.

[59] **Leachate ponds:** Revolution said its facility is the only one whose leachate ponds are designed to be impermeable. It appears that, among other things, Revolution has concerns about disclosure of the thickness of the liner of its leachate ponds.<sup>45</sup>

[60] The Ministry said that other composting facilities in BC have lined leachate ponds and that storage lagoons with engineered liners are very common at wastewater treatment facilities. It said that it had no reason to believe that the specific dimensions of the membrane would be excepted from disclosure.

[61] I identified some information on the containment of leachate.<sup>46</sup> Revolution did not explain what its concerns were with disclosure of this information. Revolution also did not explain how disclosure of this apparently straightforward information might cause it harm under s. 21(1)(c). These things are not evident from the records.

[62] **Site Plans:** Revolution apparently had concerns about the disclosure of its site plans.<sup>47</sup>

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<sup>44</sup> For example, in its environmental impact study of December 2012, at pages 50-51; in its updated operations plan of January 2017, at pages 113-114; and at pages 94-96.

<sup>45</sup> Ministry’s letter of July 6, 2017 to Revolution.

<sup>46</sup> For example, pages 39, 91 and 109-112.

<sup>47</sup> Pages 119-120. See Ministry’s letter of July 6, 2017.

[63] The Ministry said the site plans are generic and these types of plans are routinely released.

[64] The site plans show the location of existing and proposed structures at Revolution's facility. I do not see how disclosure of this information could reasonably be expected to harm Revolution under s. 21(1)(c). Revolution did not explain how this might be.

[65] **Bio Assay test information:** This document deals with testing compost for certain residues.<sup>48</sup> It indicates that it originated with another source and it is thus not Revolution's own information. Revolution did not address these pages and it is not clear how their disclosure could harm Revolution.

[66] **Water licence information:** Some pages<sup>49</sup> are conditional water licences. They may be related to water licence information at page 32 of Revolution's environmental impact study of December 14, 2012. Revolution did not specifically address any of this information except to say it objects to the disclosure of the conditional water licence documents.<sup>50</sup>

[67] The Ministry said that water licence source stream information (i.e., that on page 32) is publicly available on its water data base. It said it thus has no reason to believe this information is excepted under s. 21.

[68] I note that the conditional water licences contain Ministry and BC provincial letterheads. They contain similar information to the water licence information on page 32. Revolution did not dispute the Ministry's statement that water licence information is publicly available. In light of this, I do not see, and Revolution did not explain, how disclosure of any of the water licence information could harm Revolution under s. 21(1)(c).

[69] **Lab reports, ministry inspection reports and related emails and letters:**<sup>51</sup> Revolution said it provided the lab reports to the Ministry as part of its ongoing reporting on its facility's compliance with OMRR requirements. The lab reports set out results of testing of compost materials at the facility for the period 2012-2016. Revolution said that the lab reports analyze "the scientific make-up of Revolution's compost, and could provide a 'recipe' for Revolution's Class A compost to those seeking to replicate our product."<sup>52</sup> It did not explain how competitors might do so.

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<sup>48</sup> Pages 157-160, an appendix to Revolution's operations plan, updated January 2017.

<sup>49</sup> Pages 162-173.

<sup>50</sup> Revolution's email of February 8, 2019.

<sup>51</sup> Package 2, pages 1-140.

<sup>52</sup> Affidavit of Revolution's Chairman and CEO, para. 26.

[70] The inspection reports, which originated with the Ministry, cover the same period. They set out the results of inspections by Ministry staff and consist mainly of the staff's observations. Revolution said that the inspection reports contain sensitive and confidential information about its facility which it provided to the Ministry.<sup>53</sup> The emails and letters relate to the reports.

[71] Revolution did not explain how the disclosure of all these records could cause it harm under s. 21(1)(c). The records appear to be straightforward and, to the extent they might reveal issues that Revolution needed to address, Revolution has apparently done so. It is not clear how their disclosure, some years later, could harm Revolution.

[72] **Other records:** Some pages<sup>54</sup> quote various applicable Acts and Regulations. It is not clear, and Revolution did not explain, how quotations of the law could harm Revolution.

[73] The permit application<sup>55</sup> is a form with a small amount of information about Revolution, such as Revolution's contact information and some general information about the facility's site, such as the legal land description. It is not clear, and Revolution did not explain, how disclosure of this information could harm it under s. 21(1)(c).

[74] The compost training plan<sup>56</sup> states that it was largely adopted from another, named source. It is not clear how much of the information originated with Revolution. It appears to contain straightforward information on compost materials and processing. Revolution did not specifically address the training plan and it is not clear how its disclosure could harm Revolution under s. 21(1)(c).

*Conclusion on s. 21(1)(c)*

[75] Revolution did not point to specific portions of the records which might reveal its supposedly unique, proprietary designs and methods. It also did not satisfactorily explain how disclosure of the records in dispute could benefit its competitors and harm its own competitive position, or how disclosure of the information could result in undue loss to it and undue gain to its competitors. This is also not obvious from the records themselves, many of which date back some years. Revolution's submissions on these points amount to little more than assertions and do not persuade me that disclosing the information in dispute could reasonably be expected to result in any of the harms under s. 21(1)(c).

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<sup>53</sup> Revolution's initial submission, paras. 22-23.

<sup>54</sup> Pages 35-37, part of the environmental impact study.

<sup>55</sup> Pages 97-101.

<sup>56</sup> The January 2010 version is at pages 2-28, with a duplicate at pp. 64-87. The June 2011 version is at pp. 129-150.



[76] Revolution has 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).<sup>57</sup> It has not demonstrated a clear and direct connection between disclosing the information in dispute and the alleged harms. Therefore, I find that Revolution has not met its burden of proof and that s. 21(1)(c) does not apply to the information in dispute.

## **CONCLUSION**

[77] For reasons given above, under s. 58(2)(a) of FIPPA, I confirm that the Ministry is not required to refuse the applicant access to the information in dispute under s. 21(1). I require the Ministry to give the applicant access to this information by May 3, 2019. The Ministry must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

March 20, 2019

## **ORIGINAL SIGNED BY**

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Celia Francis, Adjudicator

OIPC File No.: F17-70725

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<sup>57</sup> *Community Safety*, at para. 54.