Order F21-53

VANCOUVER COASTAL HEALTH AUTHORITY

Jay Fedorak
Adjudicator

November 2, 2021

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Summary: An applicant requested a copy of an audit report that Vancouver Coastal Health Authority (VCH) commissioned to examine reporting and billings of contracted service providers under the home support services program. VCH withheld the record in its entirety under ss. 13(1) (policy advice and recommendations) and 17(1) (harm to the financial or economic interests of the public body) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant raised the application of s. 25(1) (public interest disclosure) on the grounds that disclosure was in the public interest. The adjudicator found that VCH was not required to disclose the audit report under s. 25. He also found that ss. 17(1) and 13(1) did not apply to the information at issue and ordered VCH to disclose it to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2)(g), 13(2)(m), 17(1)e, 17(1)(f), 25(1).

INTRODUCTION

[1] A journalist (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Vancouver Coastal Health Authority (VCH) for a copy of the report of a VCH audit (audit report) that the Fraser Health Authority (FHA) had mentioned in a news release. VCH responded by withholding the audit report in its entirety under s. 17 (harm to the financial or economic interests of the public body).

[2] The applicant requested a review by the Office of the Information and Privacy Commissioner (OIPC) of the Ministry's decision to withhold the information under s. 17, arguing that there was a strong public interest in the audit report so s. 25 applied.

[3] Mediation by the OIPC did not resolve the matter and the applicant requested it proceed to a formal inquiry.

[4] VCH subsequently requested permission also to apply s. 13(1) (advice and recommendations) to the same information. The Registrar of Inquiries permitted VCH to raise the application of this section, and it was added to the inquiry.

ISSUE

[5] The issues to be decided in this inquiry are:

1. Whether s. 25(1) requires VCH to disclosure the record without delay;

2. Whether s. 13(1) authorizes VCH to withhold information; and

3. Whether s. 17(1) authorizes VCH to withhold information.

[6] Under s. 57(1) of FIPPA, VCH has the burden of proving that ss. 13(1) and 17(1) apply to the information VCH withheld. There is no statutory burden of proof with respect to the application of s. 25. Previous orders have indicated that it is in the interests of both parties to provide the adjudicator with whatever evidence and argument they have regarding s. 25.[1]

DISCUSSION

[7] **Background –** In April 2010, VCH implemented contracts for home support services for VCH clients with four service providers for terms for ten years each. Home support services involve assistance with bathing, toileting, grooming and dressing. In 2017, Internal Audit Services (IAS), on behalf of VCH and FHA conducted a routine audit of the billing and reporting data of one of the companies providing service to both health authorities. VCH describes IAS as a "consolidated, specialized group of internal auditor professionals that serves VCH, FHA, Providence Health Care, and First Nations Health Authority".[2]

[8] Based on the information that the routine audit produced, VCH decided to request that IAS conduct a detailed audit of all four of its service providers. The purpose of this audit was to assess the service providers' compliance with the terms of their contracts and inform VCH decisions on future courses of action with respect to those contracts, including whether to terminate the contacts. The contracts expired in 2010, and VCH decided that it would provide home support

[1] For example, see: Order 02-38, 2002 BCIPC 42472 (CanLII) and Order F07-23, 2007 BCIPC 52748 (CanLII).
[2] VCH's initial submission, para. 31.

services directly, without the aid of service providers, from that point forward. Since 2018, VCH has also been negotiating with the service providers over the issue of compensation to VCH for overbilling by the service providers.

[9] **Information at Issue -** The record in dispute is an audit report consisting of 33 pages. VCH has completely withheld the audit report.

Public interest disclosure – section 25

[10] Section 25 requires a public body to disclose information in certain circumstances without delay despite any other provision of FIPPA. This section overrides all FIPPA's discretionary and mandatory exceptions to disclosure. The relevant parts of s. 25 state:

> 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
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> (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
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> (b) the disclosure of which is, for any other reason, clearly in the public interest.
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> (2) Subsection (1) applies despite any other provision of this Act.

[11] Because s. 25 overrides all other provisions in FIPPA, previous orders have found that it applies in only the clearest and most serious situations. Section 25 sets a high threshold, intended to apply only in significant circumstances.

[12] The applicant does not raise the application of s. 25(1)(a). Therefore, I do not need to consider it here. Moreover, I see no evidence of any risk of significant harm to the environment or to the health or safety of anyone.

Clearly in the public interest – section 25(1)(b)

[13] Disclosure under s. 25(1)(b) requires that the information at issue be clearly in the public interest. Former Commissioner Denham outlined the proper approach to applying s. 25(1)(b) in Investigation Report F16-02 as follows:

> Analyzing the application of s. 25(1)(b) in a specific situation begins by considering whether the information at issue concerns a subject, circumstance, matter or event justifying mandatory disclosure. The list of these things cannot be exhaustively enumerated. However, the following factors should be considered in determining whether they meet the test for further consideration under s. 25(1)(b):

> - is the matter the subject of widespread debate in the media, the Legislature, or by other Officers of the Legislature or oversight bodies; or
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> - does the matter relate to a systemic problem rather than to an isolated situation?
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> In addition, would its disclosure:
>
> - contribute to educating the public about the matter;
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> - contribute in a substantive way to the body of information that is already available about the matter;
>
> - enable or facilitate the expression of public opinion or enable the public to make informed political decisions; or
>
> - contribute in a meaningful way to holding a public body accountable for its actions or decisions?
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> This is not to say that in order for information to be disclosed under s. 25(1)(b) it must be the subject of public debate; there may well be situations where there is a clear public interest in disclosure of information about a topic that is not currently the object of public concern or is not known to the public.
>
> Once it is determined that the information is about a matter that may engage s. 25(1)(b), a public body should consider the nature of the information itself to determine whether it meets the threshold for disclosure. However, this threshold is not static. In any given set of circumstances there may be competing public interests, weighing for and against disclosure, and the threshold will vary according to those interests.[3]

[14] Previous orders have determined that the duty to disclose under s. 25(1)(b) "only exists in the clearest and most serious of situations where the disclosure is *clearly* (i.e., unmistakably) in the public interest."[4]

[15] For disclosure of information to be in the "public interest" means more than just that the public would find the information interesting. It is not a question of whether the information is entertaining or would satisfy a curiosity.[5]

[16] Furthermore, the public's interest in scrutinizing the work of public bodies, while important, does not in and of itself trigger the application of s. 25. As former

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[3] Investigation Report IR16-02 2016 BCIPC 36 (CanLII), pp. 26-27.
[4] Order 02-38, at paras. 45-46, citing Order No. 165-1997, 1997 BCIPC 22 (CanLII) at p. 3. Emphasis in original. See also Order F18-26, 2018 BCIPC 29 (CanLII) at para. 14.
[5] *Clubb v. Saanich (Corporation of The District)*, 1996 CanLII 8417 (BCSC) at para. 30.

Commissioner Loukidelis stated, s. 25(1)(b) "is not an investigative tool for those who seek to look into the affairs of a public body. It is an imperative requirement for disclosure which is triggered by specific information the disclosure of which is clearly in the public interest."[6]

[17] The applicant argues that VCH cited the audit report as justification for a major public policy decision to discontinue the outsourcing of home care services. They also submit that the "safety and comfort of vulnerable individuals who require outside assistance for their daily basic needs is quite clearly one of grave public interest."[7] Furthermore, they argue that any plan to change the nature of the provision of these services is of vital interest to the clients concerned.

[18] VCH responds that the audit report concerns the risk of financial harm to VCH resulting from service providers contravening the terms of their contracts. The audit report does not examine the quality of care or the impact on the health or safety of VCH clients or the public. The audit report concerns billing and reporting information. It does not include any information on the clients themselves, such as client satisfaction results, number of falls or pressure ulcers, or incontinence or communication issues.[8]

Analysis

[19] The first step in my analysis is to determine whether the matter may engage s. 25(1)(b). If I find that it does, I will then proceed to examine the nature of the information itself to determine whether it meets the threshold for disclosure.

[20] My review of the audit report supports the description of VCH. The audit report concerns issues relating to records of billings and the systems involved in processing this information. There is no evidence before me that these issues are matters of widespread public debate or that they reflect systemic problems. The fact that VCH has withheld the record in its entirety prevents me from providing any information that it has not included in its submissions. The only public policy issues that the audit report might illuminate are whether the service providers billed and reported accurately and whether there are any issues with how well the VCH managed the contracts.

[21] While the subject matter of the audit report relates indirectly to the topic of the disbursement of public funds, which can sometimes be a matter of public interest, this is not sufficient on its own to engage s. 25(1)(b). In this case, the information at issue relates to a compliance review of a contract with private-

[6] Order 00-16, 2000 BCIPC 7714 (CanLII), at p. 14.
[7] Applicant's response submission, second page.
[8] VCH's reply submission, para.5.

sector service providers. This is not in itself indicative of an issue of public interest, but rather a practice of VCH holding its contractors accountable to their contractual obligations.

[22] The evidence before me does not support the contention that the disclosure of the audit report is clearly in the public interest. It appears to me doubtful that the information in the report would inform the public on any matters of current public debate or address an important issue of accountability with respect to VCH in any meaningful way. Nor would it inform the public with respect to future political decisions. There is no evidence before me to indicate that disclosure would add to the body of public knowledge on the subject matter in a significant way. The applicant has raised the issue of the safety and comfort of home support clients as being in the public interest, but the audit report does not illuminate those issues. I cannot identify any other relevant considerations that argue in favour of disclosure being in the public interest. In summary, disclosure would not meet the standard threshold for further consideration under s. 25(1)(b).

[23] Therefore, I find that s. 25(1)(b) does not apply to the audit report.

Section 17(1) – harm to the financial or economic interests of the public body

[24] VCH is refusing to disclose some information under s. 17(1), which states:

> 17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
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> (e) information about negotiations carried on by or for a public body;
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> (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[25] In this case, to rely on s. 17(1), VCH must establish that disclosure of the information could reasonably be expected to harm its financial or economic interests. The "reasonable expectation of harm" standard is "a middle ground between that which is probable and that which is merely possible."[9] There is no need to show on a balance of probabilities that the harm will occur if the

[9] *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3 at para. 201.

information is disclosed, but the public body must show that the risk of harm is well beyond the merely possible or speculative.[10]

[26] After reviewing the audit report, VCH commenced negotiations with the service providers for the purpose of recouping amounts that VCH believed the service providers had overbilled. These negotiations have continued and remain ongoing, even though the contracts terminated in 2020. VCH argues that disclosure of the audit report would harm its position in these negotiations. It asserts that it has based its negotiation strategy on the audit report.[11]

[27] It also argues that, in addition to harming the negotiating position of VCH, disclosure of the report would also harm the financial interests of other clients of IAS: FHA, Providence Health Care and the First Nations Health Authority. This is because, VCH submits, the audit report demonstrates weaknesses in its auditing processes, which the service providers could use as a defence against any allegations of overbilling. VCH submits that this would harm the ability of these other authorities to negotiate with their service providers.[12]

[28] Finally, VCH argues that disclosure of the audit report's factual and background information could give the service providers cause for an action for defamation. It submits that IAS relied on certain "assumptions, scripts, and methodologies" that might be flawed in evaluating compliance by service providers with the contracts. IAS subsequently received feedback from external legal counsel and external auditors with a view to improvement. In fact, the VCH states that, during the negotiations, it has changed its assessment of the level of compliance of the service providers. It now believes that the audit report is inaccurate, and that disclosure would be harmful to both VCH and the service providers. VCH fears that, if the service providers determine that the audit report portrays them inaccurately, they will sue the VCH for defamation.[13]

[29] The applicant submits that VCH has not provided sufficient evidence to support its case. They characterize VCH's submission as a series of "bald assertions" that some "ill-defined" and "speculative" harms will occur. VCH, according to the applicant, fails to explain how disclosure of the discrepancies in the audit report will hinder the negotiations. With respect to how these discrepancies might harm the position of VCH in possible litigation, the applicant submits,

> the audit report will be compellable evidence in any litigation it initiates resulting from those contracts, especially if these so-called weaknesses

[10] *Ibid* at para. 206. See also *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at paras. 52-54.
[11] VCH's initial submission, para. 30.
[12] VCH's initial submission, para. 31.
[13] VCH's initial submission, para. 32; VCH's reply submission para. 12.

> would assist the service providers in their defence. The public body cannot withhold the records simply because it thinks their content may be used against them in eventual litigation (which may or may not occur), when those same records will have to be produced in that proceeding (if it in fact occurs).[14]

[30] Finally, the applicant points out that any concerns about action for defamation are unfounded because VCH would be insulated from legal proceedings because s. 73 applies. Section 73 says:

> 73 No action lies and no proceeding may be brought against the government, a public body, the head of a public body, an elected official of a public body or any person acting on behalf of or under the direction of the head of a public body for damages resulting from
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> (a) the disclosure, or failure to disclose, in good faith of all or part of a record under this Act or any consequences of that disclosure or failure to disclose, or
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> (b) the failure to give any notice required under this Act if reasonable care is taken to give the required notice.

Analysis

[31] I find the arguments of the applicant on s. 17(1) to be persuasive. VCH has provided insufficient evidence that disclosure could reasonably be expected to lead to the potential harms that it alleges. It has provided no evidence about the negotiations that it states have continued for almost three years. Its submissions lack affidavit evidence or supporting documentation. Its entire case consists of the general assertion that VCH based its entire negotiating strategy on the audit report, and thus disclosure of the audit report would undermine VCH's position and lead to financial loss. It does not explain the significance of any specific information in the audit report and how it relates to the negotiations. Other than vague and unexplained references to flaws in the audit report, VCH does not explain how disclosure could result in a worse financial settlement for VCH.

[32] VCH has not made a sufficient case as to how the disclosure of the information in the records could reasonably be expected to cause the harms it envisions. It has not identified any individual passages in the audit report that it considers to be problematic. The fact that it has withheld the report in its entirety suggests that it believes that there is not one line in the audit report that it could disclose without causing the feared harm, but it has not explained how this could be the case.

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[14] Applicant's response submission, second unnumbered page.

[33] It is not sufficient for VCH merely to claim that s. 17(1) applies. It must demonstrate how the exception applies to the specific information at issue. It must establish a direct connection between the disclosure of that information and the harm it envisages. VCH must provide sufficient explanation and evidence (including, but not limited to, examples) to demonstrate that the risk of harm does indeed meet the required standard. In this case, I find it has not done so. VCH has merely claimed that there is a risk of harm, without substantiating that claim.

[34] I also find it incongruous that the VCH argues, on one hand, that the audit report is the foundation of its negotiating position, but that, on the other, it is so flawed as to open it up to a suit for defamation. In addition, IAS states that it validated the results of the audit directly with the service providers by disclosing its preliminary findings including financial calculations. If that is correct, it appears that IAS has already disclosed significant parts of the financial information in the audit report. VCH has not indicated that the information in the audit report differs from the information already disclosed to the parties it is negotiating with.

[35] I also agree with the applicant with respect to the protection from legal suit that s. 73 of FIPPA provides. Based on the information that VCH has provided in its submission, it is reasonable to conclude that this provision in FIPPA would protect VCH from a suit for defamation in the event it discloses all or part of the audit report in good faith in response to the access request in this case. Moreover, VCH did not identify, even in the most cursory way, what statements in the audit report might conceivably be viewed as defamatory. It is not apparent to me that there are any such statements. Therefore, I do not accept that disclosure of the audit report could reasonably be expected to cause VCH financial harm due to damages awarded in a defamation suit.

[36] Moreover, I find that VCH has failed to elucidate the "concrete factor" necessary to establish that disclosure of the information at issue would be likely to cause it financial or economic harm, either with respect to its current negotiations or a future action for defamation. It has not established that the risk of harm in this case is more than merely speculative. The burden of proof lies with VCH, and its submissions do not meet the required test.

Conclusion on s. 17(1)

[37] I find that s. 17(1) does not authorize VCH to withhold the audit report.

Section 13 – advice and recommendations

[38] VCH is also withholding the records in their entirety under s. 13(1), which states:

> 13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.
>
> (2) The head of a public body must not refuse to disclose under subsection (1)
>
> (g) a final report or final audit on the performance or efficiency of a public body or on any of its policies or its programs or activities, …
>
> (m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or

[39] The courts have described the purpose of protecting advice and recommendations from disclosure is to ensure public servants are able to provide full, free and frank advice, because some degree of deliberative secrecy can increase the effectiveness of the decision-making process.[15] The term "advice" includes expert opinions on matters of fact on which a public body must make a decision for future action.[16] The courts have also found it includes policy options prepared in the course of the decision-making process.[17] Previous orders have upheld the application s. 13(1) both when information reveals advice or recommendations and when it would enable a reader to draw accurate inferences about advice or recommendations.[18]

[40] Order F21-16 sets out the process for determining if s. 13(1) applies:

> The s. 13 analysis involves two steps. First, I must determine if disclosure of the information in dispute would reveal advice or recommendations developed by or for the public body. If it would, then I must determine whether the information falls into any of the categories listed in ss. 13(2) or 13(3). If it does, the public body cannot refuse to disclose it. Section 13(2) lists categories of information that public bodies cannot withhold under s. 13(1).[19]

[41] In arriving at my decision on s. 13(1), I have considered the principles for applying s. 13(1) set out in the court decisions and orders cited above.

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[15] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 [College of Physicians], para. 105; *John Doe v. Ontario (Finance)*, 2014 SCC 36 [John Doe], at paras. 34, 43, 46, 47.
[16] College of Physicians, para. 113.
[17] John Doe, para. 35.
[18] See, for example, Order F15-60, 2015 BCIPC 64 (CanLII), at para. 12. See also Order F16-32, 2016 BCIPC 35 (CanLII). Order F15-52, 2015 BCIPC 55 (CanLII), also discusses the scope and purpose of s. 13(1).
[19] Order F21-16, 2021 BCIPC 21 (CanLII), paras. 14 and 15.

[42] VCH submits that the audit report constitutes IAS's advice regarding service providers' overbilling for the purpose of assisting VCH to make decisions about contract management. VCH asserts that all factual and background information "formed a necessary and integral part of the advice".[20]

[43] The applicant does not dispute VCH's s. 13 submissions other than to cite the application of s. 13(2)(m). I shall deal with that issue below.

Analysis – s. 13(1)

[44] VCH submits that every sentence in the audit report constitutes advice or would enable the reader to draw inferences about the advice, if it were disclosed. VCH has made no attempt to apply s. 13(1) line by line. There is a requirement in s. 4(2) for the public body to withhold only to the information to which exceptions apply and to provide the remainder, to which the applicant has a statutory right. The cover page, for example includes only the title, the date and a list of recipients.

[45] The report contains background information about the origins and methodology of the audit. It also contains background about the home support services program and the service providers. In addition, it contains statistical information about the reporting and payment of services. It includes the professional assessment of the auditors on the compliance by the service providers with the terms of the contracts contained in a summary of observations and its conclusions. There is a description of the feedback that an external auditor and external legal counsel provided to IAS and IAS's response to that feedback. Finally, there is a description of the steps that IAS took to validate its results with the service providers themselves.

[46] I find that the professional assessment of the auditors contained in the summary of observations and its conclusions constitutes expert opinions on matters of fact on which a public body must make a decision for future action, and, therefore, meets the definition of advice. I also find that the feedback from the external auditor and external legal counsel constitute advice. Therefore, I find that s. 13(1) applies to this information.

[47] The next issue that I must determine is whether the factual and background material also constitutes advice. The facts that an advisor uses for the purpose of crafting their advice can also be subject to s. 13(1), when the facts reveal advice or recommendations directly and when they would enable a reader to draw accurate inferences about advice or recommendations. The advice in this case relates to an assessment of the compliance of service providers with their contracts. The background information about the origins of the audit does not

[20] VCH's initial submission, para. 39.

give any indication as to the auditors' final conclusions. Nor does the basic descriptions of the home support services program or the service providers. I cannot see how anyone could draw accurate inferences about the advice the auditors subsequently provided. There is nothing in the choice of the auditors to provide this background information that provides any direction as to what the outcome of the audit would be. This information merely outlines the subject matter of the audit. It does not reveal any details about the financial information that the auditors used to draw their conclusions. I find that the information described above does not constitute advice, and s. 13(1) does not apply.

[48] The audit report provides tables of annual statistics and financial information for each contractor, along with a description of the data used to calculate those tables. There is a description of audit methodologies, the criteria for payment under the contracts and the billing process. The auditors present this information in an objective manner for purposes of information. I can see no way for a reader to infer what the auditors' conclusions were from this information. This is because this basic statistical information does not include other information, which the auditors uncovered, that was necessary for evaluating compliance of the service providers with their contracts. This information only becomes apparent in the summary of the findings and the conclusions, which I agree constitutes advice. Therefore, I find that this basic statistical information and descriptions of the data do not constitute advice, and s. 13(1) does not apply.

Analysis – s. 13(2)

[49] I have found that some of the passages in the report constitute advice or recommendations. Therefore, it is necessary for me to consider whether any provisions of s. 13(2) apply. If they do, VCH may not withhold any of the passages under s. 13(1). Section 13(2)(g) is relevant here. It says that the head of a public body must not refuse to disclose under s. 13(1) "a final report or final audit on the performance or efficiency of a public body or on any of its policies or its programs or activities."

[50] The audit report at issue concerns an audit of the costs of delivering an outsourced home care program. Therefore, it constitutes a report on the efficiency of a public body's program, in accordance with s. 13(2)(g). The only point at issue is whether the audit report constitutes a "final" report. It is a final report if there are no subsequent updated versions of the report in existence or in preparation. In this case, there are no subsequent updated versions of the report in existence. Nevertheless, VCH asserts that the audit report is merely a first draft of a document that it intends eventually to revise and publish later at an unspecified date.

[51] VCH submits that it intended the audit report to be a draft audit report. It notes that IAS had not incorporated into the report all the comments or

implemented all the recommendations of the external auditors or external legal counsel.[21] It states that it intends to issue a final version of the audit at some point after it completes the negotiations for a settlement with the service providers.[22]

[52] My review of the audit report raises questions about VCH's claim that it is not the final version of the report. The audit report has all the characteristics of a final report. It contains all the usual components of a final report, including table of contents and appendixes. It includes an introduction and a summary of findings with conclusions and next steps. There are no unfinished passages. IAS has given no direct indication in the audit report that it intended this audit report to be a preliminary draft of a document that will be the subject of future revision. There are statements in the audit report, which I cannot disclose here, that persuade me that IAS considered its work on the matter complete.[23]

[53] The purpose of the audit report also raises questions with respect to the future of the report. VCH asked IAS to conduct the audit to assess the service providers' compliance with the terms of their contracts to enable VCH to make informed decisions about those contracts, including whether to terminate the contracts. It is evident that VCH has used the audit report for those purposes. VCH now states that it plans to revise the audit report after the conclusion of the negotiations with the service providers. This suggests a change of purpose to the report. By updating the audit report after the completion of the negotiations, it would no longer constitute a document whose purpose was to inform future courses of action with respect to the now terminated contracts. This raises questions as to whether the new version of the report, as VCH describes it, would, in fact, constitute a new and separate report rather than a further iteration of an existing report.

[54] Previous orders have found that s. 13(2)(g) applies in cases where a report is the conclusive or decisive report and where there is no evidence that anyone prepared another subsequent version of a report.[24] From my review of the audit report, I find it to be complete and conclusive. The word "draft" does not appear in the audit report with respect to that report. Nor is there any indication of a version number for the audit report. IAS does not indicate that its findings or conclusions are preliminary. The audit report is dated November 2018. During the almost three years that have passed, no one has produced another version. It is also important to note that VCH provided no evidence from IAS or anyone else that supports its statement that the audit report was intended to be a preliminary version or that there was ever an intention to revise it. It simply stated that this would be the case.

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[21] VCH's initial submission, para. 44.
[22] VCH's reply submission, para. 21.
[23] Audit Report, p. 14.
[24] See for example, Order F11-04, 2011 BCIPC 4 (CanLII), para. 55.

[55] I also note that it would be an absurd result for a public body to escape the requirements of s. 13(2)(g) simply by asserting that it intends to draft another version of a report at some indeterminate date in the future. There is no means to establish for certain that there will be another version of the report. It is possible that VCH might change its mind in the future and abandon the plan to draft another version.

[56] It is evident that the purpose of s. 13(2)(g) is to provide a greater level of accountability for the advice and recommendations contained in audit reports relating to the efficiency of a program of a public body. The use of the term "final" in this provision is to exclude the draft working documents of incomplete audits, as further work on audits can lead to a revision of conclusions, advice and recommendations. That VCH based its negotiating strategy on the audit report suggests that the work was in a sufficient state of completion. The audit report served the purpose for which it was created. There is no evidence that IAS is currently working on a revised report. Consequently, the audit report qualifies for the level of accountability in accordance with the purposes of s. 13(2)(g).

[57] Therefore, I find that the audit report is the final report of an audit into the financial management and efficiency of VCH's home care support program in accordance with s. 13(2)(g). Consequently, VCH must not refuse to disclose the audit report under s. 13(1).

[58] The applicant also raised the application of s. 13(2)(m), on the grounds that a media release indicated that the decision of VCH and FHA to end the outsourcing of home care support services was based on the audit report. As I have found that s. 13(2)(g) applies, there is no need for me to consider the application of s. 13(2)(m). However, I would add that VCH denies that it has made public that its decision to end the outsourcing was based on the audit report. It also points out that it was in fact FHA that issued the media release in question. It further asserts that the media release does not actually say that the audit report was the basis of the decision. I confirm that there is no evidence (not even a copy of the media release itself) before me to support the claim of the applicant with respect to the application of s. 13(2)(m).

CONCLUSION

[59] For the reasons given above, under s. 58(2)(a) of FIPPA, I find that ss. 13(1) and 17(1) do not authorize VCH to withhold the audit report, and I require VCH provide the applicant with access to the audit report in its entirety.

[60] I make no order with respect to the application of s. 25(1), as I have found that it does not apply.

[61] Pursuant to s. 59(1) of FIPPA, VCH must comply with this order by December 15, 2021.

November 2, 2021

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

OIPC File No.: F19-80821