



OFFICE OF THE
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COMMISSIONER
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Order F19-31

BRITISH COLUMBIA ASSESSMENT AUTHORITY

Chelsea Lott
Adjudicator

August 22, 2019

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Summary: The applicants requested records related to the BC Assessment Authority's 2015 assessment of a property. The matter resulted in Order F17-48. Order F17-48 was reopened to consider whether information which the adjudicator ordered to be disclosed could be used to calculate figures which were ordered to be withheld under s. 21(2) of FIPPA (information gathered for the purpose of determining tax liability). The adjudicator held that some of the information which was ordered to be disclosed in Order F17-48 was required to be withheld because it would reveal information which had been held to be subject to s. 21(2).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 21(2), 79; *Assessment Act*, s. 16(3).

INTRODUCTION

[1] This order is a reconsideration of part of Order F17-48. There were two original access requests made to the British Columbia Assessment Authority (Authority) which led to Order F17-48. One was made by an individual and the other by the South Vancouver Parks Society (Parks Society). The individual and the Parks Society made separate requests for materials underlying the Authority's 2015 property assessment of the Oakridge Centre in Vancouver (Oakridge Centre).¹ The Authority withheld information in the records under

¹ Authority's Legal Assistant Affidavit, Exhibits C and D.

s. 21(2) (information gathered for the purpose of determining tax liability) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The individual and the Parks Society (applicants) jointly requested that the Office of the Information and Privacy Commissioner (OIPC) review the Authority's decision to withhold information.² The OIPC held an inquiry which resulted in Order F17-48. In her order, the adjudicator found that the Authority was required to withhold most of the severed information under s. 21(2) but had to disclose the rest.³

[3] The Authority believes that the information it was ordered to disclose in Order F17-48 would lead to the disclosure of some of the information the Authority was ordered to withhold under s. 21(2). The OIPC agreed to reopen Order F17-48 to consider the Authority's argument.

Background

[4] The Authority is a Crown corporation established under the *Assessment Authority Act*. The Authority's statutory mandate is to maintain real property assessments in accordance with the *Assessment Act*.⁴

[5] Oakridge Centre is a 28.3 acre site comprising a shopping centre and office buildings. Due to the development of rapid transit into the area, it is being redeveloped in accordance with the City of Vancouver's Cambie Corridor Plan and has been rezoned to allow for increased density.

[6] Oakridge Centre was initially assessed for the 2015 assessment roll at \$867,757,000. The owner of the shopping centre, Ivanhoe Cambridge Inc., appealed the assessment to the Property Assessment Review Board. Through that process, the owner and the Authority agreed to a revised valuation. The Board confirmed the assessment for the 2015 roll at \$500,540,000. The Parks Society unsuccessfully appealed the assessment to the Property Assessment Appeal Board.⁵

Order F17-48

[7] The issue in Order F17-48 was whether the Authority was required to withhold information pursuant to s. 21(2) of FIPPA. Section 21(2) of FIPPA says:

² Authority's Legal Assistant Affidavit, Exhibit E.

³ 2017 BCIPC 53.

⁴ Authority submissions at para. 2.

⁵ The background is taken from *South Vancouver Parks Society v Area 09 et al*, 2016 PAABBC 20160114 which can be accessed at:

http://decisions.assessmentappeal.bc.ca/Decisions/Dfull/dec_2015-09-00077_20160114.asp

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.

...

[8] At the beginning of the inquiry, there were 17 pages of spreadsheets and tables at issue.

[9] The Authority identified the information in dispute in the records as falling into one or more of the following five categories:

- Information that appears in its original format as provided by Ivanhoe Cambridge (Category 6a);
- Information provided by Ivanhoe Cambridge that was in a calculation the Authority performed using that information (Category 6b);
- Information that appears as a result of a calculation the Authority performed incorporating Category 6a and 6b information (Category 6c);
- Information that the authority gathered from sources other than Ivanhoe Cambridge (Category 7a); and
- Information that is the result of a calculation the Authority performed using information from sources other than Ivanhoe Cambridge (Category 7b).

[10] During the course of the inquiry, the Authority disclosed to the applicant information which fell into categories 7a and 7b.⁶

[11] The adjudicator held that the Authority was required to withhold the information falling within categories 6a and 6b pursuant to s. 21(2) of FIPPA. The adjudicator further held that the information that fell within category 6c was not captured by s. 21(2) because it was not “gathered” for the purposes of determining tax liability as it was generated as a result of calculations done by the Authority. The adjudicator’s analysis regarding the pages at issue in this reconsideration was as follows:

[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”. However, neither BCA nor Ivanhoe Cambridge explained how underlying “gathered” information would be revealed by disclosure of the

⁶ During the inquiry, pursuant to the request of the adjudicator, the Authority provided a legible copy of the records with the different categories of information indicated on the record (email dated August 12, 2017). I have relied on this copy of the records in writing this order.

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 “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.

Terms of the Consent Order

[12] The Authority made submissions regarding the application of s. 16(3) of the *Assessment Act* which limits the disclosure of information or records obtained or created under that Act. Section 16(3) of the *Assessment Act* was not in issue in Order F17-48. Order F17-48 was quashed by consent order on the limited basis that the adjudicator’s order to disclose certain information may conflict with her order to withhold other information under s. 21(2) of FIPPA. My jurisdiction is limited by the terms of the consent order so I will not consider the Authority’s arguments on the *Assessment Act*.

[13] Even if I am wrong regarding my jurisdiction, whether or not s. 16(3) of the *Assessment Act* applies would not affect the result of this reconsideration decision by virtue of s. 79 of FIPPA which states:

79 If a provision of this Act is inconsistent or in conflict with a provision of another Act, the provision of this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.

[14] Section 16(3) of the *Assessment Act* does not contain express language saying that it applies despite FIPPA. Therefore, s. 16(3) of the *Assessment Act* could not be applied to withhold information where FIPPA requires its disclosure.

ISSUE

[15] The issue in this inquiry is whether disclosing the information falling within category 6c would reveal information which Order F17-48 held was subject to s. 21(2) of FIPPA.

DISCUSSION

Records at issue

[16] The records which are the subject of this reconsideration decision consist of two spreadsheets. One is titled “2015 Roll Valuation Residential” (Residential Valuation) and the second is “2015 Roll Valuation – Commercial” (Commercial Valuation). The spreadsheets contain calculations regarding the current income from tenants as well as the net present value of future construction costs, tenant income, and the value of future residential properties. The Authority disclosed the column and row headings but withheld most of the remaining information, principally dollar figures, under s. 21(2).

Parties’ Submissions

[17] The Authority argues that disclosing the information in category 6c will lead to the disclosure of information that Order F17-48 requires them to withhold. The Authority says that it is possible to calculate the following information that the adjudicator in Order 17-48 found to be subject to s. 21(2):

- new gross leasable area of office space;
- the gross leasable area for certain types of commercial spaces in the 2015 Tax Year;
- the total retail gross leasable area;
- the capitalized percentage;
- the assessor’s rent of the existing office space; and
- the developer’s percentage of the profits in respect of the expansion of Oakridge Centre.

[18] The Authority did not make any argument regarding the balance of the information the adjudicator held was subject to s. 21(2). The Authority provided representative calculations to illustrate how some of the s. 21(2) data can be derived from figures it was ordered to disclose. Ivanhoe Cambridge Inc. adopted the Authority’s submissions and did not make any additional representations.

[19] The applicants’ submission focuses on whether the Authority adequately responded to their access request. The applicants’ complaint about the Authority’s search for records and statutory duty to assist them is outside the scope of this reconsideration decision.

[20] I will consider whether disclosing the information in category 6c will make it possible to calculate any of the information in category 6a or 6b, which the adjudicator held was subject to s. 21(2).

Commercial Valuation Spreadsheet

[21] I will first consider the information contained in the Commercial Valuation spreadsheet.

[22] The Commercial Valuation spreadsheet contains two separate tables regarding tenant income.⁷ One table is tenant income as of October 2014 (2014 Table) and the second is tenant income as if the development was completed in 2023 (2023 Table). For each tenant, the spreadsheet contains the following columns:

Tenant	GLA [Gross Leasable Area]	Assr Rent [Assessor's Rent]	Gross Income	Vacancy [expressed as a % of Gross Income]	Expense [expressed as a % of Gross Income]	NOI [Net Operating Income]
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Gross Income Calculation

[23] The Authority explained that Gross Income is calculated by multiplying the Gross Leasable Area times the Assessor's Rent:

$$\begin{array}{r}
 \text{Gross Leasable Area} \\
 \times \quad \text{Assessor's Rent} \\
 \hline
 \text{Gross Income}
 \end{array}$$

[24] The adjudicator held that all of the data in the Gross Income columns was required to be disclosed. The adjudicator ordered that some of the figures in the Gross Leasable Area and Assessor's Rent columns had to be disclosed but others did not. Some of the figures in the Gross Leasable Area and Assessor's Rent columns were also disclosed by the Authority prior to the inquiry.

[25] As a result of Order F17-48, for some of the tenants, two out of three figures in the above noted calculation would be publicly known. The third figure, which the adjudicator held was subject to s. 21(2) could be calculated by simple division. In any such instances, I find that the Authority is required to withhold the figures it was previously ordered to disclose. In addition, the Authority must withhold all of the Gross Income figures in the 2014 Table because they can be used to calculate the Net Operating Income, which I will discuss further below.

⁷ Some of the "tenants" are generic categories like "restaurant" whereas others are specific tenants like "Target."

New Gross Leasable Area of Office Space

[26] The column containing Gross Leasable Area figures has subtotals for different categories of tenants. One of the subtotals is for “office” tenants. The spreadsheet adds the New Gross Leasable Area of office space to the Existing Gross Leasable Area of office space to calculate the Total Gross Leasable Area:

	Existing Gross Leasable Area
+	New Gross Leasable Area
	Total Gross Leasable Area

[27] The Authority disclosed the Existing Gross Leasable Area of office space prior to the inquiry. The adjudicator held that the Total Gross Leasable Area of office space had to be disclosed, but the New Gross Leasable Area was subject to s. 21(2). As a result, the New Gross Leasable Area of office space can be calculated by subtraction. Therefore, I find that the Total Gross Leasable Area of office must be withheld under s. 21(2) because disclosing it will allow one to calculate the New Gross Leasable Area, which is subject to s. 21(2).

Vacancy, Expense, Net Operating Income, Capitalized Percentage and Value of the Development

[28] The Gross Income, Vacancy, Expense, Net Operating Income, Capitalized Percentage and the Value of the Development are all related figures.

[29] The Authority did not explain how the Net Operating Income is calculated, or how it can be derived from information which it was ordered to be disclosed. Based on my review of the figures, the Net Operating Income is calculated by multiplying the Gross Income by the inverse of the Vacancy %, and then multiplying the resulting number by the inverse of the Expense %:

$$[\text{Gross Income} \times (1 - \% \text{ Vacancy})] \times (1 - \% \text{ Expense}) = \text{Net Operating Income}$$

[30] The Authority argues that the Capitalized Percentage in both tables can be calculated by information which the Authority was required to disclose, but does not elaborate. Based on my calculations, the Capitalized Percentage is related to the Net Operating Income and can be derived by dividing the total Net Operating Income by the Value of the Development:⁸

	Total Net Operating Income
÷	Value of the Development
	Capitalized Percentage

⁸ On the Commercial Valuation spreadsheet, these figures are called the “Value ‘as is’” and the “Value as if Complete.”

[31] Various inputs to both of the above noted equations were ordered to be withheld under s. 21(2) by Order F17-48. Some figures were voluntarily disclosed by the Authority. In addition, I found above that some of the figures in the Gross Income column must also be withheld under s. 21(2).

[32] I have considered how the numbers and calculations interrelate and find that disclosing the figures in the Net Operating Income columns will indirectly disclose other information which has already been found to be subject to s. 21(2). Therefore I find that the Authority must withhold the Net Operating Income figures under s. 21(2). I include the Net Operating Income figures as they appear in the present value calculations at the bottom of the spreadsheet in the information which must be withheld. However, disclosing the Value of the Development would not allow one to calculate figures subject to s. 21(2).

[33] It would also be possible to disclose the Net Operating Income figures but not the Value of the Development to avoid disclosing any information which is subject to s. 21(2). However, considering one of the aims of FIPPA is to promote transparency and accountability, I decided that disclosing information about the Authority's valuation of the development would better further those aims than disclosing the income information.

Developer's Percentage of the Profits

[34] The Authority argues that the Developer's Percentage of the Profits can be calculated based on information which was ordered to be disclosed but does not elaborate.

[35] The spreadsheet includes the Costs to Complete the development which relate to the Developer's Profit. The Developer's Profit is expressed as a percentage of those costs:

$$\begin{array}{r} \text{Costs to Complete} \\ \times \text{ Developer's \% of the Profits} \\ \hline \text{Developer's Profit} \end{array}$$

[36] The adjudicator ordered the Authority to withhold the Developer's Percentage of the Profits but to disclose the Costs to Complete and the Developer's Profit. In Order F17-48, the adjudicator found that the Costs to Complete the development should be withheld in a different table in the spreadsheet. Accordingly, I find that the Costs to Complete must be withheld under s. 21(2). However, the Developer's Profit can be disclosed.

[37] The Positive Net Gain must also be withheld under s. 21(2) because it can be used to calculate the Costs to Complete. The Costs to Complete can be calculated using the Positive Net Gain as follows:

	Positive Net Gain
	Market Value Change
-	Developer's Profit
	Costs to Complete

[38] The adjudicator held that the Positive Net Gain, the Market Value Change and the Developer's Profit all had to be disclosed. As a result, the Costs to Complete could be calculated pursuant to Order F17-48. I have found that the Costs to Complete are subject to s. 21(2), so in order to avoid them being derived from the Positive Net Gain, I find that the Positive Net Gain is also subject to s. 21(2).

[39] At the bottom of the spreadsheet, there is an additional calculation of the net present value calculations of Costs to Complete. This includes an amount that is the Developer's Profit but it is a different figure than the one I held must be disclosed in paragraph 36. This "Developer's Profit" could be used to determine the Costs to Complete (which must be withheld), because the Authority has disclosed the Discount Rate and the Developer's Percentage of the Profits which it relied on in the present value calculations.

Residential Valuation Spreadsheet

[40] The Residential Valuation spreadsheet contains a table which calculates the net present value of the costs to complete the residential portion of the development as well as the developer's profit from the same. The rows of the spreadsheet are primarily different types of costs, for example cost of community amenities contributions or building costs. Each column is for a different year of the development, starting in 2014 and ending in 2024. The majority of the table was either disclosed by the Authority or was ordered to be disclosed.

[41] The second table in the spreadsheet calculates the value of the residential buildings. The adjudicator found that the table had to be withheld in its entirety.

[42] Order F17-48 required the Authority to disclose the following rows in the first table:

- Area of Additional Development Potential each year;
- Total Extraordinary Costs;
- Building Costs of Residential (Concrete);
- Total Residential Costs (Land Obligations, Amenities Contribution, Extraordinary and Residential);
- Developer's Profit;
- The Net Present Value of the Total Residential Cost; and
- The Net Present Value of the Developer's Profit.

[43] I will consider whether disclosing any of this data would enable the accurate calculation of figures which the adjudicator found was subject to s. 21(2) in Order F17-48.

Area of Additional Development Potential each year

[44] The Area of Additional Development Potential appears to be the combined square footage of specific buildings scheduled for development each year. The adjudicator held that the square footage of individual buildings was subject to s. 21(2). In two instances, only one building is scheduled for development. As a result, the Area of Additional Development Potential would reveal the square footage of two individual buildings, which is information subject to s. 21(2) and must be withheld on that basis. However where more than one building is scheduled for development in a particular year, it is not possible to derive information which is subject to s. 21(2) from the total square footage.

Total Extraordinary Costs

[45] The Total Extraordinary Costs are the sum of Extraordinary Above Grade Construction Costs and Extraordinary Podium/Infrastructure/Parking Costs both of which the adjudicator held were subject to s. 21(2). It is not possible to calculate either of the figures with only their sum. Accordingly, I find that s. 21(2) does not apply to the Total Extraordinary Costs.

Building Costs of Residential and Total Residential Costs

[46] The Total Residential Costs are the sum of:

	Total Community Centre, Cash & Park Contribution Cost
	Total Land Obligation Costs
	Total Extraordinary Costs
+	Building Costs of Residential (Concrete)
<hr/>	
	Total Residential Costs

The Authority disclosed the Total Community Centre, Cash & Park Contribution Cost and the Total Land Obligation Costs prior to the inquiry and the adjudicator did not find either the Building Costs of Residential or the Total Residential Costs to be subject to s. 21(2). Accordingly, no information which is subject to s. 21(2) could be calculated from these figures and I find that s. 21(2) does not apply.

Developer's Profit

[47] The Developer's Profit is a percentage of the Total Residential Costs:

	Total Residential Costs
x	Developer's % of the Profit
	Developer's Profit

[48] The Total Residential Costs are not subject to s. 21(2) and the Developer's Percentage of the Profit used to calculate the profit was disclosed by the Authority. Accordingly, disclosing the Developer's Profit would not reveal any information subject to s. 21(2) and I find the section does not apply.

Net Present Value of the Total Residential Cost and the Developer's Profit

[49] The table contains calculations of the Net Present Value of the Developer's Profit and the Total Residential Cost. As discussed, neither value is subject to s. 21(2). The discount factor was disclosed by the Authority. Accordingly, I find that neither the calculations regarding the Net Present Value of the Total Residential Costs or the Developer's Profits must be withheld under s. 21(2).

CONCLUSION

[50] For the reasons provided above, I make the following order under s. 58 of FIPPA:

- a) Pursuant to s. 21(2) of FIPPA, the Authority is required to withhold the information outlined by a black box in the copy of records being sent to the Authority along with this order.
- b) The Authority is required to give the applicants access to the information in the records which is not outlined by an orange or black box.
- c) The copy of the records provided to the applicants must be large enough to make the figures readable.
- d) I require the Authority to give the applicants access to this information by October 4, 2019. The Authority must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicants, together with a copy of the records.

August 22, 2019

Chelsea Lott, Adjudicator

OIPC File No.: F16-65928