



Order F21-05

## BRITISH COLUMBIA ASSESSMENT AUTHORITY

Ian C. Davis  
Adjudicator

February 1, 2021

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**Summary:** The British Columbia Assessment Authority (BC Assessment) applied for an order that the Commissioner exercise his discretion under s. 56(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to decline to conduct an inquiry in this matter. BC Assessment argued that an inquiry should not be held because it is plain and obvious that the records requested by the access applicant are available for purchase by the public and are, therefore, outside the scope of FIPPA pursuant to s. 3(1)(j). The adjudicator decided that the matter will not proceed to an inquiry because it is plain and obvious that s. 3(1)(j) applies to the requested record.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 56(1) and 3(1)(j).

### INTRODUCTION

[1] The British Columbia Assessment Authority (BC Assessment) applies for an order that the Commissioner exercise his discretion under s. 56(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to decline to conduct an inquiry in this matter. The access applicant, who is the respondent on this application, made a request to BC Assessment for access to certain datasets of property information. In response, BC Assessment refused access on the basis that the requested records are available for purchase by the public and are, therefore, outside the scope of FIPPA pursuant to s. 3(1)(j).

[2] The respondent asked the Office of the Information and Privacy Commissioner (OIPC) to review BC Assessment's decision. Mediation did not resolve the matter and the respondent requested an inquiry. Subsequently, BC Assessment made this s. 56 application.

## ISSUE

[3] The issue is whether the OIPC should exercise its discretion to decline to conduct an inquiry because it is plain and obvious that the requested records fall outside the scope of FIPPA under s. 3(1)(j). Since this is BC Assessment's application, it has the burden to show that the OIPC should exercise its discretion to decline to conduct an inquiry.<sup>1</sup>

## BACKGROUND

[4] BC Assessment's purpose under the *Assessment Authority Act* is to establish and maintain valuations and classifications of property that are uniform in the whole of BC in accordance with the *Assessment Act* (a separate statute).<sup>2</sup> One of its main duties is to develop and administer a complete system of property assessment.<sup>3</sup> To perform its mandate, BC Assessment collects, maintains and uses relevant data.

[5] The *Assessment Authority Act* also authorizes BC Assessment to "perform technical or professional services, other than those required under the *Assessment Act*, and to set and charge fees for those services".<sup>4</sup> One service that BC Assessment provides is access to its data for citizens, government organizations and researchers. The terms and conditions of accessing data held by BC Assessment are set out in a data access policy.<sup>5</sup>

[6] Sometime prior to February 15, 2019, the Ministry of Attorney General (Ministry) made a request to BC Assessment for access to certain data. BC Assessment provided the requested data pursuant to an "End User Data License Agreement". BC Assessment waived the fee, pursuant to its data access policy, because it determined that providing the data promoted the priorities set out in its annual Mandate Letter.<sup>6</sup> In the Mandate Letter, BC Assessment's responsible Minister directed it to "[s]upport provincial government priorities and policy development through the use of BC Assessment data, property information and by leveraging the corporation's extensive expert knowledge on valuation and real estate."<sup>7</sup>

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<sup>1</sup> Order F20-11, 2020 BCIPC 13 (CanLII) at para. 4.

<sup>2</sup> *Assessment Authority Act*, R.S.B.C. 1996, c. 21 [AAA] at s. 9. Except where otherwise stated, the information in this background section is based on the parties' submissions and the publicly available documents referred to therein.

<sup>3</sup> AAA, *ibid* at s. 10(a).

<sup>4</sup> AAA, *ibid* at s. 10(e).

<sup>5</sup> See online: <https://info.bcassessment.ca/Shared%20Documents/Data-Access-Citizens-Government-Organizations-Academic-Researchers-Policy-BP-02-0148.pdf> (BC Assessment's initial submissions at para. 16) [Data Access Policy].

<sup>6</sup> Data Access Policy, *ibid* at s. 4.5.

<sup>7</sup> See online: <https://info.bcassessment.ca/about/Publications/2019-2020%20Mandate%20Letter.pdf>, at p. 2 (BC Assessment's initial submissions at para. 16).

[7] According to the respondent, the authors of a report called “Dirty Money”<sup>8</sup> analyzed and relied upon the data BC Assessment provided to the Ministry. The Ministry released this report in two parts dated March 31, 2018 and March 31, 2019. The report is an independent review of money laundering in Lower Mainland casinos, BC real estate, luxury vehicle sales and horse racing. The respondent is particularly interested in the aspects of the report relating to the connection between money laundering and BC real estate.

[8] The respondent says that, prior to making his access request to BC Assessment, he made an access request for similar (or the same)<sup>9</sup> records to the Ministry. The Ministry denied the request, stating:

The [Ministry] will not be providing access to the raw data sets because they are not in the custody or under the control of the [Ministry] within the meaning of ss. 3(1) and 4(1) of FOIPPA. The raw data sets are exclusively in the custody or under the control of BC Assessment and LTSA, respectively.<sup>10</sup>

[9] As a result, in early January 2020, the respondent made the access request that is the subject of this application. Specifically, the respondent requested that BC Assessment provide him access to “electronic copies of the datasets of ... property information, provided to the working group for the report, ‘Dirty Money Part 1 and 2’ by Peter M. German, Peter German & Associates Inc., in 2018/2019.”<sup>11</sup>

### **DISCRETION TO CONDUCT AN INQUIRY – s. 56(1)**

[10] Section 56(1) of FIPPA states that if a matter is not referred to an OIPC mediator or settled, the Commissioner “may” conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry. This section accords the Commissioner a broad discretionary power to determine whether or not to hold an inquiry.<sup>12</sup> The Commissioner has delegated to me the power to determine whether an inquiry should be conducted in this matter.<sup>13</sup>

[11] The Commissioner may decline to conduct an inquiry where the matter is moot or an abuse of process, *res judicata* or issue estoppel applies, or it is plain

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<sup>8</sup> The parties did not provide me with the Dirty Money report, but it is publicly available online: [https://cullencommission.ca/files/Gaming\\_Final\\_Report.pdf](https://cullencommission.ca/files/Gaming_Final_Report.pdf); [https://cullencommission.ca/files/Dirty\\_Money\\_Report\\_Part\\_2.pdf](https://cullencommission.ca/files/Dirty_Money_Report_Part_2.pdf) [Dirty Money Part 2].

<sup>9</sup> The respondent did not provide me with a copy of his access request to the Ministry, so I do not know exactly how his request was worded.

<sup>10</sup> Respondent’s response submissions at p. 2.

<sup>11</sup> Investigator’s Fact Report at para. 1.

<sup>12</sup> *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 835 at para. 47.

<sup>13</sup> See FIPPA, s. 49(1).

and obvious that the disputed records are outside the scope of FIPPA or subject to an exception to disclosure under FIPPA.<sup>14</sup> The Commissioner will decline to conduct an inquiry under s. 56(1) only if there is “no arguable case that merits an inquiry”.<sup>15</sup>

### ***Overview of the parties’ positions***

[12] BC Assessment submits that it is plain and obvious that the Commissioner should decline to conduct an inquiry in this matter because, it says:

- a. The data requested by the Applicant is outside the scope of FIPPA. Specifically, BC Assessment is of the opinion that FIPPA section 3(1)(j) applies to the data requested by the Applicant.
- b. BC Assessment does not have any knowledge of what information the Ministry of Attorney General provided to Dr. German or “the working group.”
- c. BC Assessment is not aware of those exceptions to disclosure under FIPPA that the Ministry of Attorney General may claim in relation to the disclosure of the data to the Applicant, such as FIPPA section 12 “Cabinet and local public body confidences.”<sup>16</sup>

[13] Section 3(1)(j) states that FIPPA applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to “a record that is available for purchase by the public”.

[14] The respondent says the requested records are not available for purchase by the public. As I discuss in more detail below, the respondent says BC Assessment has misunderstood his access request. He submits that his access request, properly understood, is for records that are not available for purchase by the public. The respondent also says that providing him with the requested records is in the public interest.<sup>17</sup>

### ***What records is the respondent requesting?***

[15] There is some disagreement in the parties’ submissions about what records the respondent is requesting. Accordingly, the first step on this application is to resolve that issue.

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<sup>14</sup> Decision F08-11, 2008 CanLII 65714 (BC IPC) at para. 8; Decision F07-04, 2007 CanLII 67284 (BC IPC) at para. 16; Order 01-03, 2001 CanLII 21557 (BC IPC); Order 02-57, 2002 CanLII 42494 (BC IPC).

<sup>15</sup> Decision F08-11, *ibid.*

<sup>16</sup> BC Assessment’s initial submissions at paras. 11 and 24.

<sup>17</sup> Respondent’s response submissions at p. 3.

[16] BC Assessment says the respondent made “new” and “different” access requests in his response submissions.<sup>18</sup> BC Assessment refers to the respondent’s “initial” request as distinct from his “revised” or “new” request.<sup>19</sup> In either case, BC Assessment submits that the requested records fall outside the scope of FIPPA under s. 3(1)(j).

[17] The respondent acknowledges that, “in the interest of clarity”, he “refined” the wording of his initial request in his response submissions.<sup>20</sup> In those submissions, he says he is requesting “the dataset that BCA [BC Assessment] provided to the Ministry of Attorney General”.<sup>21</sup> He says he is requesting the dataset explicitly referred to on page 69 of Part 2 of the Dirty Money report as follows:

A dataset from BCA that included assessed values and conveyance information for 2018 and 2019. The conveyance data captures any sales of a property from January 2018 to March 2019 and is derived from the declared value on title.<sup>22</sup>

[18] Since the respondent says that this is what he is requesting, I am satisfied for the purposes of this application that this is his access request. BC Assessment says this revised access request is “very general”, but that it includes “sufficient information” for BC Assessment to identify the record within the scope of the respondent’s request.<sup>23</sup>

***Is it plain and obvious that the requested record is available for purchase by the public under s. 3(1)(j)?***

[19] The next question is whether it is plain and obvious that the requested record is available for purchase by the public under s. 3(1)(j).

[20] BC Assessment submits that the requested record is available for purchase by the public. Specifically, BC Assessment says the respondent “may purchase for approximately \$93,000 (plus tax) the data within scope of the Applicant’s revised request for all properties in British Columbia with a conveyance date between January 2018 and March 2019.”<sup>24</sup>

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<sup>18</sup> BC Assessment’s reply submissions at paras. 6 and 9.

<sup>19</sup> BC Assessment’s further submissions dated January 22, 2021 at paras. 6, 8 and 13.

<sup>20</sup> Respondent’s further submissions dated January 14, 2021 at p. 1.

<sup>21</sup> Respondent’s response submissions at p. 1.

<sup>22</sup> Dirty Money Part 2, *supra* note 8 at p. 69; respondent’s response submissions at p. 1.

<sup>23</sup> BC Assessment’s reply submissions dated January 7, 2021 at para. 7; BC Assessment’s further reply submissions dated January 22, 2021 at para. 13.

<sup>24</sup> BC Assessment’s further reply submissions dated January 22, 2021 at para. 8. The respondent disputes the price estimate and BC Assessment emphasizes that it is a preliminary approximation, subject to change based on further confirmations and/or clarifications.

[21] The respondent argues that the requested record is not available for purchase by the public. He submits:

- I have stated repeatedly that I am requesting the dataset that BCA provided to the Ministry of Attorney General. This dataset is clearly not available to purchase. I am not requesting individual records, which would be available to purchase. Despite my clarifications on this, BCA claims that I am requesting the individual records contained within the dataset. This is not true.<sup>25</sup>

[22] The respondent also says: “Yes the records are available for purchase. But that is meaningless, because I am requesting the dataset, which is not available for purchase.”<sup>26</sup> The respondent stresses that the dataset he is requesting “is an entity entirely separate from the individual records it contains.”<sup>27</sup>

[23] It is apparent from the respondent’s submissions that he distinguishes between the “dataset” he is requesting and what he calls the “individual records contained within the dataset”, which he is not requesting. By “individual records”, I understand the respondent to be referring to records that provide information on a single property. By contrast, I understand the “dataset” to be a record that captures data elements—for example, conveyance price, land size, lot number—from multiple different records relating to individual properties.

[24] The respondent says that individual records are available for purchase, but the dataset is not. However, he does not explain why he thinks the dataset is not available for purchase.

[25] It is clear to me from BC Assessment’s material that “datasets” such as the one the respondent is requesting are available for purchase.<sup>28</sup> BC Assessment directed me to its website and in particular to its “How to Request Property Information” page, its online “Property Information Request Form”, and its online “Data Catalogue”.<sup>29</sup> These sources show that members of the public can purchase custom reports from BC Assessment based on data elements that they select. The sample data that BC Assessment provides on its website includes datasets in table format that capture data from multiple properties.<sup>30</sup> Based on this, I accept BC Assessment’s assertion that datasets including the one at issue here are available for purchase by the public from BC Assessment.

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<sup>25</sup> Respondent’s response submissions at p. 1.

<sup>26</sup> Respondent’s further submissions dated January 14, 2021 at p. 1.

<sup>27</sup> Respondent’s response submissions at p. 2.

<sup>28</sup> However, it appears that some records about individual properties, which the respondent says are for sale, are actually free. See, e.g., Order F20-07, 2020 BCIPC 08 (CanLII).

<sup>29</sup> BC Assessment’s further reply submissions dated January 22, 2021 at paras. 8 and 10.

<sup>30</sup> See online: <https://info.bcassessment.ca/services-and-products/Pages/Sample-data.aspx>.

[26] The respondent makes two further arguments. First, he argues that the dataset is not available for purchase because the End User Data License Agreement (Agreement) between BC Assessment and the Ministry “requires that the dataset not be made available to the public.”<sup>31</sup> In reply, BC Assessment submits that the respondent is “incorrect” about how the Agreement works.<sup>32</sup>

[27] I am not persuaded by the respondent’s argument. The Agreement does not prevent someone from purchasing the same data that the Ministry requested and received from BC Assessment. Rather, the Agreement simply prevents the Ministry from sharing the data it received with third parties.<sup>33</sup>

[28] Second, the respondent argues that the dataset “cannot be considered available for purchase” because it is “cost prohibitive”.<sup>34</sup> In reply, BC Assessment says the respondent is essentially seeking “a path to circumvent paying for data which is available for purchase and which is routinely purchased by other members of the public.”<sup>35</sup> BC Assessment notes that it relies on the revenue from data sales to fulfill its legislative mandate.

[29] In my view, s. 3(1)(j) is about whether the requested data is for sale to the public, not whether it is affordable or cost-prohibitive. This is the plain meaning of the language in that subsection. Further, past orders dealing with s. 3(1)(j) consider whether the record is for sale and do not address price.<sup>36</sup> The respondent does not cite any legal authority to support his interpretation of s. 3(1)(j) and I am not aware of any.

[30] At any rate, the respondent’s concerns about cost are addressed, to some extent at least, in BC Assessment’s data access policy. The policy allows for waivers or reductions of fees in certain circumstances, including where “provision of the Data for no or reduced fee is in the public interest.”<sup>37</sup>

[31] To summarize, I am satisfied based on what the respondent says in his submissions that he is requesting a specific dataset from BC Assessment that the authors of the Dirty Money report relied upon. BC Assessment says this dataset is available for purchase by the public. It is plain and obvious to me, based on BC Assessment’s submissions, that s. 3(1)(j) applies to the requested dataset because it is information that BC Assessment sells to the public.

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<sup>31</sup> Respondent’s response submissions at p. 1.

<sup>32</sup> BC Assessment’s reply submissions at para. 8.

<sup>33</sup> Data Access Policy, *supra* note 5 at Appendix 1, s. 5.

<sup>34</sup> Respondent’s further submissions dated January 14, 2021 at p. 2.

<sup>35</sup> BC Assessment’s initial submissions at paras. 22-23.

<sup>36</sup> See, e.g., Order F20-07, 2020 BCIPC 08 (CanLII) at paras. 29-31; Order F15-13, 2015 BCIPC 13 (CanLII) at paras. 7-9.

<sup>37</sup> Data Access Policy, *supra* note 5 at s. 4.5. Whether to grant a fee waiver or reduction is, of course, for BC Assessment to decide, if the issue arises.

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Accordingly, the requested record is clearly outside the scope of FIPPA and there is no arguable case that merits an inquiry in this matter.

[32] Finally, I note that BC Assessment raised arguments about its lack of knowledge about what data the Ministry provided to the authors of the Dirty Money report and about the FIPPA exceptions to disclosure that the Ministry might claim in relation to the requested record. To the extent that these arguments were intended as separate grounds from s. 3(1)(j), I do not find it necessary to consider them given my analysis and conclusion above.

## **CONCLUSION**

[33] For the reasons given above, I exercise the Commissioner's discretion under s. 56(1) of FIPPA to decline to conduct an inquiry to review BC Assessment's decision to refuse access to the requested record. The application is allowed on the basis that it is plain and obvious that s. 3(1)(j) applies to the requested record.

February 1, 2021

## **ORIGINAL SIGNED BY**

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Ian C. Davis, Adjudicator

OIPC File No.: F20-84467