



Order F24-11

## BRITISH COLUMBIA POWER AND HYDRO AUTHORITY

Jay Fedorak  
Adjudicator

February 12, 2024

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**Summary:** A journalist requested a copy of an evaluation report on the bids for a contract regarding the Site C Dam project. The British Columbia Power and Hydro Authority (BC Hydro) disclosed the report but withheld information under s. 17(1) (harm to financial interests of the public body), s. 19(1) (harm to individual health or safety), s. 21(1) (harm to third party business interests), and s. 22(1) (unreasonable invasion of privacy). The adjudicator found that s. 19(1), s. 21(1) and s. 22(1) applied to some of the information, but that s. 17(1) did not apply to any information. The adjudicator ordered BC Hydro to disclose some of the information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 17(1)(d), 17(1)(e), 17(1)(f), 19(1)(a), 21(1)(a), 21(1)(b), 21(1)(c)(i), 21(1)(c)(ii), 22(1), 22(2)(e), 22(2)(f), 22(3)(d).

### INTRODUCTION

[1] A journalist (applicant) requested British Columbia Power and Hydro Authority (BC Hydro) provide him a copy of a report that evaluated the proposals from bidders for a contract relating to the Site C Dam project (Report). BC Hydro disclosed the Report but withheld some information under ss. 17(1) (financial harm to the public body), 21(1) (harm to third party business interests) and 22(1) (unreasonable invasion of personal privacy of third parties) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant was dissatisfied with the response and requested a review of the decision by the Office of the Information and Privacy Commissioner (OIPC).

[3] During mediation, BC Hydro also applied s. 19(1) (harm to personal health or safety) to some of the information it withheld.

[4] Mediation failed to resolve the issues and the applicant requested that the matter proceed to an inquiry. In addition to BC Hydro and the applicant, two of the companies that submitted bids (third parties) made submissions to the inquiry.

## ISSUES

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

1. Does s. 17(1) authorize BC Hydro to withhold information?
2. Does s. 19(1) authorize BC Hydro to withhold information?
3. Does s. 21(1) require BC Hydro to withhold information?
4. Does s. 22(1) require BC Hydro to withhold information?

[6] Under s. 57(1), BC Hydro has the burden of proving that the applicant has no right of access to the information it withheld under ss. 17(1), 19(1) and 21(1). Section 57(2) stipulates that the applicants have the burden to prove that disclosure would not be an unreasonable invasion of the personal privacy of a third party under s. 22(1). However, the public body has the initial burden to show that the information it is withholding under s. 22(1) is personal information.<sup>1</sup>

## DISCUSSION

[7] **Background** – The Site C Clean Energy Project (Site C) involves the construction of a third dam and hydroelectric generating station on the Peace River. The Report was prepared by the Site C Evaluation Committee at the request of the Site C Project Board. The Report evaluated the proposals received in response to a Request for Proposal and recommended a preferred proponent.<sup>2</sup>

[8] **Record at issue** – The Report consists of 17 pages plus appendices, for a total of 334 pages. It provides a description of the process methodology, an evaluation of each of the proposals received against specified criteria and a recommended preferred proponent. BC Hydro has withheld information on 297 of the pages.

### ***Harm to the financial interest of the public body s. 17(1)***

[9] BC Hydro is refusing to disclose some information under s. 17(1) on the grounds that disclosure would be harmful to its financial interests. BC Hydro's arguments raise the following parts of s. 17:

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<sup>1</sup> Order 03-41, 2003 BCIPC 41 (CanLII), paras. 9-11.

<sup>2</sup> BC Hydro's initial submission, paras. 7-8.

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:

...

- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
- (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.

[10] Subsections 17(1)(a) to (f) are examples of the types of information that, if disclosed, could reasonably be expected to cause harm under s. 17(1). Past orders have said that subsections 17(1)(a) to (f) are not stand-alone provisions and, even if information fits within those subsections, a public body must also prove that disclosure of that information 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>3</sup>

[11] To rely on s. 17(1) in accordance with its submission, BC Hydro must establish that disclosure of the information could reasonably be expected to harm its financial or economic interests. The “reasonable expectation of harm” standard for s. 17(1) is “a middle ground between that which is probable and that which is merely possible.”<sup>4</sup> There is no need to show on a balance of probabilities that the harm will occur if the information is disclosed, but the public body must show that the risk of harm is well beyond the merely possible or speculative.<sup>5</sup> The evidence must be detailed enough to establish specific circumstances for the contemplated harm to be reasonably expected to result from disclosure of the information.<sup>6</sup>

[12] BC Hydro must also demonstrate that the release of the information itself would give rise to a reasonable expectation of harm.<sup>7</sup> There must be a clear and

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<sup>3</sup> Order F19-03, 2019 BCIPC 4 (CanLII), para. 22 and Order F22-35, 2022 BCIPC 39 (CanLII), para. 33.

<sup>4</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, para. 201.

<sup>5</sup> *Ibid*, para. 206. See also *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, paras. 52-54.

<sup>6</sup> Order 02-50, 2002 BCIPC 51 (CanLII), para. 137.

<sup>7</sup> *British Columbia (Minister of Citizens’ Services) v British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875, para. 43.

direct connection between the disclosure of information and the harm that is alleged.<sup>8</sup>

[13] While BC Hydro has identified that it is relying on ss. 17(1)(d), (e) and (f), its submission does not examine each of these provisions individually. Its arguments on s. 17(1) are grouped together to address the potential of harm to its procurement process generally. BC Hydro submits that the procurement process it employed in this case involves the allocation of what it describes as “technical credits”. It argues as follows:

BC Hydro never discloses precisely how many technical credits are awarded. If proponents were to become aware of the number of technical credits granted in the MCW Process (re Request for Qualifications), it would reasonably be expected that they would calculate the return on investment of attempting to earn such credits. It follows that some proponents would decide that it is not worth strengthening their bids in an attempt to earn such credits. The pool of potential bidders is small. The procurement process would be vulnerable to being “gamed”, to the detriment of BC Hydro and its ratepayers.<sup>9</sup>

[14] BC Hydro argues further that disclosure of the points that it granted to each bid would harm the procurement process in general. This is because, it submits, disclosure of rankings and point totals would damage the third parties, as it could be perceived as negative commentary by BC Hydro.<sup>10</sup>

[15] In summary, BC Hydro lists the following ways in which disclosure would cause it to suffer financial harm:

- (a) allow future proponents to tailor their bids with evaluative intelligence;
- (b) negatively impact the neutrality of BC Hydro’s evaluation committees;
- (c) allow future proponents to obtain more of a contract’s economic value by conducting a cost/benefit analyses for technical credits; and
- (d) impair BC Hydro’s ability to efficiently procure Site C related contracts.

[16] In support of its arguments, it cites Order F17-10, where the adjudicator found that disclosure of the information at issue in that case could enable future bidders to tailor their bids to the detriment of the financial interests of the public body.<sup>11</sup>

[17] The applicant rejects the arguments of BC Hydro. He cites several previous orders where the Commissioner found that disclosure of information

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<sup>8</sup> Order F19-10, 2019 BCIPC 12 (CanLII), para. 31; Order F07-15, 2007 BCIPC21 (CanLII), para 17.

<sup>9</sup> BC Hydro’s initial submission, para. 22.

<sup>10</sup> BC Hydro’s initial submission, para. 23.

<sup>11</sup> BC Hydro’s initial submission, para. 29; Order F17-10, 2017 BCIPC 11 (CanLII).

about the bids would result in there being multiple informed bidders, which would assist in obtaining fair bids and improving the bidding process.<sup>12</sup>

### *Analysis*

[18] To meet the test for the application of s. 17(1), BC Hydro must demonstrate that there is a reasonable expectation that it will suffer financial harm from the disclosure of the information. The specific concerns that it identifies in this case do not directly address the issue of financial harm. It has not explained how future bidders could use the information to tailor their bids, other than to suggest that bidders might make less effort to obtain technical credits. This assertion is vague and speculative. Moreover, technical credits relate only to part of the bidding process. Given BC Hydro did not provide an adequate explanation, I am not satisfied that disclosure of a mere score would enable a bidder to “game” the bidding process.

[19] BC Hydro has also failed to explain how enabling bidders to tailor their bids would result in financial loss to BC Hydro, other than to allege that disclosure would result in unidentified increased costs to BC Hydro. It has not explained why it would incur increased costs nor has it given any indication of the possible extent of those increased costs.

[20] BC Hydro also cites that disclosure of the evaluative comments of the committee members would harm its evaluative process in future because future evaluation committee members might be less willing to be open with their comments. Whether or not this is the case, BC Hydro has not demonstrated how a reduction in the level of frankness on the part of future evaluation committee members could result in a financial loss to BC Hydro.

[21] Finally, BC Hydro submits that the consequences of disclosing the information at issue would include damaging its procurement process. It has not explained how the process would be damaged or to what possible extent. Nor has it explained how this would result in financial loss to BC Hydro, other than that it would result in unidentified increased costs. It has not explained why the costs would be increased or given any indication of the extent of those alleged increases.

[22] BC Hydro cites the decision of the adjudicator in Order F17-10, which involved a consultant’s report on options for replacing a school that the public body used as the guide to a procurement process. In that case, the report at issue contained sensitive information about the public body’s negotiating position, including its allocation of risk, cost projections, land appraisals and financial information. The adjudicator found that bidders could use this sensitive

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<sup>12</sup> Applicant’s response submission, para. 15; Order 02-50, 2002 BCIPC 51 (CanLII); Order F20-36, 2020 BCIPC 42 (CanLII).

information to tailor and inflate their bids, as well as address identified risks in ways that were to the financial detriment of the public body.<sup>13</sup>

[23] The Report at issue in this case is different. It does not contain any financial information or appraisals or risk assessments about BC Hydro or the Site C project. The information at issue is the scores awarded to the various bids. The facts here are not the same as they were in Order F17-10 and the considerations that applied in Order F17-10 do not apply in this case.

[24] A case that is similar to this one is that of Order F15-37. There the adjudicator considered the issue of the harm of disclosing scores given to various aspects of a bid. He also found that the public body had failed to establish that disclosure of the scores it assigned would harm its financial interests.<sup>14</sup>

[25] I conclude that BC Hydro's arguments and evidence do not meet the required threshold to establish that disclosure of the information at issue could reasonably be expected to harm its financial interests. Therefore, I find that s. 17(1) does not apply to the information at issue.

***Harm to individual or public safety s. 19(1)***

[26] BC Hydro submits that s. 19(1)(a) applies to the information in dispute. That provision is as follows:

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or

[27] Section 19(1), like s. 17(1), is a harms-based exception, and the question is whether disclosure of the information in dispute could reasonably be expected to result in the identified harms. As explained above, the "reasonable expectation of harm" standard, is "a middle ground between that which is probable and that which is merely possible."<sup>15</sup> Again, there is no need to show on a balance of probabilities that the harm will occur if the information is disclosed, but the public body must show that the risk of harm is well beyond the merely possible or speculative.<sup>16</sup>

[28] BC Hydro submits that disclosing the identities of its employees not already publicly associated with Site C would pose a real risk of harm to their

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<sup>13</sup> Order F17-10, 2017 BCIPC 11 (CanLII), paras. 19-21.

<sup>14</sup> Order F15-39, 2015 BCIPC 40 (CanLII), para. 93.

<sup>15</sup> *Merck Frosst Canada Ltd. v. Canada* cited above, para. 201.

<sup>16</sup> *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.

personal safety. It argues that the project is contentious, which has led both to peaceful protests and physical and threatened violence. It cites a number of incidents where protesters have destroyed property and threatened employees. This included one occasion where a protester wielding a knife was shot by police and another where a protestor shot a gun at BC Hydro property. It has provided documentation of protesters using threatening language against employees. It supports its arguments with affidavit evidence and news reports about this type of violence or threatened violence.<sup>17</sup>

[29] The applicant's submission does not address the application of s. 19(1) other than to raise a question as to how the public can hold employees accountable for their actions if the public does not know the names of those employees.<sup>18</sup>

### *Analysis*

[30] I have reviewed the submissions of BC Hydro and affidavit and other evidence. BC Hydro has made a compelling case that disclosure of the names of its employees not already publicly associated with the project would meet the threshold of harm for the application of s. 19(1)(a). It has demonstrated with documented evidence that several employees have already suffered such harm and that there is a reasonable prospect of harm to other employees that goes beyond the bounds of mere speculation.

[31] BC Hydro's evidence establishes that there is a direct connection between disclosing the information in dispute and a reasonable expectation of a risk of violence or threats of violence against its employees.

[32] Therefore, I find that s. 19(1)(a) applies to the names of BC Hydro employees not already publicly associated with the project. This finding is consistent with the findings of previous orders that have considered the application of s. 19(1)(a) to the names of BC Hydro employees working on the Site C project.<sup>19</sup>

### ***Harm to Third Party Business Interests, s. 21(1)***

[33] Section 21(1) requires a public body to withhold information if its disclosure could reasonably be expected to harm the business interests of a third party. The following parts of s. 21(1) are engaged in this case:

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<sup>17</sup> BC Hydro's initial submission, paras. 48-61; Affidavit of the Director of Safety and Security for the Site C Clean Energy Project.

<sup>18</sup> Applicant's response submission, para. 33.

<sup>19</sup> Order F20-54, 2020 BCIPC 63 (CanLII), paras. 36-45; Order F20-03, 2020 BCIPC 3 (CanLII), paras. 16-22.

21(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

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

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

(c) the disclosure of which could reasonably be expected to

- (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
- (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied.

[34] The principles for applying s. 21(1) are well established.<sup>20</sup> All three of the following criteria must be met in order for s. 21(1) to apply:

- Disclosure would reveal one or more of the types of information listed in s. 21(1)(a);
- The information was supplied, implicitly or explicitly, in confidence under s. 21(1)(b); and
- Disclosure of the information could reasonably be expected to cause one or more of the harms in s. 21(1)(c).

[35] To rely on s. 21(1), BC Hydro and the third parties must establish that disclosure of the information could reasonably be expected to harm the financial interests of the third parties. The “reasonable expectation of harm” standard for s. 21(1) is the same as that for s. 17(1) mentioned above.<sup>21</sup>

*Part 1: Commercial or financial information of or about a third party*

[36] FIPPA does not define the terms “financial” or “commercial” information. Past orders have found that “commercial” information relates to the exchanging or providing of goods and services.<sup>22</sup> Orders have also found that “financial” information includes prices, expenses, hourly rates, contract amounts and budgets.<sup>23</sup>

[37] BC Hydro and the two third parties that participated in the inquiry submit that the information at issue concerning the bids constitutes the commercial and

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<sup>20</sup> Order F22-33, 2022, BCIPC 37 (CanLII), para. 25.

<sup>21</sup> See above, para. 11.

<sup>22</sup> Order 01-36, 2001 BCIPC 37 (CanLII), para. 17; Order F20-23, 2020 BCIPC 27, para. 10; Order F19-03, 2019 BCIPC 04, para. 43.

<sup>23</sup> For example: Order F20-41, 2020 BCIPC 49, paras. 21-22; Order F20-47, 2020 BCIPC 56, paras. 100-101; Order F18-39, 2018 BCIPC 42, para. 19.

financial information.<sup>24</sup> The applicant makes no arguments regarding the application of s. 21(1)(a).

### *Analysis*

[38] I agree that where the report makes direct reference to the details of the bids that this information constitutes commercial or financial information.

[39] Therefore, I find that s. 21(1)(a) applies to information revealing financial and commercial information included in the bids. Therefore, this information meets the first part of the three-part test.

[40] Nevertheless, BC Hydro has applied s. 21(1) to passages that, while relating to individual bids, do not reveal the details of those bids. These include generic indications as to whether bids included all of the required information or otherwise satisfied all of the requirements; the number of times the panel had to seek clarification from each proponent; the number of reference checks undertaken; the number of points the panel awarded with respect to different categories of information; the panel's assessment of different categories of information in the bid as "poor", "average", "fair", "good", "very good" or "excellent"; a statement that none of the proposals were within a certain price range; and the date, time, and quantity of materials received from the proponents.

[41] None of this information discloses any details from the bids submitted. While it may reveal the opinions of the panel as to the generic quality of aspects of the various bids, it does not reveal any identifiable information from the bids. I find that s. 21(1) does not apply to that information.

[42] In summary, I find that s. 21(1) applies to some of the withheld information, so that is the only information I will consider in the next stage of the test.

### *Part 2: supplied in confidence*

[43] For s. 21(1)(b) to apply, the third parties must have supplied the information, implicitly or explicitly, in confidence. The first consideration is whether the information was "supplied" to BC Hydro. It is only if I find that the information was supplied, that I will need to determine whether it was supplied "in confidence".

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<sup>24</sup> BC Hydro's initial submission, para. 35; First third party's initial submission, paras. 16-17; Second third party's initial submission, p. 1.

Was the information supplied?

[44] BC Hydro and the first third party submit that the bidders supplied all of the information included in their bids. They cite several previous orders that have found that information that bidders supply as part of an RFP process meets the definition of supplied for the purposes of s. 21(1)(b).<sup>25</sup> BC Hydro argues that summaries of the details of the bids included in the Report constitute information that the bidders supplied.

[45] The applicant's submission does not address the application of s. 21(1)(b).

*Analysis*

[46] From my review of the records, it is reasonable to conclude that the summaries of the details of the bids contain information that the third parties supplied. Therefore, I find that such information was supplied for the purposes of s. 21(1)(b).

Was the information supplied in confidence?

[47] BC Hydro submits that all the bidders supplied their proposals in confidence. It asserts that this is a market expectation and the RFP explicitly indicated that BC Hydro would treat all proposals as supplied in confidence.<sup>26</sup> The two third parties submit that they provided the information in their proposals, and they expected BC Hydro to treat the information in confidence. They note that the information in their proposals was not the subject of negotiation. They submit that their bids meet the criteria to be considered supplied in accordance with s. 21(1)(b).<sup>27</sup>

[48] The applicant's submission does not address the application of s. 21(1)(b).

*Analysis*

[49] The submissions of BC Hydro and the third parties persuade me that there was a mutual understanding of confidentiality with respect to the information included in the bids. Therefore, I find that the bidders supplied this information in confidence in accordance with s. 21(1)(b).

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<sup>25</sup> BC Hydro's initial submission, paras. 36-37; First third party's submission, paras. 19-21; Order F18-39, 2018 BCIPC 42 (CanLII); Order F15-37, 2015 BCIPC 40 (CanLII); Order F20-55, 2020 BCIPC 64 (CanLII).

<sup>26</sup> BC Hydro's initial submission, para. 38.

<sup>27</sup> First third party's initial submission, paras. 19-26; Second third party's initial submission, p. 1.

*Part 3: harm to the third party*

[50] BC Hydro submits that disclosure of the details of the bids could enable competitors to obtain competitively valuable information about the bidders. This would cause harm to all bidders in accordance with s. 21(1)(c)(i). It cites previous orders that came to this conclusion in similar circumstances.<sup>28</sup>

[51] The first third party that participated in the inquiry submits that competition in this industry is high and the margins separating bidders is fine. Knowledge of the costs incurred by one bidder may enable another bidder to undercut them. This would harm the competitive position of the bidder whose information is disclosed.<sup>29</sup> The second third party adds that disclosure of the bid summaries “would allow a competitor insight into [its] (and/or its constituent members’) strengths, weaknesses, and logic to pricing complex work.”<sup>30</sup>

[52] The applicant cites two previous orders where the adjudicator found that s. 21(1) did not apply.<sup>31</sup> The applicant does not explain the connections he sees between those orders and the information at issue in this case.

*Analysis*

[53] Several previous orders have dealt with requests for information relating to bids as part of public body RFP processes. Each case was decided on its own unique set of facts, and the arguments the parties presented during the inquiry. In some cases, the information at issue has met the reasonable expectation of harm standard, while in other cases, it has not. In some cases, disclosure of confidential proprietary information of one bidder would damage the prospects of that bidder in future negotiations by giving an unfair advantage to its competitors.

[54] It is important to note that the record at issue here is not an actual bid. It is a lengthy report that, in some places, summarizes information that BC Hydro received in bid submissions. I can confirm that some of the information at issue consists of third parties’ proprietary information. It is reasonable to conclude that disclosure of this type of technical and financial information to the third parties’ competitors could reasonably be expected to undermine the third parties’ competitive positions. This would involve the competitors receiving “something for nothing”, which is one of the circumstances previous orders have found establishes that disclosure meets the threshold for the application of s. 21(1)(c).

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<sup>28</sup> BC Hydro’s initial submission, para. 32; Order F09-22, 2009 BCIPC 28 (CanLII); Order F15-03, 2015 BCIPC 3 (CanLII).

<sup>29</sup> First third party’s submission, paras. 33-39.

<sup>30</sup> Second third party’s submission, p. 1.

<sup>31</sup> Applicant’s response submission, paras. 30-31; Order F16-48, 2016 BCIPC 53 (CanLII); Order F20-23, 2020 BCIPC 27 (CanLII).

[55] The one type of information that is an exception in this case is the lump sum price of each bid. The disclosure of only this price would merely heighten competition in a manner fair to all bidders and the public body. It is relevant that the adjudicator in Order F15-37 found that, in the context of a similar procurement process, the disclosure of the lump sum price alone did not meet the threshold for the application of s. 21(1)(c).<sup>32</sup> I also note that one of the two third parties stated explicitly in its submission that it did not object to the disclosure of its lump sum price.<sup>33</sup>

[56] Therefore, I find that s. 21(1)(c) applies to direct references to details of individual bids, but not to the lump sum prices.

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

[57] I find that s. 21(1) applies only to direct references to details of individual bids, except the lump sum price, and BC Hydro must refuse to disclose this information.

### ***Section 22(1) – unreasonable invasion of third-party privacy***

[58] BC Hydro and the two third parties submit that s. 22(1) applies to the names and employment history of employees mentioned in the bids. It has also applied s. 22(1) to categories of technical credits and the ratings it awarded under those categories.

[59] Section 22(1) requires public bodies to withhold the personal information where disclosure of that personal information would be an unreasonable invasion of a third party's personal privacy. The proper approach to the application of s. 22(1) of FIPPA is described in Order F15-03, where the adjudicator stated the following:

This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.<sup>34</sup>

<sup>32</sup> Order F15-37, 2015 BCIPC 40 (CanLII), para. 100.

<sup>33</sup> Second third party's submission, p. 1.

<sup>34</sup> Order F15-03, 2015 BCIPC 3 (CanLII), para. 58.

[60] I have taken the same approach in considering the application of s. 22(1) here.

*Step 1: Is the information “personal information”?*

[61] Under FIPPA, “personal information” is recorded information about an identifiable individual, other than contact information. “Contact information” is “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”<sup>35</sup>

[62] The applicant does not make submissions on whether the information in dispute constitutes personal information.

[63] I have reviewed the information in dispute and can confirm that it is names of employees and details about their employment experience. This constitutes information about identifiable third parties. Given the context in which the names appear, I find that they are not “contact information”.

[64] For these reasons, I find that all of the names and information about employment experience withheld under s. 22(1) are personal information. Nevertheless, the categories of technical credits and the ratings that BC Hydro applied to the submissions are not personal information, as they are not about identifiable individuals.

*Step 2: Does s. 22(4) apply?*

[65] The parties do not identify any other provision of s. 22(4) that might apply. It does not appear to me that any of the provisions in s. 22(4) apply. Therefore, I find that s. 22(4) does not apply to the withheld names or employment history.

*Step 3: Does s. 22(3) apply?*

[66] BC Hydro submits that s. 22(3)(d) applies. Those provisions read as follows:

22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if:

...

(d) the personal information relates to employment, occupational or educational history...

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<sup>35</sup> FIPPA provides definitions of key terms in Schedule 1.

[67] **Section 22(3)(d) (employment history)** – BC Hydro and the third parties submit that disclosure of the names of employees and their employment history would reveal the employment history of those employees.<sup>36</sup>

[68] The applicant does not make any submissions as to the application of s. 22(3)(d).

[69] Previous OIPC orders have found that the term “employment history” may apply to the following types of information:

- the contents of a resume or certain information in a personnel file,
- the details of disciplinary action taken against employees,
- performance appraisals of employees, and
- information that reveals a third party’s workplace behavior or actions in the context of a workplace complaint investigation involving that third party.<sup>37</sup>

[70] The Report includes references to where employees worked and their relevant experience. I find this information constitutes the employment history of those employees.

[71] Therefore, I find that s. 22(3)(b) applies to the personal information indicating the employment experience of the employees and that disclosure is presumed to be an unreasonable invasion of privacy.

*Step 4: do the relevant circumstances in s. 22(2) rebut the presumption of unreasonable invasion of privacy?*

[72] The relevant provisions read as follows:

22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

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<sup>36</sup> First third party’s initial submission, paras. 55-58.

<sup>37</sup> Order F14-41, 2014 BCIPC 44 (CanLII), paras. 45-46; Order F10-21, 2010 BCIPC 32 (CanLII), paras. 23-24; Order 01-53, 2001 BCIPC (CanLII), para. 32.

[73] **Section 22(2)(e) (unfair harm)** – BC Hydro submits that in the context of ongoing threats and violence disclosure of the names of the third parties' employees would cause them to be subject to harm.<sup>38</sup>

[74] The applicant does not make submissions to refute BC Hydro's arguments about the application of s. 22(2)(e).

[75] I have found above that s. 19(1) applies to the names of BC Hydro employees, owing to evidence of ongoing threats and violence. I note, however, that BC Hydro has not provided evidence to suggest that there also is a risk of harm to the health or safety of other employees. Consequently, I am unable to conclude that there is a risk of harm to these other employees in the context of s. 22(2)(e).

[76] Therefore, I find that s. 22(2)(e) is not a relevant circumstance in this case.

[77] **Section 22(2)(f) (supplied in confidence)** – BC Hydro submits that as it considers the Report to be confidential, any personal information in the Report has been supplied in confidence.<sup>39</sup> The applicant does not make submissions to refute what BC Hydro says about this.

[78] I have already found that the bidders provided their commercial and financial information contained in the bids in confidence. This would include the employment history of the employees the bidders indicated would work on the project.

[79] Therefore, I find that s. 22(2)(f) is a relevant circumstance with respect to the names of employees identified in the bids that would work on the project. This circumstance weighs in favour of withholding that information.

[80] **Other considerations** – In addition to the circumstances listed in s. 22(2), I may consider others that the parties have raised. I may also identify other relevant considerations. The parties have not raised any other relevant considerations, and I cannot identify any.

### **Conclusion on s. 22(1)**

[81] I found above that some of the information in dispute is personal information. The personal information is the names and employment history of

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<sup>38</sup> BC Hydro's initial submission, para. 69.

<sup>39</sup> BC Hydro's initial submission, para. 68.

the third parties' employees. I have found that none of the provisions of s. 22(4) apply to this information.

[82] I have found that the names and employment history of these employees, who are identified as the employees who would perform key functions, fall under s. 22(3)(d). Disclosure of their names is presumed to be an unreasonable invasion of their personal privacy.

[83] I have found that the third parties supplied the names of the employees who would perform key function in confidence in accordance with s. 22(2)(f). This circumstance favours withholding the names. I find the s. 22(3)(d) presumption that disclosure is an unreasonable invasion of third-party personal privacy has not been rebutted.

[84] In conclusion, I find that s. 22(1) applies to the names and employment history of the employees identified in bids as those who would perform key functions.

## **CONCLUSION**

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

1. BC Hydro is not authorized to refuse to disclose information under s. 17(1). It must disclose the information it withheld under this section.
2. I confirm the decision of BC Hydro to withhold the names of its employees under s. 19(1)(a).
3. Subject to item 4 below, I require BC Hydro to withhold information under s. 21(1). I have highlighted this information in blue in a copy of the records I have provided to BC Hydro.
4. BC Hydro is not required to withhold information under s. 21(1) that I have not highlighted in blue. It must disclose this information.
5. Subject to item 6 below, I require BC Hydro to withhold personal information under s. 22(1). I have highlighted this information in blue in a copy of the records I have provided to BC Hydro.
6. BC Hydro is not required to withhold information under s. 22(1) that I have not highlighted in blue. It must disclose this information.

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7. The public body must concurrently provide the OIPC registrar of inquiries with a copy of its cover letter and the records it provides to the applicant in compliance with items 1, 4 and 6 above.

[86] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **March 26, 2024**.

February 12, 2024

**ORIGINAL SIGNED BY**

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Jay Fedorak, Adjudicator

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