



Order F24-51

## CITY OF VANCOUVER

Rene Kimmett  
Adjudicator

June 14, 2024

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**Summary:** An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Vancouver (City) for access to information related to the development of new rental housing. The City relied on ss. 17(1) (harm to financial or economic interests) and 21(1) (harm to third-party business interests) to withhold information from the applicant. The adjudicator determined the City was not authorized under s. 17(1) or required under s. 21(1) to withhold the information in dispute. The adjudicator ordered the City to give the applicant access to the information in dispute.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, SBC 1996, c. 165, ss. 17(1) and 21(1)(a)(ii).

### INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Vancouver (City) for access to information related to the development of new rental housing. The City provided responsive records but withheld some information under ss. 13(1) (advice or recommendations) and 17(1) (harm to financial or economic interests) of FIPPA<sup>1</sup>.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision to withhold information. During mediation by the OIPC, the City reconsidered its decision to withhold information. It determined it would not rely on s. 13(1) but decided to rely on s. 22(1) (harm to third-party personal privacy). Later in mediation, the City reconsidered its decision a second time, decided it would not rely on s. 22(1), and released additional information to the applicant. The City continued to rely on

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<sup>1</sup> From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

s. 17(1) to withhold some information. Mediation by the OIPC did not fully resolve the issues in dispute and the matter proceeded to inquiry. Both the applicant and the City provided submissions in this inquiry.

[3] In its initial submission, the City sought to add s. 21(1) (harm to third-party business interests) as an issue in this inquiry. After considering the parties' submissions on the subject, another OIPC adjudicator determined it was appropriate to add s. 21(1) to this inquiry. This adjudicator also provided a relevant third party, Coriolis Consulting Corp. (Coriolis), with notice of the inquiry and gave it the opportunity to make submissions. Coriolis did not provide submissions on its own behalf, but the City attached affidavit evidence from Coriolis' owner to its initial submission.

### **ISSUES AND BURDEN OF PROOF**

[4] At this inquiry, I must decide the following issues:

1. Is the City authorized to refuse to disclose the information in dispute under s. 17(1)?
2. Is the City required to refuse to disclose the information in dispute under s. 21(1)?

[5] Under s. 57(1), the City has the burden of proving the applicant has no right of access to the information it has withheld under ss. 17(1) and 21(1).

### **DISCUSSION**

#### ***Background***

[6] Since 2009, the City has encouraged the development of purpose-built rental housing through several rental incentive programs.<sup>2</sup> In early 2019, the City launched a review of its rental incentive programs to identify challenges, limitations, and opportunities for improvement.<sup>3</sup>

[7] The City retained Coriolis, a real estate and financial consulting company, to analyse the effectiveness of the City's existing rental development policies and the impact of potential changes to these policies.<sup>4</sup>

[8] As part of this project, Coriolis performed detailed financial modelling, which included determining the effect of various existing and proposed

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<sup>2</sup> Senior Housing Planner's affidavit at para 6.

<sup>3</sup> *Ibid* at para 8.

<sup>4</sup> *Ibid* at paras 14-17.

development scenarios on estimated profit margins and estimated supportable land values following development at specific sites.<sup>5</sup>

[9] Coriolis' performed the financial modelling on the specific sites and then generalized its findings to the district level, using the sites as representative examples of properties within each district. The financial modelling was based on publicly available information and the owners of the sites (Owners) were unaware that the analysis was being done.<sup>6</sup>

[10] Coriolis summarized its work and findings in three memoranda. The memoranda do not reference the specific sites and instead discuss the financial modelling results generalized to the district level. The City included these memoranda in reports to its Council and, as a result, they are publicly available.<sup>7</sup>

[11] Coriolis also created and provided the City with several exhibits (Exhibits) to support the conclusions it set out in the memoranda. The Exhibits are marked "draft for discussion purposes only".

### **Information at issue**

[12] The information in dispute is on four pages of the Exhibits. The Exhibits contain a simplified outline of the results of Coriolis' financial modeling.<sup>8</sup> The Exhibits feature several charts with various development scenarios on one axis and civic addresses and their corresponding zoning or geographic districts on the other axis. The cells in the charts contain percentages and dollar figures showing the estimated impacts of the development scenarios on profit margins and land values at each site/district.<sup>9</sup> The City has disclosed most of the information in the Exhibits and is only withholding the addresses of the specific sites (Site Addresses).

[13] The properties at the Site Addresses are actual sites currently used for a range of purposes from single family dwellings to low density commercial.<sup>10</sup> The City and Coriolis selected the sites because they are typical examples, in each district, of sites that have development potential but that are not currently undergoing development.<sup>11</sup>

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<sup>5</sup> City's initial submission at para 19.

<sup>6</sup> *Ibid* at para 25 and Senior Housing Planner's affidavit at paras 24-25.

<sup>7</sup> Senior Housing Planner's affidavit at para 20.

<sup>8</sup> City's initial submission at para 19.

<sup>9</sup> *Ibid*. Records at PDF page 1, 2, 4, 5, 6, 7, 8, and 9.

<sup>10</sup> City's initial submission at para 25.

<sup>11</sup> *Ibid*.

***Harm to financial or economic interests of a public body – s. 17(1)***

[14] The City withheld the Site Addresses under ss. 17(1), 17(1)(b), and 17(1)(d). The relevant parts of s. 17(1) read:

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:

[...]

(b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;

[...]

(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;

[...]

[15] Subsections 17(1)(a) to (f) are examples of information that, if disclosed, could reasonably be expected to result in harm under s. 17(1). The subsections listed under s. 17(1) do not represent an exhaustive list, meaning there may be other types of information that fall under the opening words of s. 17(1) despite not being listed in subsections 17(1)(a) to (f).<sup>12</sup>

[16] 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 disclosure of the information in dispute could reasonably be expected to result in one or more of the harm described in the opening words of s. 17.<sup>13</sup> Therefore, regardless of the type of information, the overriding question is always whether disclosure of the 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.

[17] Former Commissioner Loukidelis described the threshold for harm under s. 17(1), in Order F08-22, as follows:

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<sup>12</sup> Order F14-31, 2014 BCIPC 34 at para 41; Order F19-03, 2019 BCIPC 4 at para 22.

<sup>13</sup> Order F05-06, 2005 CanLII 11957 (BC IPC) at para 36; Order F10-39, 2010 CanLII 77325 (BC IPC) at paras 32–34; Order F11-14, 2011 BCIPC 19 at paras 47–48; Order F12-02, 2012 BCIPC 2 at para 42.

The threshold for harm under s. 17(1) is not a low one met by any impact. Nature and magnitude of outcome are factors to be considered. If it were otherwise, in the context of s. 17(1) any burden, of any level, on a financial or economic interest of a public body could meet the test. This would offend the purpose of FIPPA to make public bodies more accountable to the public by giving the public a right of access to records, subject to specified, limited exceptions. It would also disregard the contextual variety of the harms-based disclosure exceptions in FIPPA.<sup>14</sup>

[18] I adopt this interpretation for the purpose of this order.

[19] A public body must demonstrate that the release of the information itself could reasonably be expected to result in the harm contemplated.<sup>15</sup> In other words, there must be a clear and direct connection between the disclosure of information and the harm that is alleged.<sup>16</sup>

[20] The standard of proof for s. 17(1) is a “reasonable expectation of probable harm.”<sup>17</sup> To demonstrate a reasonable expectation of probable harm, a public body does not need to prove that disclosure will in fact result in harm or even that such harm is probable. Instead, a public body must provide evidence of a risk of harm that is “well beyond” or “considerably above” the merely possible or speculative.<sup>18</sup> The evidence must be detailed enough to establish specific circumstances under which disclosure of the information in dispute could reasonably be expected to result in the contemplated harm.<sup>19</sup>

[21] Below, I first consider the parties’ submissions on what the phrase “that government” means as it appears in s. 17(1) and then their submissions on whether disclosure could reasonably be expected to harm the City’s financial or economic interests.

*What does “that government” mean in s. 17(1)?*

#### Parties’ submissions

[22] The City submits the phrase “the ability of that government to manage the economy” in the opening words of s. 17(1) should be interpreted to refer to any

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<sup>14</sup> Order F08-22, 2008 CanLII 70316 (BC IPC) at para 50.

<sup>15</sup> *British Columbia (Minister of Citizens’ Services) v British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para 43-44.

<sup>16</sup> Order F19-10, 2019 BCIPC 12 at para 31; Order F07-15, 2007 CanLII 35476 (BCIPC) at para 17.

<sup>17</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

<sup>18</sup> *Ibid* at paras 52-66 and *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para 93.

<sup>19</sup> Order 02-50, 2002 CanLII 42486 (BCIPC) at para 137.

government, including the City, that has a role in managing the economy.<sup>20</sup> It notes that FIPPA includes “a municipality” in the definition of “local government body”. The City submits disclosure of the Site Addresses would harm its ability to manage the economy, specifically the housing market.<sup>21</sup>

[23] The applicant submits that the City cannot claim that its ability to manage the economy could reasonably be expected to be harmed because that type of harm is reserved only for the government of British Columbia.<sup>22</sup>

### Analysis

[24] For the reasons that follow, I find the term “that government” in s. 17(1) refers only to the government of British Columbia.

[25] The Supreme Court of Canada has affirmed many times that the basic modern approach to statutory interpretation is that “the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”<sup>23</sup>

[26] After reading “that government” in its grammatical and ordinary sense within the context of s. 17(1) and FIPPA, I conclude that it refers only to the government of British Columbia. The word “that”, in this context, is a demonstrative pronoun used to refer to a single thing. In this case, the single thing referred to is the government of British Columbia because it is the closest noun preceding the word “that”. If the Legislature intended to refer to both the government of British Columbia and local government bodies, it could have said so directly or used the word “those”, which is the demonstrative pronoun used to refer to more than one thing. The word “those” is used in several instances in FIPPA as a demonstrative pronoun referring to more than one thing.<sup>24</sup>

[27] I find that the phrase “the ability of that government to manage the economy” in the opening language of s. 17(1) is about the government of British Columbia’s ability to manage the economy. The City has not argued that disclosure of the information in dispute could reasonably be expected to result in this type of harm; therefore, I do not consider this aspect of s. 17(1) further.

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<sup>20</sup> City’s reply submission at paras 24-26.

<sup>21</sup> City’s initial submission at para 63.

<sup>22</sup> Applicant’s submission at paras 58-66.

<sup>23</sup> Order F15-06, 2015 BCIPC 6 (CanLII) at para 16, quoting from R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at 1, citing E. A. Driedger, *The Construction of Statutes* (1974), at 67. See also, *Canadian National Railway Co v Canada (Attorney General)*, 2014 SCC 40 at para 36

<sup>24</sup> See e.g. FIPPA at ss. 33(5), 60(3)(b), 65(2), and 69(2).

*Could disclosing the Site Addresses reasonably be expected to harm the City's financial or economic interests?*

[28] The City submits that disclosure of the Site Addresses could reasonably be expected to result in two kinds of harm to the City's financial or economic interests: "(1) harms relating to altered behaviour in the real estate market; and (2) harms relating to Coriolis no longer providing case study property addresses".<sup>25</sup>

#### Altered behaviour in the real estate market

##### Parties' submissions

[29] The City submits disclosure of the Site Addresses could reasonably be expected to alter behaviour in the real estate market and that this altered behaviour would harm the City's financial or economic interests "where a development does not proceed or is delayed, both in terms of the payment of development fees and the costs associated with additional staff time".<sup>26</sup>

[30] The City submits that this altered behaviour would also harm its ability to manage the housing market, as it could cause changes on the micro level – affecting the development of particular sites – when the City's intent is to change behaviour at the macro level by encouraging rental development generally.<sup>27</sup>

[31] The City also submits that disclosure of the Site Addresses could reasonably be expected to result in undue financial loss or gain to the Owners of the properties at the Site Addresses, as a result of altered behaviour in the real estate market.<sup>28</sup>

[32] The City relies on affidavit evidence from its Senior Housing Planner and Coriolis to support its submissions on this subject.<sup>29</sup> I address this evidence more directly in my analysis, below.

[33] The applicant submits that the City has not shown how disclosure would excessively alter behaviour in the real estate market relative to the changes from other factors, including other increasing costs and the City's "continually changing policies".<sup>30</sup>

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<sup>25</sup> City's initial submission at para 60.

<sup>26</sup> *Ibid* at para 63.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid* at paras 54-58, quoting Senior Housing Planner's affidavit at para 26 and Coriolis' affidavit at paras 19-21.

<sup>29</sup> City's initial submission at paras 61-62.

<sup>30</sup> Applicant's submission at paras 91-92.

## Analysis

[34] I understand the City to be arguing that disclosure of the Site Addresses could reasonably be expected to result in altered behaviour in the real estate market, which, in turn, could result in harm to its financial or economic interests from:

- 1) fewer development fees and increased staffing costs as a result of a development not proceeding or being delayed,
- 2) impacts to the City's ability to manage the housing market, and
- 3) undue financial loss or gain to the Owners of the properties at the Site Addresses.

[35] In other words, the harms the City contemplates are dependent on disclosure of the Site Addresses resulting in "altered behaviour in the real estate market".

[36] I note that s. 17(1) does not, contrary to what the applicant submits, require the City to establish that disclosure would excessively alter behaviour in the real estate market relative to other factors. However, the City does need to establish that the "altered behaviour" could reasonably be expected to occur.

[37] The Senior Housing Planner's evidence is that disclosure of the Site Addresses may encourage or discourage development at the Site Addresses and/or increase or decrease land values.<sup>31</sup> She states that the City's rental incentive programs are intended to encourage rental development generally and that disclosing the Site Addresses may encourage development at the specific Site Addresses.<sup>32</sup> I find the Senior Housing Planner's evidence on this subject unpersuasive because it is ambiguous, vague, and speculative.

[38] The City's evidence from the Coriolis affidavit is that disclosure of the Site Addresses may reduce the price a purchaser would be willing to pay for a property at those addresses and may even cause a sale to fall through.

[39] To support this position, Coriolis states that, in the past, the City implemented Coriolis' recommendations on a different project and this "dampened the values that developers paid for sites in the [...] study area [of that project]."<sup>33</sup> However, Coriolis does not explain what those recommendations were or how they relate to Site Addresses at issue in this case. Therefore, I

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<sup>31</sup> Senior Housing Planner's affidavit at para 26.

<sup>32</sup> *Ibid.*

<sup>33</sup> Coriolis' affidavit at para 21.



cannot conclude that this evidence about unspecified past recommendations is relevant to the question of whether disclosure of the Site Addresses could reasonably be expected to result in altered behaviour in the real estate market.

[40] Coriolis also states that, in the past, disclosure of Coriolis' work has led to projects not proceeding.<sup>34</sup> However, Coriolis provides diverse services to a wide range of public and private clients.<sup>35</sup> Without more information, I cannot conclude that the work Coriolis is referencing at all resembles the circumstances relevant to this inquiry.

[41] Coriolis also states that disclosure of the Site Addresses could cause a sale to fall through if an agreed upon deal had not been completed and the land value estimate prepared by Coriolis was lower than the agreed upon sale price.<sup>36</sup> However, this outcome is not supported by the other evidence before me.

[42] For example, Coriolis states that most developers seek out as much information as possible when making a decision to acquire a development site.<sup>37</sup> It also says sophisticated developers would create the same type of models as in the Exhibits to analyse the expected financial performance of a planned project and to help decide whether to acquire a site and how much to pay.<sup>38</sup> Given the City's evidence that developers make purchasing decisions based on their own research and financial modelling, the City has not persuaded me that the disclosure of the Site Addresses could reasonably be expected to cause a sale to fall through.

[43] My finding on this subject is supported by the fact that the estimates in the Exhibits are clearly marked "draft for discussion purposes only", are several years old (they are dated 2019 or 2021), and are dependent on, among other things, a hypothetical developer obtaining rezoning approval, purchasing the property, building a rental project, selling the project to an investor, and targeting a 15% return on costs.<sup>39</sup> In my view, these details signal to the reader, including prospective buyers and sellers, that the estimates may be incomplete, out-of-date, or otherwise unreliable for the purpose of determining whether to withdraw from an agreed upon sale of the multimillion-dollar properties at the Site Addresses.

[44] Finally, Coriolis expresses concerns that the estimates in the Exhibits could be misinterpreted by the public because there is no accompanying report explaining the calculations and results. As an example, it says that a member of

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<sup>34</sup> City's initial submission at paras 58 and 62, referencing Coriolis' affidavit at para 21.

<sup>35</sup> Coriolis' affidavit at Exhibit B.

<sup>36</sup> *Ibid* at para 20.

<sup>37</sup> *Ibid* at para 15.

<sup>38</sup> *Ibid* at para 12.

<sup>39</sup> Records at PDF page 2.

the public could reasonably be expected to assume an estimate in the Exhibits applies to a particular site even though the development scenario the estimate is based on is not actually permitted by the City.<sup>40</sup> Given that the Exhibits are clearly several years old, are marked “draft for discussion purposes only”, and list a series of assumptions on which the estimates are based, I am not persuaded that the misinterpretation the City contemplates could reasonably be expected to occur. Even if it could reasonably be expected, I find the City has not adequately explained how the public’s misinterpretation of the Exhibits could reasonably be expected to result in “altered behaviour in the real estate market”. Further, previous OIPC orders have found that the risk that someone might misinterpret or otherwise fail to understand information is not a proper basis for withholding that information. As Adjudicator McEvoy (as he then was) observed in Order F11-23:

[...] it is always possible that any member of the public could take out of context any information disclosed under FIPPA. Were this a basis for withholding records, one could easily envision very little information being disclosed by public bodies concerned about how information might be used or viewed by members of the public.<sup>41</sup>

[45] In summary, I find the City’s evidence, including its evidence from Coriolis, is not persuasive enough to establish that disclosure of the Site Addresses could reasonably be expected to result in altered behaviour in the real estate market.

[46] The harms the City contemplates – fewer development fees, more staffing costs, impacts to its ability to manage the housing market, and undue financial loss or gain to the Owners – are dependent on “altered behaviour in the real estate market”. Since the City has not established that disclosure of the Site Addresses could reasonably be expected to result in such altered behaviour, I find that the City has also not met its burden to prove that disclosure of the Site Addresses could reasonably be expected to result in the harms the City contemplates.

[47] Given these findings, I do not need to consider whether the harms the City contemplates amount to harm to the City’s financial or economic interests within the meaning of s. 17(1).

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<sup>40</sup> Coriolis’ affidavit at para 19.

<sup>41</sup> Order F11-23, 2011 BCIPC 29 at para 40.

### Coriolis no longer supplying site addresses

#### Parties' submissions

[48] The City submits disclosure could also reasonably be expected to result in harms relating to Coriolis no longer providing site addresses to the City.<sup>42</sup>

[49] The Senior Housing Planner's evidence is that the City and Coriolis selected the Site Addresses collaboratively and that, in many cases, the addresses were selected by City staff.<sup>43</sup>

[50] The City's evidence from Coriolis' affidavit states:

Based on these concerns [about disclosure of the Site Addresses], I have advised the City that Coriolis will not disclose [site] addresses to the City in the future if the City is unable to prevent the public release of this information. Coriolis would be prepared to continue to provide financial modelling as input for policy analysis for the City, but would not disclose the case study property addresses used for this modelling and would be unable to engage in dialogue about specific case study address sites with City staff. This would also prevent Coriolis from performing analysis for a specific/unique site for the City.<sup>44</sup>

[51] The Senior Housing Planner's evidence states that, if Coriolis does not tell the City which site addresses it uses for its financial modelling, then the City would be materially less confident relying on Coriolis' financial modelling.<sup>45</sup> She also provides evidence on the importance of financial modelling in setting housing policy.<sup>46</sup>

[52] The City submits that if Coriolis no longer provides site addresses it will need to transition to a new process for financial modelling, either with Coriolis or another consulting company. It submits that this transition would require additional staff time and resources to action, and, therefore, would cause the City financial harm.<sup>47</sup>

[53] The City submits that OIPC Order F17-19 is instructive because in that order an OIPC adjudicator "expressly considered the information contained in [financial models] and found that both the City and developers relied on this

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<sup>42</sup> City's initial submission at paras 64-65.

<sup>43</sup> Senior Housing Planner's affidavit at para 25.

<sup>44</sup> Coriolis' affidavit at para 22.

<sup>45</sup> Senior Housing Planner's affidavit at paras 25 and 27.

<sup>46</sup> *Ibid* at para 28.

<sup>47</sup> City's initial submission at paras 65-66.

information and that there would be harm to the financial and economic interests of the City if this information were no longer supplied.”<sup>48</sup>

[54] The applicant submits that the harm alleged by the City related to the need to transition to a different consultant is merely possible or speculative.<sup>49</sup>

### Analysis

[55] I understand the City to be submitting that, if it is required to disclose the Site Addresses in response to the applicant’s access request, then Coriolis will no longer include the City in the process for selecting site addresses and will instead rely solely on its own expertise to make these selections.

[56] It is not clear to me how the transition to this new process for financial modelling, which appears to require less work from the City, would require additional staff time and resources to action. Even if I accept that such a transition could reasonably be expected to require additional financial resources (which I do not), the City does not explain or provide evidence about how much additional staff time and resources it anticipates, or the costs associated with these items. Not every instance of additional financial burden meets the threshold for “harm to the financial or economic interests of a public body” under s. 17(1). In this case, the City has not adequately explained how the nature or magnitude of the financial burden contemplated amounts to harm to its financial or economic interests and, as a result, it has not met its burden under s. 17(1).

[57] Further, the City has not persuaded me that this new process, in which Coriolis uses its own expertise to select site addresses that are representative of a district, could reasonably be expected to result in financial modelling that is less reliable. The City submits Coriolis is a market leader and is the City’s primary consultant for financial modelling.<sup>50</sup> Coriolis says it has provided financial analysis to the City since before 1990.<sup>51</sup> Given the significant relationship between the parties and Coriolis’ expertise, the City has not established that the transition to this new process could reasonably be expected to diminish the reliability of Coriolis’ financial modelling. Since the City has not established that this outcome could reasonably be expected to occur, I do not consider whether the contemplated harm flowing from this outcome amounts to harm to the City’s financial or economic interests.

[58] The City submits that it may need to transition to a new process for financial modelling with a different company. However, the City expresses

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<sup>48</sup> City’s initial submission at para 67.

<sup>49</sup> Applicant’s submission at para 117.

<sup>50</sup> City’s initial submission at paras 15, 65, and 78.

<sup>51</sup> Coriolis’ affidavit at para 6.

a preference for continuing to work with Coriolis, stating “There are few alternatives to Coriolis, and none with the same history with the City”.<sup>52</sup> Further, at no point does the City submit that it will not be able to rely on Coriolis’ financial modelling or that it will stop working with Coriolis. Coriolis says that it is prepared to continue to provide the City with financial modelling to inform the City’s policy development.<sup>53</sup> Based on this information, as well as the City’s evidence about Coriolis’ expertise and long history with the City, I find the City has not established that it could reasonably be expected to transition to a new company for financial modelling as a result of the Site Addresses being disclosed. Even if such a transition could reasonably be expected, the City has not established that the nature or magnitude of the financial burden associated with this transition amounts to harm to its financial or economic interests.

[59] Finally, I am not persuaded that the conclusions reached in Order F17-19 are instructive to the present inquiry. The information in Order F17-19 was provided voluntarily by a developer to the City in the context of the two parties negotiating a specific rezoning application<sup>54</sup> and the harm contemplated was harm to the City’s negotiating position.<sup>55</sup> In this inquiry, the Site Addresses and corresponding financial modelling were not provided in the context of a negotiation and the harm the City contemplates is not related to the City’s negotiating position.

[60] In summary, I find the City has not provided sufficient evidence to establish that the harm from Coriolis not supplying site addresses in future amounts to harm to the City’s financial or economic interests under s. 17(1) or that this harm could reasonably be expected to result from disclosure of the Site Addresses.

*Conclusion, s. 17(1)*

[61] For the reasons explained above, the City has not met its burden to prove that disclosure of the Site Addresses could reasonably be expected to harm its financial or economic interest. As a result, the City is not authorized under s. 17(1) to refuse access to the information in dispute.

[62] The City argues that the information in dispute falls under ss. 17(1)(b) and (d). However, because subsections 17(1)(a) to (f) are not stand-alone provisions, and I have found that disclosing the Site Addresses could not reasonably be expected to result in the harms set out in the opening words of s. 17(1), I do not need to consider whether the Site Addresses fall within the categories of information in ss. 17(1)(b) and 17(1)(d).

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<sup>52</sup> Senior Housing Planner’s affidavit at para 27.

<sup>53</sup> Coriolis’ affidavit at para 22.

<sup>54</sup> Order F17-19, 2017 BCIPC 20 at para 7.

<sup>55</sup> *Ibid* at para 40.

***Harm to a third-party business interest – s. 21(1)***

[63] The City withheld all of the information in dispute under ss. 21(1)(c)(ii).

[64] 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 relevant parts of s. 21 in this case are as follows:

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

(a) that would reveal

[...]

(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

[...]

(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,

[65] Past orders have established a three-part framework to determine the applicability of s. 21(1). The City must satisfy all three of the following criteria in order for the information to be properly withheld under s. 21(1):

1. Disclosing the information at issue would reveal the type of information listed in s. 21(1)(a);
2. The information at issue was supplied, implicitly or explicitly, in confidence under s. 21(1)(b); and
3. Disclosing the information at issue could reasonably be expected to cause one or more of the harms set out in s. 21(1)(c).<sup>56</sup>

***Type of Information – s. 21(1)(a)*****Financial information**

[66] The first step in the s. 21(1) analysis is to determine whether the information in dispute is the type of information listed in s. 21(1)(a). The City submits the Site Addresses are financial information per s. 21(1)(a)(ii).

<sup>56</sup> Order 03-02, 2003 CanLII 49166 (BC IPC); Order F17-14, 2017 BCIPC 15 at para 9; and Order F22-33, 2022 BCIPC 37 at para 25.

[67] Previous OIPC orders have said that “financial information” relates to, for example, information about profit and loss data, operating costs, financial resources or arrangements, as well as financial statements about assets, liabilities, revenues, expenses and cash flows.<sup>57</sup> Order F17-19 found that financial information included, among other things, estimated profits and land values.<sup>58</sup>

[68] The City submits that the Site Addresses are financial information about the properties at the addresses, specifically estimated profit margin or estimated supportable land value.<sup>59</sup> The City’s Senior Housing Planner states that disclosing the Site Address would allow a reader to convert the otherwise generalized financial information in the Exhibits into individualized financial information specific to each of the Site Addresses.<sup>60</sup>

[69] The City has not persuaded me that the Site Addresses, which are civic addresses, are themselves financial information. However, I find the estimated supportable land values and estimated profit margins in the Exhibits are financial information. I accept that with the Site Addresses withheld, these estimates are generalized to the district-level and that disclosing the Site Addresses would allow the reader to apply the estimates in the body of the charts to the properties at the Site Addresses. Therefore, I accept that disclosing the Site Addresses would reveal financial information specific to those sites.

Of or about a third party

[70] Under s. 21(1)(a)(ii), the revealed information must be “of or about a third party”. The definition of “third party” in FIPPA states:

"third party", in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than

(a) the person who made the request, or

(b) a public body.

[71] In its initial submission, the City submits that the Site Addresses “are financial information about these properties”.<sup>61</sup> Given the mandatory nature of

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<sup>57</sup> Order F22-35, 2022 BCIPC 39 at para 82, referencing Order F17-41, 2017 BCIPC 45 at paras 59-61 and Order F11-25, 2011 BCIPC 31 at para 34. The former two orders discuss “financial information” under s. 17(1) and the latter discusses “financial information” under s. 21(1).

<sup>58</sup> Order F17-19, 2017 BCIPC 20 at para 32.

<sup>59</sup> Senior Housing Planner’s affidavit at para 17.

<sup>60</sup> *Ibid* at para 20.

<sup>61</sup> City’s initial submission at para 74.

s. 21(1), I wrote to the parties to give the City the opportunity to provide more information about which third party it was referring to when it said the financial information was about “these properties”. The City provided further explanation and the applicant responded. I considered these supplemental submissions, along with the parties’ original submissions, in my analysis that follows.

#### “About” the Owners

[72] The City submits the Site Addresses are information about the Owners because the Site Addresses are civic addresses linked to properties they own and, if disclosed, the Site Addresses would connect the estimated supportable land values and estimated profit margins in the Exhibits to these properties.<sup>62</sup>

[73] After reviewing the Exhibits, I conclude that the financial information they contain is dependent on each of the sites being purchased, developed, and sold by a hypothetical developer and reflects the City’s expectations about the profits this developer may receive after developing the site. I understand the City to view prospective developers as separate and distinct from the current Owners of the properties at the Site Addresses.<sup>63</sup> As a result, I am not persuaded that the information in the Exhibits is about the current Owners of the properties at the Site Addresses as the financial information is dependent on them no longer owning these properties.

#### “Of” Coriolis

[74] The City submits that the Site Addresses are information of Coriolis because the financial modelling associated with the Site Address was prepared by Coriolis.<sup>64</sup> The City submits that the word “of” in the context of s. 21(1)(a)(ii) clearly has a different and broader meaning than the word “about”. It submits that in this context “of” “has a possessive connotation and would include information created by or originating from a third party.”<sup>65</sup> To support this position, the City relies on OIPC Order F14-40, which found that opinions prepared by third parties were the technical or commercial information “of” the third parties.<sup>66</sup>

[75] The applicant submits that the financial modelling associated with the Site Addresses is not “of” Coriolis because according to the City’s own submission “the City owns the information as the Exhibits were prepared for the City by Coriolis, an external consulting firm it retained.”<sup>67</sup> The applicant submits that

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<sup>62</sup> City’s letter dated April 3, 2024 at page 3.

<sup>63</sup> City’s initial submission at para 25 and Senior Housing Planner’s affidavit at para 26.

<sup>64</sup> City’s letter dated April 3, 2024 at page 3, quoting City’s initial submission at para 51 and City’s reply submission at para 8.

<sup>65</sup> City’s letter dated April 3, 2024 at page 3.

<sup>66</sup> City’s letter dated April 3, 2024 at page 3, citing Order F14-40, 2014 BCIPC 43 at paras 44-45.

<sup>67</sup> Applicant’s submission at para 45, quoting City’s initial submission at para 51.



Coriolis does not have ownership of or a legal claim to the information in dispute.<sup>68</sup>

[76] In response to this point, the City submits “[...] ownership depends on various factors including the wording of the specific contract between the public body and the service provider.”<sup>69</sup> The City did not elaborate or provide its contract with Coriolis for me to review.

[77] For the reasons that follow, I find the City has not established that disclosing the Site Addresses would reveal financial information of Coriolis.

[78] I accept that Coriolis created the financial modelling based on the Site Addresses. However, the City has not persuaded me that Coriolis’ creation of the financial information means that the financial information is “of” Coriolis.

[79] Clearly, if the Legislature intended s. 21(1)(a)(ii) to apply to information “created by” a third party it could have said so explicitly, as it did when it used the phrase “created by” in ss. 3(3)(f), 3(3)(g), 3(4) and 3(4.1) of FIPPA. Further, the statutory interpretation presumption of “consistent expression” dictates that where the Legislature uses different words within the same piece of legislation, it intends the words to have different meanings.<sup>70</sup> Relying on this presumption, the phrase “of [...] a third party” in s. 21(1)(a)(ii) should not be interpreted, as the City submits, to include information simply because it was “created by” a third party.

[80] In Order F14-40, on which the City relies, the adjudicator found that the information in dispute was technical and commercial information of third parties. However, this information was prepared by third-party construction and engineering specialists for another third-party and not a public body.<sup>71</sup> In my view, the findings in this order do not support the City’s position that financial information, created by a third party and provided to a public body under contract, is financial information “of” that third party.

[81] In my view, information is “of” a third party, for the purpose of s. 21(1)(a)(ii), where that third party owns the information in question. There may be other situations in which a third party does not own the information but has some other legal claim to or interest in the information that can support a finding that the information is “of” that third party for the purpose of s. 21(1)(a)(ii). In this inquiry, the City has not established that Coriolis owns or otherwise has a legal claim to or interest in the information in dispute.

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<sup>68</sup> Applicant’s submission at para 45.

<sup>69</sup> City’s reply submission at para 21.

<sup>70</sup> R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at 218.

<sup>71</sup> Order F14-40, 2014 BCIPC 43 at para 41.

[82] I accept the City's submission that it owns the information in the Exhibits and that it retained and paid Coriolis for this information. The City has not provided evidence to sufficiently rebut the applicant's submission that Coriolis does not have ownership of or a legal claim to the information in the Exhibits. Further, there is nothing in the Exhibits that appears, on its face, to be Coriolis' proprietary information. Without more information, I am not persuaded that the financial information at issue is "of" Coriolis and find that it is not.

*Conclusion, s. 21(1)*

[83] As noted above, all three parts of the test must be met in order for the information in dispute to properly be withheld under s. 21(1). Having concluded that s. 21(1)(a) does not apply because the information in dispute is not "of or about a third party", I do not need to continue with the analysis under ss. 21(1)(b) or (c). I find that the City cannot withhold the information in dispute under s. 21(1).

## **CONCLUSION**

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

1. The City is not authorized under s. 17(1) or required under s. 21(1) to refuse the applicant access to the Site Addresses.
2. The City is required to give the applicant access to all the information in the responsive records, including the Site Addresses.
3. The City must provide the OIPC registrar of inquiries with a copy of its cover letter and the records it sends to the applicant in compliance with item 2 above.

[85] Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by **July 29, 2024**.

June 14, 2024

### **ORIGINAL SIGNED BY**

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Rene Kimmett, Adjudicator

OIPC File No.: F21-87348