OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

Order 00-22

INQUIRY REGARDING ATTORNEY GENERAL HEALTH SERVICES CONTRACTS

****** This Order has been subject to Judicial Review ******

David Loukidelis, Information and Privacy Commissioner
July 11, 2000

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Summary: Applicant trade union sought access to contracts between public body and two health care service providers. Public body withheld global contract amounts, hourly rates and other breakdowns of global contract amounts. Disputed information had been negotiated and not "supplied" within the meaning of s. 21(1)(b). Public body not required to refuse access and also not required to withhold information where a previous contractor was no longer in business. Section 21(1) not available to protect new company that employs a principal and shareholder of previous contractor.

Key Words: Third party financial information – supplied in confidence – undue financial loss or gain to any person or organization.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 2(1) and 21(1).

Authorities Considered: B.C.: Order No. 26-1994; Order No. 45-1995; Order No. 220-1998; Order No. 288-1999; Order No. 315-1999; Order No. 320-1999; Order 00-09; Order 00-10. **Ontario:** Order P-263 (January 24, 1992); Order P-609 (January 12, 1994).

Cases Considered: *Canada Packers Inc.* v. *Canada (Minister of Agriculture)* (1988), 53 D.L.R. (4th) 246 (F.C.A.); *Halifax Development Ltd.* v. *Canada (Minister of Public Works and Government Services)*, [1994] F.C.J. No. 2035 (F.C.T.D.); *Re Atlantic Highway Corp.*, [1997] N.S.J. No. 238 (S.C.).

1.0 INTRODUCTION

In this case, the BC Nurses Union requested, under the *Freedom of Information and Protection of Privacy Act* ("Act"), copies of service contracts between the Ministry of

Attorney General ("Ministry") and two private health care contractors, Jill Schmidt Health Services Inc. ("JS") and Kamloops Health Services Ltd. ("KH"). The Ministry responded to the access request in relation to past and present contracts between the Ministry and JS, and a past contract with Kamloops Vocational Health Sciences Ltd. (to which KH had changed its name). The contracts deal with the contractors' provision of health care services at various correctional facilities operated by the Ministry. The applicant apparently represents most of the employees of the contractors. It says that its interests and those of its members are affected by the amount and allocation of government spending for patient care and other services in health care facilities and the contracting out of health care services at various facilities. The Ministry declined to disclose some information in the contracts, under s. 21(1) of the Act, which requires a public body to refuse to disclose, in some cases, confidential information relating to the commercial interests of third parties.

JS participated in the inquiry as a third party. KH was not an active participant in the inquiry. It is no longer doing business. It is bankrupt. CK Management Services Ltd. ("CK") participated in the inquiry as a third party because it claims an interest in the KH contract through one of the KH shareholders and principals, who now works for CK in a similar capacity. JS and CK support the Ministry's position in response to the applicant's request.

2.0 ISSUE

The issue in this inquiry is whether the Ministry is required by s. 21(1) of the Act to refuse to disclose the information it withheld under that section. Section 57(1) of the Act places the burden on the Ministry to prove that the applicant has no right of access to that information.

3.0 DISCUSSION

3.1 Disputed Information – The Ministry denied access to the aggregate fees and expenses for the contracts, of which I reviewed unsevered versions. The Ministry also denied access to hourly rates for services provided under the contracts and to breakdowns of the aggregate contract amounts on the basis of services, expenses and fees (with the exception of figures relating to physicians and physiotherapists). The Ministry provided the following more detailed description of the disputed information:

1. Base hourly rates, benefits, and the totals thereof for certain periods (including the wages of nurses, support staff, x-ray technicians, dentists and psychologists);

2. charges for the following: Occupational First Aid Allowance, academic bonus, shift differential and safety allowance;

3. management fees;

4. general and administrative fees (including fees for the following: legal, accounting, bank charges, travel costs, telephone and pager fees, bookkeeping, advertising, business licence, payroll, conferences, education, WCB fees, insurance, office supplies, orientation of new staff, education, Occupational First Aid course, overtime, contingency fees, and mileage costs);

5. monthly and annual amounts payable to the contractor, and other amounts for other periods; and

6. total amounts of the contracts.

The Ministry also gave the following explanation for the selective release of figures relating to physicians and physiotherapists:

> Under the current agreements with the Third Parties, which had not been entered into at the time of the Applicant's requests, the arrangement is for physicians and physiotherapists to be compensated by the Medical Services Plan on a fee for service basis, and not to be compensated directly by the health services contractor. The Public Body decided that disclosure of the pricing information relating to physicians and physiotherapists would not result in the harms contemplated by section 21.

The third party contractors have not objected to this disclosure.

3.2 Does Section 21 Apply Here? – This inquiry deals with s. 21(1) of the Act, which reads as follows:

> 21(1) The head of a public body must refuse to disclose to an applicant information
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> (a) that would reveal
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> (i) trade secrets of a third party, or
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> (ii) commercial, financial, labour relations, scientific or technical information of a third party,
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> (b) that is supplied, implicitly or explicitly, in confidence, and
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> (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,
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> (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,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

As has been noted in previous orders, s. 21(1) creates a three-part test, each element of which must be satisfied before a public body is required to refuse to disclose information.

Is the Information the Contractors' Commercial or Financial Information?

The Ministry argues that the disputed information is "commercial and financial" information "of" the contractors. Although the applicant did not agree that the requirements for s. 21(1)(a) were established, it presented no argument on the point.

I agree with the Ministry. I have no doubt that the information is commercial and financial in nature and that it relates to the contractors. It also qualifies as information "of" the contractors in this case, although I also consider that, given the context, it may also be information "of" the Ministry. Reference in s. 21(1)(a)(ii) to information "of" a third party does not mean that information can be "of" only one party. To the extent that the disputed contract information in this case either derives from the contractors or was arrived at by a process of negotiation between the contractors and the Ministry, I find that it is information "of" the contractors under s. 21(1)(a)(ii) of the Act.

The Ministry asserts that the information was "of" the contractors on the basis that it was owned by the contractors or solely developed by them, and was unchanged by the Ministry in the contracts. Because of my interpretation of this element of s. 21(1)(a)(ii), it is unnecessary for me to rely upon this aspect of the Ministry's argument.

Confidentiality of the Information

Section 21(1)(b) requires there to be confidentiality. The Ministry has provided evidence on this from officials of both contractors. Betty Carswell, the principal of KH who has now joined CK, deposed as follows:

6. During the request for proposal (RFP) process prior to the signing of the contract in 1997, Carole Conway, at that time the Director of programs at KRCC [Kamloops Regional Correctional Centre], advised me, and I believe it to be true, that any financial information supplied to the Ministry would be treated confidentially. All proponents were advised at a proponents' meeting during the RFP process prior to the 1997 contract that they could not have access to the financial information from any previous contracts, as such information was treated in a confidential manner.

Jill Schmidt, the president of JS, deposed as follows:

> 5. I have been advised by representatives of the Ministry, including Joyce Hall and Ron Williams, that any financial information I have supplied to the Ministry during contract negotiations, including the information withheld from the Applicant, would be treated as confidential by the Ministry and that such information would not be released to persons outside the Ministry without my consent. To the best of my knowledge, the Ministry has to date treated such information in a confidential manner. For instance, copies of the Third Party's [JS's] contracts sent to me in the mail by the Corrections Branch of the Ministry have been initialed on the envelope seal to ensure that there has been no tampering with the envelope. Further, to the best of my knowledge, any discussions regarding the Third Party's contracts have only been between representatives of the Ministry and myself personally, not with other management personnel of the Third Party. One of the reasons for the expectation of confidentiality with respect to the Third Party's contract information is the harm to the financial interests to [*sic*] the Third Party in the event that the information was disclosed outside of government.

A sharper focus in the affidavit of JS's president would have been desirable. For example, an expectation of confidentiality formed by JS after the applicant made this access request would not meet this requirement of confidentiality. I am satisfied, nonetheless, that sufficient evidence has been adduced to establish that the Ministry had a mutual intention with its contractors, JS and KH, that information in the contracts would not be disclosed to others by the Ministry. This evidence includes the express representations of confidentiality which were made to KH, as well as the Ministry's conduct with respect to the confidential delivery of the contract to JS.

The Ministry also submitted several affidavits sworn by Ministry officials, which depose to an implicit understanding by the parties that JS and KH were providing information to the Ministry in confidence. For the future guidance of public bodies and third parties, it should be noted that these assertions were not terribly helpful when unaccompanied by evidence that demonstrated or supported the allegedly implicit confidentiality. By its nature, an implicit understanding is unexpressed and arises from something else. Deposing that there was 'implicit' confidentiality does not make it so if the 'something else' from which the implicit confidence is alleged to derive is not identified. Without evidence of external indicators of something that is 'implicit', merely saying that the implicit thing exists is not helpful. For someone to state in an affidavit, without more, that implicit confidentiality existed is argument, not evidence on which I can rely for the purposes of s. 21(1)(b) of the Act.

Was the Information Supplied to the Ministry?

The next issue to be considered is the s. 21(1)(b) requirement that the information in issue must have been "supplied" to the Ministry. The applicant argues that the information was not "supplied" by the contractors within the meaning of s. 21(1)(b) because it resulted from negotiations between the Ministry and the contractors. In Order No. 00-09, I said that information negotiated in an agreement between two parties does not

ordinarily qualify as information that has been "supplied" to a public body. This view accords with other decisions, in British Columbia and elsewhere. In British Columbia, see Order No. 26-1994, Order No. 45-1995 and Order No. 315-1999. In Ontario, see (for example) Order P-263 (January 24, 1992) and Order P-609 (January 12, 1994). (Consistent with these decisions, I have also acknowledged that the "supply" element may be met if an accurate inference can be made, from a negotiated agreement, of underlying, supplied confidential information that qualifies under s. 21(1)(a). That argument was not made here.) On the question of supply of information and negotiated contracts, also see *Halifax Development Ltd.* v. *Canada (Minister of Public Works and Government Services)*, [1994] F.C.J. No. 2035 (F.C.T.D.), and *Re Atlantic Highway Corp.*, [1997] N.S.J. No. 238 (S.C.). The Federal Court of Appeal decision in *Canada Packers Inc.* v. *Canada (Minister of Agriculture)* (1988), 53 D.L.R. (4th) 246, is also of interest, more generally, on the issue of supply.

The Ministry relies on my predecessor's decision in Order No. 220-1998 for the proposition that information concerning hourly and daily rates in a contract with government meets the requirements of s. 21(1)(b). The conclusion in that case is not, in my view, as broad as the Ministry argues. That case considered a one-page record setting out the hourly and daily rates of members of a contractor working for government. My predecessor said, without elaboration, that the evidence before him in that case established that the information had been supplied in confidence when the contractors offered their services. This was not a finding that information on hourly and daily rates in contracts invariably satisfies the "supply" requirement in s. 21(1)(b).

The disputed information in this inquiry is found in contracts between the Ministry and private sector contractors. The information represents the essential terms of payment by the Ministry for those contracts – global contract amounts and breakdowns of those amounts on the basis of hourly rates, fees, expenses and other allowances. The Ministry, JS and CK argue that this information was "supplied" because it was derived from the contractors, not the Ministry, and was incorporated *unchanged* into the contracts. There is no assertion that disclosure of the disputed information would allow an accurate inference to be made of other underlying information which was supplied in confidence by the contractors to the Ministry.

Under the request for proposals process used by the Ministry to select a successful proponent and arrive at these contracts, the Ministry provided prospective contractors with information. That information included the total number of health care staff hours required under the contract. Proponents then submitted their contract proposals, the Ministry assigned points for various components of the proposals and then selected a successful proponent. The parties then entered into a contract. The request for proposals process was undoubtedly competitive, although the Ministry was not required to select the proponent which made the lowest proposal. The evidence also indicates that, under the process, the Ministry could ask potential contractors to alter and resubmit contract proposal information and that the Ministry actually did this for at least one of the contracts under consideration in this inquiry. The Ministry and the contractors argue that

in these circumstances the contract terms were *supplied* by the contractors and were not *negotiated* between the Ministry and the contractors.

It may well be that the disputed contract information could affect the contractors' negotiating positions with unions (among other things). This has been explicitly asserted in connection with s. 21(1)(c) of the Act. There is a distinction, however, between information which was *derived* from negotiations – between the Ministry and its contractors – and information which, if disclosed, could reasonably be expected to harm the contractors' success in future negotiations or competitions for health care contracts (public and private), as well as in labour relations negotiations.

The following passage from the affidavit of Jill Schmidt is typical of the evidence before me on the "supply" issue:

> 4. … I supplied that Information [the disputed information] to the Ministry during contract negotiations. Further[,] that Information that I supplied to the Ministry appears unchanged in those contracts and amendments thereto.

It is apparent from this statement that JS engaged in "contract negotiations" with the Ministry. Contract terms were presumably negotiated, since the process would not otherwise have been a negotiation. I have not been provided with copies of the Ministry's requests for proposals in relation to any of the contracts or the proposals the Ministry received from JS and KH. I have also not been given any further evidence distinguishing or explaining which contract terms the Ministry and the contractors say were negotiated and which they say contain unchanged information supplied by the contractors. As a result, it is unclear from the affidavit of Jill Schmidt whether her evidence is that the disputed contract information was not negotiated, or that the parties did negotiate over it but with the result that the information remained unchanged.

Another example of the evidence before me on the supply question is found in the following paragraphs from the affidavit of Ron Williams, a district director of the Ministry, who gave evidence about the Ministry's contract with JS respecting the Fraser Regional Correctional Centre:

> 3. During negotiations with respect to [the] Agreement, the goal of the Public Body [Ministry] was to ensure that an appropriate level of service was provided, and that the cost of providing such services was kept at a reasonable level. In the negotiations with the Third Party [JS] at the Public Body's Regional Office I had requested that the Third Party reduce the amounts originally supplied by the Third Party. The Third Party then returned with other amounts and the Ministry agreed to pay those amounts. The amounts supplied by the Third Party were agreed to by the Ministry and were set out in the Agreement.
>
> 4. The Information at issue in this inquiry consist [*sic*] of financial information supplied by Jill Schmidt, President of the third Party, to the Public Body during negotiations. The Information supplied by the Third Party to the Public Body appears unchanged in the Agreement.

Paragraph 3 of the Williams affidavit describes a change in the "amounts originally supplied by the Third Party" as a result of "negotiations". Paragraph 4 merely alludes to "financial information supplied" during the negotiations, but does not explain what this refers to.

A third example of the evidence on the supply question, as it relates to JS, is the affidavit of Colin Richardson, who is a manager of court services with the Ministry. His affidavit deals with the contracts for JS's provision of health services at the Alouette River Correctional Centre. Paragraph 3 of the affidavit reads as follows:

> 3. The Information withheld from the Applicant in the Agreements consists of financial information supplied by Jill Schmidt, President of the Third Party [JS], to the Public Body [Ministry] during negotiations. The Information supplied by the Third Party to the Public Body appears unchanged in the Agreements.

Similar evidence is found in affidavits submitted by the Ministry in relation to other Ministry contracts with JS, each of which apparently was entered into as a result of what is characterized in the evidence as a competitive request for proposal process.

All this evidence speaks to a contract negotiation that resulted in changes to the contractor's initial proposal. In my view, it would put form over substance to characterize the process described in Ron Williams' affidavit, for example, as the "supply" of information by JS to the Ministry within the meaning of s. 21(1)(b). JS may, in a literal sense, have supplied information by delivering to the Ministry a document on which the information was written. I do not believe, however, that the Legislature intended the "supply" element in s. 21 to be determined on such a literal and artificial basis. Section 21(1)(b) contemplates the delivery of confidential business information of a third party, not information which is prone to change (and does change in some way) because it is the very subject of the negotiation process and, having been negotiated, becomes part of the essential terms of the contract. The disputed information in the contract referred to in the Williams and other affidavits was determined through a dialogue, or negotiation, between the Ministry and JS. I cannot agree that this information is to be characterized as "supplied" by the contractor, when it was the result, in this particular case, of the give and take of negotiations between the parties.

The Ministry – supported by JS and CK – submits that the s. 21 exception "is intended to protect third party business interests, so that third parties are not disadvantaged by the fact that they do business with government." That is true only where the evidence in a given case establishes that s. 21, by its terms, applies to information in a record in dispute. Section 21, as enacted by the Legislature, does not operate as a blanket protection from all perceived or real negative effects on third parties of doing business with government. Section 2(1) of the Act explicitly says that one of the Act's purposes is to make public bodies more accountable to the public by giving a right of access to records and specifying limited exceptions to the rights of access. Section 21 is an exception to disclosure which is circumscribed by its own specific requirements, one of which is the "supply" element in s. 21(1)(b). It has long been recognized in the cases that

s. 21 – and similar provisions in Canadian and United States access to information laws – do not place third parties who contract with government in the same position they would be in if they entered into non-government contracts. The interpretation or application of s. 21, as it exists, cannot be dictated by a desire to change this fact. To do so would fail to give balanced meaning to the explicit requirements of the exception as laid down by the Legislature.

The Ministry also emphasizes that s. 21 is a mandatory exception. In my view, it is equally important to note that, under s. 57(3) of the Act, the Ministry bears the burden of establishing each of the elements of the s. 21 exception on a record by record basis. As is often the case, this burden has (as a practical matter) been shared here by JS and CK. I have already described the evidence in the Schmidt, Williams and Richardson affidavits as regards the JS contracts. The evidence on the "supply" issue in the rest of the relevant affidavits before me consists of unelaborated statements to the effect that information was supplied to the Ministry by the contractors and appears unchanged in the contracts and their amendments. From the Carswell affidavit, it is apparent that the contract with KH, like the contracts with JS, was reached through the request for proposal process. The specific evidence on the supply issue, beyond this, is the following statement by Betty Carswell in her affidavit:

> In my role as President of Kamloops Vocational Health Sciences Ltd., I supplied that Information [the disputed information] to the Ministry. Further, that information appears unchanged in those contracts and amendments thereto.

I am unable to conclude based on such evidence that the disputed information in this inquiry was "supplied" to the Ministry within the meaning of s. 21. Statements in the affidavits that most of the information which constitutes the essential payment terms of these contracts was so supplied and remained unchanged in the contracts, do not discharge the Ministry's burden of proof, because they do not answer the question of whether the information was the subject or product of negotiations, which was the context for the relationship between the Ministry and the contractors. The evidence makes it clear that the request for proposal process allowed for, and resulted in, give and take between the Ministry and successful proponents. The evidence also clearly establishes the parties engaged in contract negotiations. The fact that disputed information may have been delivered to the Ministry in a document prepared by a contractor and then incorporated in the same form in a contract does not – in light of the evidence of the parties' negotiation of contract terms – establish that the information was supplied and *not* the subject or product of negotiations. The nature of the disputed information here suggests that it is precisely the kind of information which would be negotiated and that it is not (directly or by inference) discrete or immutable third party business information. In these circumstances, I find that the Ministry has not discharged its burden of proof in relation to the supply element in s. 21(1)(b) of the Act.

Harm to the Third Parties

The next issue to be determined is whether, assuming both of the other two elements of s. 21(1) had been satisfied, disclosure of the disputed information could reasonably be

expected to harm each of the third parties as contemplated by s. 21(1)(c). I will deal first with JS.

The applicant says that release of the disputed information cannot harm JS's competitive position because the requested contracts have expired. The applicant also says, citing Order No. 320-1999, that the kind of "formula" contract information in issue has not been found to meet this branch of s. 21(1).

I find that the disputed information is not contract boilerplate and that there is sufficient evidence before me to establish that s. 21(1)(c)(i) has been fulfilled with respect to JS. The affidavits filed here attest to the fact that disclosure of the disputed information would assist competitors of JS to undercut it on the pricing component of future tenders for health services contracts. There is also evidence that the pricing component can be critical to a successful contract proposal. Assuming that the disputed information is not available from other sources – of which there is no evidence before me – I accept that it would be a useful pricing guide for JS's competitors. While the expiry of the contracts in issue could diminish their relevance and usefulness for competitive purposes, the contracts are relatively recent and their competitive value lies not only in the contract amounts, but also in breakdowns applied to those amounts. The test of reasonable expectation of significant harm to competitive position has been met in relation to JS on this ground.

The Ministry's affidavit evidence also attests to harm to the labour relations negotiating position of JS. Six paragraphs, in three of the affidavits, were (properly) filed *in camera*. The *in camera* paragraphs provide details as to how the disputed information would affect JS's ability to negotiate with the union representing JS's employees. Those details cannot be revealed without undermining JS's negotiating position. I have considered and relied on the *in camera* evidence but, in view of the other evidence about the competitive position issue in relation to JS, I would have reached the same conclusion on s. 21(1)(c)(i) in the absence of the *in camera* evidence.

KH ceased doing business in 1999. Its two shareholders and principals, and the company itself, became bankrupt. The shareholders were husband and wife. The wife later went to work for CK, which is owned by her two daughters and conducts a similar business.

The applicant argues that release of the disputed information could not reasonably be expected to harm KH because it has no current contract with the Ministry, is no longer active in business and is bankrupt. It relies on the following passage from the Director's report and recommendations that formed part of Order No. 288-1999:

> However, BC Ferries cannot establish the third branch of the test under section 21(1)(c) in relation to Integrated Ferry Constructors Inc. As the Commissioner concluded in Order No. 230-1998, where a third party is insolvent and has ceased trading, the criterion of significant harm to the competitive position of such a third party will be very difficult, if not impossible, to satisfy. I agree with the applicants that, where Integrated Ferry Constructors Inc. is insolvent, no longer in business, and without directors, the disclosure of its

> commercial information or financial information, whether or not supplied in confidence, for the purpose of protecting its claims, cannot reasonably be considered to be contrary to the provisions of section 21(1). As the three-part test in section 21(1) is conjunctive, the section cannot apply where the public authority fails to establish the third branch of the test.

KH did not participate in this inquiry. The Ministry and CK quite properly did not argue that s. 21(1) was triggered in relation to KH. (Had they done so, I would have found that s. 21(1) does not, in light of Order No. 288-1999, apply with respect to KH itself.) Their cases were advanced on the basis that harm to CK, in its own right or through its connection to KH, triggered s. 21(1). I will now deal with that argument.

Section 21(1)(c)(i) is aimed at the competitive or negotiating position of the third party whose information is at stake. That third party here is KH, since the disputed information relates to KH and not CK. CK is a different corporate entity from KH. If this was not a sufficient distinction, it is apparent that KH and CK also have different shareholders. The fact that one of the principals of KH now works for CK and that there is a family relationship between the shareholders of the two companies, does not mean that the financial information of KH is now the information of CK. Similarly, even if the content of the disputed information was the same as similar to financial information of CK in contracts it may have with the Ministry, this would no 9open the door to arguments that information of KH was information of CK supplied in confidence to the Ministry. The proposition that s. 21(1) recognizes such an identity, or transfer of interests, is not contemplated by the express language of s. 21(1) and cannot be inferred from that language. Nor do I think such a conclusion is compelled by legal principles or rules outside the Act.

Undue Financial Loss or Gain

This leads me to the argument advanced by the Ministry and CK under s. 21(1)(c)(iii), *i.e.*, that disclosure of the information could reasonably be expected to result in undue financial loss or gain to "any person or organization".

I agree that the phrase "any person or organization" is wide enough to include CK. I also accept that disclosure of the disputed information in the KH contract could in some sense affect the competitive field in which CK must operate in order to obtain health care service contracts. The more information other contractors have about pricing methods successfully employed by KH – and perhaps now by CK as well – the more likely it is that they can more effectively compete amongst themselves and with CK.

It does not follow, however, that these conditions or KH's employment of a former principal of KH, satisfy the requirement for "undue" financial loss or gain. In my view, s. 21(1)(c)(iii) is not an open door for the recognition of harm to business interests of a third party which could reasonably be expected to flow, in some way or to some degree, from the disclosure of confidential business information. As I indicated in Order 00-10**,** the word "undue" must be given real meaning, determined in the circumstances of each

case. Generally speaking, that which is 'undue' can only be measured against that which is 'due'. Some assistance can be gained by considering previous cases.

In this case, CK has no proprietary interest in the requested KH contract information. It has merely employed a former principal of KH who brings with her certain pricing skills and methods which she had previously applied for KH. I do not think the third party business harm exception in s. 21 is intended to "travel" in this way. Such portability would broaden this exception in a significant and potentially unfocused way, out of proportion to the thrust of s. 21(1)(c)(iii) and its requirement for *undue* financial loss or gain. It may be that business information 'successorship', in some form, could have a place under s. 21, but this is not a case where such an argument is sustainable.

4.0 CONCLUSION

For the reasons given above, under s. 58(2)(a) of the Act I find that the Ministry of Attorney General is not required by s. 21(1) of the Act to refuse access to the disputed information in relation to its contracts with Jill Schmidt Health Services Inc. or Kamloops Health Services Ltd., and I require the Ministry to give the applicant access to that information.

July 11, 2000

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia