



Order F21-56

## BC ASSESSMENT AUTHORITY

Lisa Siew  
Adjudicator

November 8, 2021

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**Summary:** An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to reviews undertaken by the BC Assessment Authority (BC Assessment) of its Vancouver Island office facilities. BC Assessment provided partial access to the records withholding information under s. 17(1) of FIPPA. The adjudicator determined BC Assessment was not authorized to withhold this information since its disclosure could not reasonably be expected to harm BC Assessment's financial or economic interests in accordance with s. 17(1).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 17(1), 17(1)(c), 17(1)(e), 17(1)(f).

## INTRODUCTION

[1] A local of the Canadian Union of Public Employees (applicant) requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records related to the BC Assessment Authority (BC Assessment)'s review of its Vancouver Island office facilities. BC Assessment worked with the applicant to clarify the scope of its access request. The applicant agreed to narrow the scope of its request to any "reports" related to the office space review.

[2] BC Assessment provided partial access to the records withholding information under ss. 13(1) (advice and recommendations), 15(1) (harm to security of a building) and 17(1) (harm to a public body's financial or economic interests). BC Assessment also excluded records that did not qualify as "reports" such as emails and agenda items and minutes.

[3] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review BC's Assessment's decision to withhold information under ss. 13(1) and 17(1). The applicant was not interested in the

information that BC Assessment withheld under s. 15(1) or the records that were not within the scope of its revised access request.

[4] Mediation by the OIPC resulted in the release of additional information to the applicant that had been previously withheld. However, the dispute between the parties over the remaining information was not resolved and proceeded to inquiry. Both parties provided submissions in the inquiry.

[5] During the inquiry, BC Assessment withdrew its reliance on s. 13(1) and only argued that s. 17(1) applied to the information that it withheld in the responsive records.<sup>1</sup> As a result, I conclude s. 13(1) is no longer in dispute between the parties and I will not consider it as an issue in this inquiry.

## PRELIMINARY MATTER

### *Disclosure in the public interest – s. 25*

[6] In its submission, the applicant contends that it is in the public interest that the information at issue be disclosed. It says that disclosure is necessary to ensure that BC Assessment's decisions regarding future lease renewals, property sales or purchases and decisions regarding office relocations and consolidations are reasonable and done in the public interest. It is concerned that BC Assessment is choosing office space "in locations which are not as economical as others available."<sup>2</sup>

[7] The applicant says that its role as a union is to "act as a form of auditor to ensure that there is transparency in the process and decisions made are in the interest of the public [that it serves]."<sup>3</sup> Although the applicant does not explicitly reference s. 25, I understand the applicant to be arguing that s. 25 applies in these circumstances.

[8] Section 25 of FIPPA requires a public body to disclose information without delay, in certain circumstances, despite any other provision of FIPPA. This section overrides all of FIPPA's discretionary and mandatory exceptions to disclosure.<sup>4</sup> Therefore, there is a high threshold before this section can properly come into play. Specifically, the duty to disclose under s. 25 exists only in the "clearest and most serious of situations. A disclosure must be, not just arguably in the public interest, but *clearly* (i.e., unmistakably) in the public interest."<sup>5</sup>

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<sup>1</sup> BC Assessment submission dated May 17, 2021 at para. 13.

<sup>2</sup> Applicant's submission at para. 9.

<sup>3</sup> Applicant's submission at para. 9.

<sup>4</sup> *Tromp v. Privacy Commissioner*, 2000 BCSC 598 at paras. 16 and 19.

<sup>5</sup> Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 45, emphasis in original.

[9] Section 25 was not set out in the notice of inquiry or the OIPC investigator's fact report as an issue for consideration in this inquiry. Previous OIPC orders have consistently said parties may raise new issues at the inquiry stage only if they request and receive permission to do so.<sup>6</sup>

[10] The applicant did not seek permission to add this issue to the inquiry or explain why it should be permitted to do so at this late stage. There is also nothing in the materials before me to suggest that s. 25 may be engaged. For these reasons, I decline to add s. 25 as an issue in this inquiry.

## **ISSUE**

[11] The issue I must decide in this inquiry is whether BC Assessment is authorized to withhold the information at issue under s. 17(1).

[12] Section 57(1) places the burden on BC Assessment, as the public body, to prove the applicant has no right of access to the information withheld under s. 17(1).

## **DISCUSSION**

### ***Background***<sup>7</sup>

[13] BC Assessment is a provincial crown corporation that has a legislative mandate to value all properties in British Columbia and produce annual property assessments. To carry out this mandate, BC Assessment owns property or leases office space in various locations throughout the province where its employees work.

[14] Throughout the years, BC Assessment has completed a number of reports and studies about its office space use and requirements and its "long-term facilities strategy."<sup>8</sup> In June 2018, BC Assessment conducted a study of its Vancouver Island facilities, which included the possibility of closing one of those offices. On behalf of its local union members, the applicant provided its perspective on a strategic plan for those facilities, specifically advocating for retaining the Courtenay office and all office space in small communities.

[15] The applicant later requested BC Assessment provide access to the following records:

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<sup>6</sup> For example, Order F19-41, 2019 BCIPC 46 at para. 5.

<sup>7</sup> The information in this background section is from the parties' submissions and information openly disclosed in the responsive records.

<sup>8</sup> Page 65 of the records.

“... any and all information, studies and reports related to facility reviews of the Courtenay office specifically and all offices on Vancouver Island generally, completed or in draft form since 2010.”

[16] Due to the broad scope of the request, BC Assessment worked with the applicant to clarify and revise its request. By agreement, the request for access was narrowed to the following:

“... a copy of any report written between January 1st, 2010 and November 4th, 2018 concerning a facility review of any BC Assessment office on Vancouver Island.”

[17] In 2020, the results of a Vancouver Island facility study were released internally to all staff “indicating that the Courtenay location was deemed surplus to needs.”<sup>9</sup> The Courtenay office closed on or about July 27, 2021 and all affected employees were given options to relocate, resign or retire.

### ***Records and information at issue***

[18] The responsive records total 82 pages, with approximately 13 of those pages containing the information in dispute.

[19] BC Assessment applied s. 17(1) to the following information in the responsive records:

- Information about a “facility model for future use” to help frame a 2018 study about BC Assessment’s facilities.<sup>10</sup>
- The 2010 sale price, price per square foot or capitalization rate of two commercial properties in Courtenay and the 2010 sale price and price per square foot of four land sales in Courtenay.<sup>11</sup>
- The 2017 sale price and price per square foot of 5 commercial properties located in Nanaimo and 2 commercial properties located in the BC Interior.<sup>12</sup>
- Information in a 2014 document that outlines “the salient points” of a “proposed transition plan” to enable the Courtenay office to accommodate a particular group of employees.<sup>13</sup>

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<sup>9</sup> Applicant’s submission at para. 3.

<sup>10</sup> Page 4 of the records.

<sup>11</sup> Pages 19-20 and 23 of the records.

<sup>12</sup> Pages 43-45 of the records.

<sup>13</sup> Page 57 of the records.

- A small amount of information in a 2013 document that identifies a recommendation to BC Assessment's board of directors about options to "maximize the value of the Courtenay site."<sup>14</sup>
- A small amount of information in a 2010 document that sets out options for the use of the Courtenay area office.<sup>15</sup>
- Information that identifies the results of a 2006 report that looked into consolidating office space for six regions, including Vancouver Island.<sup>16</sup>
- A recommendation about the Courtenay office located in a document which analyzes each BC Assessment office location and identifies "local issues that may impact" BC Assessment's "long-term facilities strategy."<sup>17</sup>
- Information related to BC Assessment's options for office space.<sup>18</sup>

### ***Section 17(1) – harm to a public body's financial or economic interests***

[20] Section 17(1) authorizes a public body to refuse to disclose information that, if disclosed, could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia.

[21] Subsections (a) to (f) of s. 17(1) provide a non-exhaustive list of the kinds of information that, if disclosed, could reasonably be expected to cause harm to the financial or economic interests of a public body. Information that does not fit under subsections (a) to (f) may still fall under the opening language of s. 17(1) as information that, if disclosed, 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.<sup>19</sup>

[22] The provisions that are relevant in this inquiry are as follows:

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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<sup>14</sup> Page 60 of the records.

<sup>15</sup> Page 67 of the records.

<sup>16</sup> Page 70 of the records, information located in appendix 1 to the 2010 document titled "Facilities Committee Information Briefing Note: Long-Term Facilities Strategy."

<sup>17</sup> Page 72 of the records, information located in appendix 2 to the 2010 document titled "Facilities Committee Information Briefing Note: Long-Term Facilities Strategy."

<sup>18</sup> Page 75 of the records.

<sup>19</sup> Order F14-31, 2014 BCIPC 34 (CanLII) at para. 41.

...

(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;

...

(e) information about negotiations carried on by or for a public body or the government of British Columbia;

(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.

[23] Previous OIPC orders have determined, however, that it is not enough for a public body to meet the requirements of one of the circumstances set out in ss. 17(1)(a) through (f). A public body must also demonstrate that disclosure could reasonably be expected to result in financial or economic harm to a public body or the government of British Columbia.<sup>20</sup>

[24] In terms of the standard of proof for s. 17(1), it is well-established that where the phrase “could reasonably be expected to” appears in access to information statutes, it means that in order to rely on the exception a public body must establish that there is a “reasonable expectation of probable harm.”<sup>21</sup> The Supreme Court of Canada has described this standard as “a reasonable expectation of probable harm” which it says is “a middle ground between that which is probable and that which is merely possible.”<sup>22</sup>

[25] The public body need not show on a balance of probabilities that the harm will occur if the information is disclosed, but it must demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative.<sup>23</sup> There needs to be a reasonable basis for believing the harm will result and the standard does not require a demonstration that harm is probable.<sup>24</sup>

[26] The determination of whether the standard of proof has been met 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 the “inherent probabilities or improbabilities or the seriousness of the allegations or

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<sup>20</sup> Order F19-03, 2019 BCIPC 4 (CanLII) at para. 22.

<sup>21</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 206.

<sup>24</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 59 and *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 (CanLII) at para. 93.

consequences.”<sup>25</sup> Previous OIPC orders have said general speculative or subjective evidence will not suffice.<sup>26</sup>

[27] Furthermore, it is the release of the information itself which must give rise to a reasonable expectation of harm.<sup>27</sup> The public body must provide evidence to establish “a direct link between the disclosure and the apprehended harm and that the harm could reasonably be expected to ensue from disclosure.”<sup>28</sup>

***BC Assessment’s initial submission on s. 17(1)***

[28] BC Assessment submits the disclosure of the information at issue would cause it financial and economic harm “now and in the future in relation to its administration of facilities and negotiating strategies and position.”<sup>29</sup> It relies on ss. 17(1)(c), (e) and (f) to withhold the information at issue.

[29] In terms of its negotiating position, BC Assessment argues the disclosure of the information at issue could provide an unfair advantage to parties engaged in negotiations with BC Assessment and harm its “latitude and negotiating capacity.”<sup>30</sup> It argues that third parties could “capitalize upon the redacted information, or their perception of it, prior to or during negotiations in relation to facility availability, facility space, value of properties, and lease and sale terms and conditions.”<sup>31</sup>

[30] It submits that the information at issue, even if not current, could be used by these third parties to its detriment regarding the following processes:

- “competitive Request for Proposals, including relating to the leasing of office space, requirements for tenant improvements, fixtures and equipment (“RFP Processes”);
- “lease and sale negotiations”; and
- “property management processes and decisions.”<sup>32</sup>

[31] BC Assessment explains that it “engages in facility-related discussions and negotiations year after year, so, while it may appear that some of the

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<sup>25</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

<sup>26</sup> For example, Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 27.

<sup>27</sup> *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para. 43.

<sup>28</sup> *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 at para. 219.

<sup>29</sup> BC Assessment submission dated September 24, 2021 at para. 20.

<sup>30</sup> BC Assessment submission dated September 24, 2021 at para. 21.

<sup>31</sup> BC Assessment submission dated September 24, 2021 at para. 18.

<sup>32</sup> BC Assessment submission dated September 24, 2021 at para. 16.

redacted information is not current by virtue of the date it was produced, the information provides insights into strategic matters that may impact current and future negotiations.”<sup>33</sup> It argues, therefore, that making this information publicly available affects its financial and economic interests by allowing third parties to use this information against it during current and future negotiations.

***Applicant’s submission on s. 17(1)***

[32] Citing previous OIPC orders, the applicant submits BC Assessment has failed to meet the standard of harm required under s. 17(1) since it only speaks about a potential for harm that is speculative. It notes that most of the information is over 10 years old and BC Assessment has freely divulged more current and similar information such as 2018 market values and lease and capitalization rates. It suggests that this serves to undermine BC Assessment’s assertions of harm regarding disclosure of the information that it continues to withhold.

[33] The applicant adds that it has no intention of publicly posting the lease information for any competitors or prospective lessees to see. It says it intends to analyze the data internally and determine if current and near future decisions are, and will be, made in the public interest.

[34] In terms of s. 17(1)(c), as previously noted, this provision applies to any information that would reveal plans that relate to the management of personnel or the administration of a public body that have not yet been implemented or made public. The applicant submits s. 17(1)(c) does not apply because any plans regarding office leases or closures that the information at issue may reveal has already been implemented or made public.

[35] For instance, the applicant argues that any withheld information about the Nanaimo office should be disclosed since any lease negotiations regarding that office have already been implemented. It also says the closure of the Courtenay office was publicly known by many in government and in the community through conversations with local staff or through BC Assessment’s efforts to see if there was an alternate use for the space by a government ministry.

[36] With regards to ss. 17(1)(e) and (f), these provisions apply respectively to information about negotiations carried on by or for a public body and information the disclosure of which could reasonably be expected to harm the negotiating position of a public body. The applicant argues that, in a moving real estate market, none of the withheld information is current enough to negatively impact BC Assessment’s future negotiations.

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<sup>33</sup> BC Assessment submission dated September 24, 2021 at para. 19.



**BC Assessment's response submission on s. 17(1)**

[37] BC Assessment restates its previous arguments and assertions, emphasizing the proposed harm is not speculative and distinguishing the orders cited by the applicant. Specifically, it says the information at issue is not simply "lease information" as claimed by the applicant, but information that "provides insights into strategic matters that may impact current and future negotiations."<sup>34</sup>

[38] BC Assessment submits that the public disclosure of the withheld information could reasonably be expected to result in the following harms:

- Place it at a disadvantaged negotiating position with third parties causing it financial harm.
- Result in increased financial costs "in the form of less favourable tenant improvements, increased rent and other charges, and less favourable renewal options."
- Dampen the competitive bidding environment "for new office space because third parties would orient their bids to assumptions and strategies set out in the records", rather than "exploring and offering more aggressive cost-saving opportunities."<sup>35</sup>

[39] BC Assessment says the applicant even acknowledges that these harms are not speculative since the applicant has specified that, if given access, it will not publicly disclose the information. It notes that FIPPA does not limit what an applicant does with the information obtained from an access request since "there are no restrictions placed upon the further distribution or publication of that information."<sup>36</sup> BC Assessment contends that the applicant would not have provided such assurances if there was no reasonable expectation of harm.

**Analysis and findings on s. 17(1)**

[40] BC Assessment submits ss. 17(1)(c), 17(1)(e) and 17(1)(f) apply to the information that it has withheld. It does not specify where in the records each provision applies so I will consider whether any of the withheld information falls under each of the three subsections.

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<sup>34</sup> BC Assessment submission dated June 22, 2021 at paras. 6 and 12.

<sup>35</sup> BC Assessment submission dated June 22, 2021 at paras. 18-19.

<sup>36</sup> BC Assessment submission dated June 22, 2021 at para. 8.

*Plans relating to management of personnel or administration of a public body – s. 17(1)(c)*

[41] BC Assessment submits that the withheld information would reveal plans that relate to the management of its personnel or the administration of its facilities that have not yet been implemented or made public in accordance with s. 17(1)(c).

[42] Previous OIPC orders have interpreted the term “plan” as something that sets out detailed methods and action required to implement a policy, design, scheme or thing to be done,<sup>37</sup> but excludes a “report containing recommendations that would form the basis for the development of a ‘plan’.”<sup>38</sup> I agree with that approach.

[43] Based on this definition, I find only some of the withheld information qualifies as a “plan.” This information sets out detailed steps for a “proposed transition plan” to enable the Courtenay office to accommodate a particular group of employees.<sup>39</sup> Based on my review of this information, I agree that it reveals plans that relate to BC Assessment’s management of its personnel and the administration of its facilities. There is no evidence before me that the plans were implemented or made public. As a result, I conclude s. 17(1)(c) applies.

[44] The rest of the withheld information, however, does not reveal information on any plans for the management of personnel or the administration of the public body. Rather, it consists of factual information such as sale prices of certain properties and recommendations about office space. This information does not reveal nor is it about detailed methods to implement a policy, design or scheme for the management of personnel or the administration of BC Assessment’s facilities.

[45] In particular, I note that some of this information is about the results of a 2006 report that looked into consolidating office space for six regions.<sup>40</sup> While this information identifies some conclusions and recommendations related to the consolidation of office space, none of it reveals a detailed plan for implementing any of those recommendations. I, therefore, find s. 17(1)(c) does not apply to this information.

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<sup>37</sup> Order F17-03, 2017 BCIPC 3 (CanLII) at para. 13. Order No. 326-1999, October 29, 1999 <available: <https://www.oipc.bc.ca/orders/1188>> at p. 6.

<sup>38</sup> Order No. 326-1999, October 29, 1999 <available: <https://www.oipc.bc.ca/orders/1188>> at p. 6. Order F11-35, 2011 BCIPC 44 (CanLII) at paras. 9-10.

<sup>39</sup> Information located on p. 57 of the records.

<sup>40</sup> Page 70 of the records.

*Reveals information about negotiations – s. 17(1)(e)*

[46] BC Assessment submits the withheld information reveals information about negotiations that were carried on by or for it in accordance with s. 17(1)(e). It says that it “engages in facility-related discussions and negotiations year after year.”<sup>41</sup> However, I have carefully considered the information at issue and find none of it reveals information about any past or current negotiations carried on by or for BC Assessment.

[47] Previous OIPC orders have interpreted the phrase “information about negotiations” under s. 17(1)(e) as information that reveals negotiating analysis, strategies, options, positions, criteria, objectives or other similar information.<sup>42</sup> I conclude none of the withheld information reveals this kind of information about a past or current negotiation.

[48] For instance, I can see that some of the withheld information consists of recommendations on what to do about office space and the sale or lease price and price per square footage of certain properties. However, there was no discussion or evidence that any of this information is linked to any actual negotiations undertaken or underway by or for BC Assessment, including any “facility-related” negotiations as BC Assessment has specifically argued.

[49] It is also not apparent from the records themselves that any of the information at issue is about a past or current negotiation carried on by or for BC Assessment. As a result, I do not find that s. 17(1)(e) applies to any of the withheld information.

*Reasonable expectation of harm to negotiating position – s. 17(1)(f)*

[50] BC Assessment submits the withheld information even if not current, could be used by third parties to its detriment during negotiations for the sale and lease of office space. It contends that the disclosure of the withheld information could reasonably be expected to harm its negotiating position and damage its ability to bargain effectively by giving valuable information to third parties. For instance, it argues that third parties could use the withheld information to push and negotiate “harder because there are, for example, other lease spaces available at a higher rental rate or a lease space that has been vacant for a significant period of time.”<sup>43</sup>

[51] However, I am not persuaded that any third parties, armed with knowledge of the information at issue, could reasonably be expected to gain a negotiating

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<sup>41</sup> BC Assessment submission dated September 24, 2021 at para. 19.

<sup>42</sup> Order 02-56, 2002 CanLII 42493 (BCIPC) at paras. 43-45 and 51, citing Order 00-39 and Order 01-17.

<sup>43</sup> BC Assessment’s submission dated June 22, 2021 at paras. 18-19.

advantage to BC Assessment's detriment. BC Assessment did not sufficiently explain how the withheld information reveals valuable information or a key aspect of its position for any current or future negotiations and it is not apparent from the records themselves.

[52] Most of the information at issue is historical sales or lease information or information specific to the now closed Courtenay office. I agree with the applicant, that in a fluctuating real estate market, it is not apparent how any of this withheld information is current enough to negatively impact BC Assessment's ongoing or future negotiations for office space.

[53] As well, contrary to BC Assessment's claims, it is not clear how most of the information at issue "provides insights into strategic matters that may impact current and future negotiations."<sup>44</sup>

[54] I can see that some information may allow those who negotiate with BC Assessment to learn information about a "facility model for future use" and the results of a 2006 report about office consolidation.<sup>45</sup> However, it is not apparent how this information is relevant to any current or future negotiations nor is it the kind of information that I would expect third parties could use to their advantage.

[55] For example, it is unclear how a third party could use information about a general recommendation for the consolidation of office space to harm BC Assessment's position in any ongoing or future negotiations.<sup>46</sup> BC Assessment has not provided information about the implementation of this recommendation or sufficiently explained how this information, which was provided in 2006, is relevant to any ongoing or future negotiations.

[56] Ultimately, I find BC Assessment has not sufficiently explained how the disclosure of the specific information at issue could reasonably be expected to place it at a disadvantage in attempting to negotiate the purchase or lease of office space, thus resulting in a reasonable expectation of harm to its negotiating position for the purposes of s. 17(1)(f).

*Reasonable expectation of probable harm under s. 17(1)*

[57] The next step is to determine whether the disclosure of the information at issue could reasonably be expected to harm BC Assessment's financial or economic interests. I found that ss. 17(1)(e) and (f) did not apply, but decided that some of the information qualifies as a "plan" for the purposes of s. 17(1)(c). However, the overriding question is whether the disclosure of the information at issue, even if it falls under ss. 17(1)(c), (e) or (f), could reasonably be expected to

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<sup>44</sup> BC Assessment's submission dated June 22, 2021 at paras. 6 and 12.

<sup>45</sup> Information located on pp. 4 and 70 of the records.

<sup>46</sup> Information located on p. 70 of the records.

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harm the financial or economic interests of the public body or the government of British Columbia.

[58] As set out below, I conclude BC Assessment's evidence and arguments fall short of establishing there is a reasonable expectation of probable harm from the disclosure of the information at issue.

[59] One of BC Assessment's alleged s. 17(1) harms is tied to its arguments about its negotiating position. BC Assessment submits that the disclosure of the withheld information could reasonably be expected to place it at a disadvantaged negotiating position with third parties, thereby, causing it financial harm.

[60] In support of its position, BC Assessment cites Order F10-34 where former Commissioner Denham determined the disclosure of the information at issue in that case could reasonably be expected to harm the negotiating position of the public body and, thus, the financial or economic interests of the province.<sup>47</sup> Based on the public body's arguments and evidence, she was satisfied the information could be used against the public body in future negotiations and there was a logical connection between the information at issue and the contemplated harm.

[61] For the reasons previously given under my consideration of s. 17(1)(f), I am not satisfied that any of this information could reasonably be expected to place BC Assessment in a detrimental or harmful negotiating position. As a result, I conclude there is a missing link between the disclosure of the information at issue and the financial harm that BC Assessment alleges could reasonably be expected to occur.

[62] Furthermore, I do not find the information at issue or the circumstances here similar to what was at issue in Order F10-34. In particular, I am not persuaded there is a logical connection here between the disclosure of the information and the apprehended harm.

[63] BC Assessment suggests that disclosing the information at issue could reasonably be expected to negatively impact its ability to obtain favorable terms in negotiations regarding office space. However, based on the evidence and submissions before me, I am not persuaded that any of the information at issue could reasonably be expected to increase BC Assessment's risk of less favorable terms in any contract negotiations or decrease its cost-saving opportunities, thus increasing its financial costs.

[64] For instance, BC Assessment submits that the disclosure of the information at issue would negatively impact any "Request for Proposal process" related to the leasing of office space or dampen the competitive bidding

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<sup>47</sup> BC Assessment's submission at para. 22. Order F10-34, 2010 BCIPC 50 (CanLII) at para. 25.

environment for new office space. Whether BC Assessment is saying there is a reasonable expectation that it will suffer this harm as a lessee or lessor, it is not apparent how any of the information at issue could reasonably be expected to result in increased financial costs to BC Assessment or reduce its competitiveness in any ongoing or future attempts to lease or rent out office space.

[65] Some of the information at issue is sale or lease prices of certain properties from 2010 and 2017. It is unclear how this historical information would influence a potential landlord to increase lease rates or to offer unfavourable renewal options or limit tenant improvements, as BC Assessment has argued. As another example, it is unclear how a potential landlord who knows about a “facility model for future use” or the results of a 2006 report about the consolidation of office space could use this information to cause BC Assessment financial or economic harm.

[66] Furthermore, other information is specific to circumstances that have changed and BC Assessment did not sufficiently explain its relevance to current or future scenarios. For example, some of the information consists of recommendations about the Courtenay office, including information about a proposed transition plan that I found fell under s. 17(1)(c). The value or interest in this information and how it can be used against BC Assessment to cause it financial harm is unclear given the Courtenay office is now closed.

[67] Ultimately, I am not persuaded that the information at issue could reasonably be expected to harm BC Assessment’s negotiating position or that the harms referred to in its argument and evidence could reasonably be expected to flow from disclosing the information at issue. As a result, I am not satisfied that BC Assessment’s financial or economic interests, or that of the BC government, could be harmed in accordance with s. 17(1).

## **CONCLUSION**

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

1. I require BC Assessment to give the applicant access to the parts of the disputed records that it has withheld under s. 17(1).
2. I require BC Assessment to concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, along with a copy of the relevant records.

[69] Under s. 59 of FIPPA, BC Assessment is required to give the applicant access to the information it is not authorized to withhold by December 21, 2021.

November 8, 2021

**ORIGINAL SIGNED BY**

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Lisa Siew, Adjudicator

OIPC File No.: F19-78724