OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
British Columbia

Order 03-33

MINISTRY OF FINANCE

David Loukidelis, Information and Privacy Commissioner
July 24, 2003

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Summary: The applicant sought records relating to a request for proposals to provide services to the provincial government, including proposals submitted by other proponents and records reflecting the government's assessment of the proposals. Section 21(1) requires the Ministry to refuse disclosure of information which could reasonably be expected to result in harm under s. 21(1)(c).

Key Words: trade secrets of a third party – commercial information – financial information – supplied in confidence – undue financial loss or gain – competitive position – negotiating position – interfere significantly.

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

Authorities Considered: B.C.: Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order 00-22, [2000] B.C.I.P.C.D. No. 25; Order 00-26, [2000] B.C.I.P.C.D. No. 29; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 01-39, [2001] B.C.I.P.C.D. No. 40; Order 03-02, [2003] B.C.I.P.C.D. No. 2; Order 03-15, [2003] B.C.I.P.C.D. No. 15; Order 03-23, [2003] B.C.I.P.C.D. No. 23.

Cases Considered: *Jill Schmidt, Health Services Inc.* v. *British Columbia (Information and Privacy Commissioner)*, [2001] B.C.J. No. 79, 2001 B.C.S.C. 101.

1.0 INTRODUCTION

[1] This decision relates to a request for proposals for Internet credit card payment-processing services that the provincial government sought. The Provincial Treasury, at the time a section of what is now the Ministry of Finance ("Ministry"), in 2000 issued two separate requests for proposal for such services. The provincial government's goal was to enable members of the public to make credit card payments to the government

through the Internet. The first request for proposals ("RFP"), which the government identified as RFP-PT-2000-1 ("First RFP"), was cancelled after proposals had been submitted. The second, RFP-PT-2000-2 ("Second RFP"), was issued after cancellation of the First RFP.

[2] The applicant in this case, Beanstream Internet Commerce Inc. ("applicant"), had been a participant in a proposal submitted in response to the First RFP by TD Bank. An October 13, 2000 proposal ("Proposal") by the Canadian Imperial Bank of Commerce ("CIBC") and Global Payments Canada Inc. ("Global") in response to the Second RFP was successful, although no contract has been entered into as a result. It is this proposal and some related records that are in dispute here.

[3] The applicant later made a request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), to the Ministry for access to a broad range of records related to the development and evaluation of the two RFPs and proponents' responses to those requests. The request encompassed records relating to the development and conduct of the RFPs and award of any contract. A considerable number of responsive records were disclosed to the applicant in whole or in part. As a result of later, successive disclosures and mediation by this Office, only a few records remain in dispute. The refusal to disclose information was initially based on ss. 14, 21 and 22 of the Act, but only s. 21(1) is now in issue.

[4] The applicant also contends that the Ministry's search for records was inadequate. It says records exist that relate to certain portions of the Proposal that, the applicant says, were altered after the closing date for proposals. The applicant also believes correspondence related to those alterations is missing from the response, and that a contract between the Ministry and CIBC exists, but has not been disclosed.

[5] The Ministry of Management Services responded to the applicant's request on behalf of the Ministry and the provincial Purchasing Commission. Those are the public bodies named in the Notice of Written Inquiry that this Office issued. After submissions were exchanged in this inquiry, the *Procurement Services Act* came into force on April 10, 2003. It repealed the *Purchasing Commission Act* and the Purchasing Commission ceased to be a public body under the Act. The Ministry then confirmed that the disputed records do not include Purchasing Commission records. The Ministry is, therefore, the only public body still involved in this inquiry.

[6] After the initial response to the applicant's access request, the Ministry notified various third parties of the request. The upshot is that the following third parties had notice of this inquiry and made submissions: CIBC, Global and Eigen.

2.0 ISSUES

[7] These are the issues in this inquiry:

1. Was the search for records adequate?

2. Does s. 21(1) of the Act require the public bodies to refuse to disclose information to the applicant?

[8] A number of previous decisions establish that the Ministry bears the burden of proof on the first issue and s. 57(1) of the Act places the burden on the Ministry respecting the second issue.

3.0 DISCUSSION

[9] **3.1 Description of the Records** – This is the information in dispute here:

1. Portions of the Proposal, together with an October 13, 2000 cover letter;

2. Three questions on the second page of an October 15, 2000 e-mail from Pamela Stewart to Arlene LaBelle; and

3. Portions of an attachment to an October 25, 2000 e-mail from Arlene LaBelle to Pamela Stewart.

[10] **3.2 Adequacy of the Search** – The applicant says the Ministry failed to conduct an adequate search for records, contrary to its s. 6(1) obligation to do so. That section reads as follows:

> **Duty to assist applicants**
>
> **6** (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

[11] The standards expected in searching for records have been described in many cases. A public body must undertake such search efforts as a fair and rational person would find to be acceptable in the circumstances. This does not impose a standard of perfection, but a public body's search must be thorough and comprehensive. See, for example, Order 03-23, [2003] B.C.I.P.C.D. No. 23, and Order 00-26, [2002] B.C.I.P.C.D. No. 29.

[12] According to the applicant, the search was not adequate as regards "sections for the CIBC RFP submission that were altered by the Ministry after closing", "related correspondence" respecting the amended portions and "an agreement or contract between the Provincial Treasury, CIBC, Eigen Development and/or Global Payments".

[13] The Ministry notes that the search instructions given to individuals who searched for records specifically mentioned any contract resulting from the RFP process. It says the search instructions also clearly encompassed any records relating to adjustments made to the CIBC RFP submission after the close of submissions. Searches were made in the Provincial Treasury, the Corporate Registry and the Finance and Administration sections of the Ministry, as well as in the Minister's office and Deputy Minister's office. Searches were also conducted in the files of the Purchasing Commission. The Ministry says that, as a result of these searches, records to which the applicant refers do not exist and there is no reason to think that any records exist relating to adjustments to the Proposal beyond those already accounted for (para. 7.18, initial submission).

[14] According to the affidavit of Gary Derrien Karr, the Ministry's senior manager of banking policy and contracts, the Provincial Treasury obtained some clarification of aspects of the Proposal after it was received. These were reflected in the Price Breakdown Table, which formed Appendix 3 to the Proposal, a document called Analysis of Proposal Price, and a November 6, 2000 e-mail message. Karr deposed that all of these records have been disclosed to the applicant, in their entirety or partially severed, and that he is not aware of any other records documenting clarifications of, or adjustments to, the Proposal.

[15] In his affidavit, David Young, a Freedom of Information & Protection of Privacy Analyst with the Ministry, deposed in considerable detail as to the specific steps that were taken to search for responsive records. He acknowledged, however, that two documents were later found that had not been perused by the Provincial Treasury in the initial search (para. 14). He deposed that these records had been found because they were later identified by the applicant "through references and other documents", and that these further records were service contracts with a consultant hired to prepare and evaluate pricing tables for the Second RFP (para. 14).

[16] The applicant has no burden to show that the search for records was inadequate. The applicant argues it is not plausible to suggest that no records exist that document discussions between evaluation team members or project sponsors regarding changes made to proposals, including because changes to proposals after their submission are "potentially controversial" (p. 2, initial submission). As for the existence of a contract stemming from the Proposal, the applicant says the following (p. 2, initial submission):

> My suggestion that the Ministry is withholding a contract between themselves and either the CIBC, Eigen Development or Global Payments is based largely on circumstantial evidence. I have included a number of documents that suggest that such an agreement exists despite numerous responses from the Ministry (as recently as August 2002) that no such contract has been signed.
>
> I have included a reproduction of a document on the Ministry website stating that the OneStopBC portal service was launched in July 2001 using the CIBC/Eigen service. I have attached another document that identifies the Internet payment service as being hosted by the CIBC. A third document states that the Ministry is using the Internet Payments Program for the OneStopBC registration service that was

> launched in the spring of 2002, and a final document that shows that Global Payments received over $1.1M in fees during fiscal 2001.
>
> I cannot believe that the Ministry launched a service in the spring of 2001 using the CIBC/Eigen payment service and has paid nearly $1.1M in fees to Global Payments without any agreement or contract. Perhaps my original request was worded in such a way that was unclear, but I have made numerous subsequent requests for the same information and have repeatedly been given the same answer. I don't think that there is any doubt what I have been asking for and the Ministry has an obligation to assist me in locating documentation rather than splitting hairs on definitions.
>
> Clearly some contract in some form exists and it is responsive to my original request and numerous subsequent enquiries. The date of the initial OneStopBC launched (July 2001) and my experience with the contract negotiation process leads me to believe that the contract likely existed at the time of my original FOI act request.

[17] According to Derrien Karr's evidence, contract negotiations resulting from the Second RFP were still underway, and no contract had been executed, as of the date of his affidavit. At para. 11 of his second affidavit, Derrien Karr deposed that the payment to Global that the applicant mentioned in its initial submission was for other services, not services sought through the Second RFP.

[18] This evidence persuades me that, at the date of the applicant's access request and at the time of the inquiry, no record reflecting a contract of the kind described in the access request existed. It is therefore not surprising that the public bodies' search efforts did not find such a record. It is also clear from the material before me that the search for records was for any written contract resulting from the Second RFP, not just a contract with CIBC. I am also satisfied that an adequate search was undertaken for other records within the request's scope.

[19] I find that the search for records in this case met the standards required under s. 6(1) of the Act.

[20] **3.3 Third-Party Business Interests** – Section 21(1) protects certain third-party commercial or business interests from harm through disclosure of information under the Act. The section reads as follows:

> **Disclosure harmful to business interests of a third party**
>
> **21** (1) The head of a public body must refuse to disclose to an applicant information
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> (a) that would reveal
>
> (i) trade secrets of a third party, or
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> (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,
>
> (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.

[21] The Ministry submits that s. 21(1) requires it to refuse disclosure of the information still in dispute. It says the three-part test in s. 21(1) has been met and specifically refers to CIBC's evidence and argument respecting s. 21(1), on which it relies. CIBC, I note, has for its part merely adopted and relied on Global's submissions.

[22] I have discussed the interpretation and application of s. 21(1) on many occasions. See, for example Order 03-02, [2003] B.C.I.P.C.D. No. 2, and Order 03-15, [2003] B.C.I.P.C.D. No. 15. I have applied here, without repetition, the approach to s. 21(1) reflected in these earlier decisions.

[23] The first question is whether information of a kind described in s. 21(1)(a) is involved here.

Commercial or financial information

[24] The contents of the proposal were created by Global, CIBC and Eigen for the purpose, they hoped, of winning work from the province. The Proposal contains information detailing the nature of the products and services they proposed to supply or perform and methods to be used in performing the proposed services. The records relating to clarifications of the Proposal are of a similar character. The information in the Proposal relates, clearly, to the buying or selling of goods or services; it is information pertaining to commerce. Consistent with my finding in Order 03-15 and other similar cases, I am satisfied that the disputed information is "commercial information" within the meaning of s. 21(1)(a)(ii) of the Act.

[25] The portions of the Proposal disclosed to the applicant confirm that the proposal was submitted under cover of a letter to the Provincial Treasury from CIBC and signed by Arlene LaBelle as an Account Manager with CIBC Merchant Card Services. On p. 2 of the Proposal, the relevant portion of which has been disclosed to the applicant, it was said that "CIBC has partnered with Eigen Development to offer a comprehensive E-Commerce solution for the Province of British Columbia." Global is not explicitly mentioned in the Proposal or any of the other disputed records.

[26] Page 2 of Global's initial submission says, however, that Eigen Development Ltd. ("Eigen") "works exclusively with Global to provide … bank card transaction services." Arlene LaBelle deposed that she is now an account manager with Global and was formerly employed by CIBC in the same capacity. She deposed, at para. 2, that as a result of "a corporate alliance between CIBC and Global", she was transferred to Global and continued her responsibilities of preparing and submitting "a response from CIBC/Global to a request for proposals issued by the Government of British Columbia." She also deposed that the Proposal was a response by "CIBC/Global" to the Second RFP and that the Proposal "was submitted by CIBC in connection with an alliance between CIBC and Global (paras. 4 and 6). She deposed, last, that Eigen "was a partner to the Global response" (para. 8). Based on this material, I am satisfied that, for the purposes of s. 21(1)(a) of the Act, the disputed information is information "of or about" Global, CIBC and Eigen.

Supplied in confidence

[27] Section 21(1) only applies where information has been "supplied, implicitly or explicitly, in confidence". Numerous decisions have addressed the issue of whether information in a contract between a public body and third party can qualify as information that has been "supplied" within the meaning of s. 21(1)(b). Order 03-02 contains a lengthy survey of Canadian cases on this point and Order 03-15 is a recent case in which information in a contract was held not to have been supplied.

[28] The contents of the Proposal, and the other records still in dispute, were supplied to the province within the meaning of s. 21(1)(b). The evidence establishes that the Provincial Treasury sought, through the Second RFP, proposals for various services. The Proposal was delivered in response to that invitation for proposals. There is no question that the Proposal, and the other information in dispute, was "supplied" to the Ministry as contemplated by the Act.

[29] In its initial submission, the applicant contends that the e-mails asking for, and giving, clarifications respecting the Proposal take the contents of those communications outside the concept of information that has been "supplied". The applicant says these exchanges of information amount to a negotiation process, such that the information provided by Global cannot be characterized as having been supplied within the meaning of s. 21(1)(b). Both the Ministry and Global have taken the position that the answers provided to questions posed by Provincial Treasury staff were not amendments to the Proposal in the nature of negotiations.

[30] Having examined both the questions posed by the Provincial Treasury and the answers given, I agree with that contention. The information severed from the e-mails was, like the contents of the Proposal, "supplied" within the meaning of s. 21(1)(b). Further, to the extent information now in dispute is found in e-mails sent by Provincial Treasury staff to Global, I am satisfied that this information was originally supplied by Global or would, if disclosed, reveal such information. The fact that this information is

set out in such an e-mail does not, therefore, change its character as information that was "supplied".

[31] I am satisfied the evidence supports the finding that the Proposal's contents were explicitly supplied in confidence to the province. Although a copy of the relevant portion of the Second RFP was not provided to me, at para. 4 of his affidavit, Derrien Karr deposed that section 5.6 of the Second RFP read as follows:

> All documents, including Proposals, submitted to the Province become the property of the Province. They are received and held in confidence by the Province, subject to the provisions of the Freedom of Information Protection of Privacy Act.

[32] Karr further deposed that the provincial employees who evaluated proposals submitted under both the First RFP and Second RFP "regarded all of those proposals, and all related communications from proponents, to have been supplied to and received by Provincial Treasury in confidence." He did not provide any further detail as to the basis for his knowledge that unidentified third-party provincial employees "regarded" all proposals as having been supplied and received in confidence. He did not depose that he was personally involved in either of the RFP processes.

[33] Karr also deposed, at para. 4 of his first affidavit, as to what he described as to

> … a well established and long standing understanding, between the Provincial Treasury and financial institutions (including CIBC) that often bid on requests for proposals issued by Provincial Treasury, that all proposals and all related communications received by the Provincial Treasury will be received and held in confidence.

[34] The explicit statement in section 5.6 of the Second RFP that proposals and other documents would be "received and held in confidence" by the province is mirrored by the explicit stipulation of confidentiality found in the submitted Proposal. At the bottom of each page of the Proposal, the word "confidential" appears.

[35] Arlene LaBelle's evidence, further, is that the disputed records that Global submitted in response to the Second RFP, including the Proposal, were submitted "on the understanding that the documents and plans set out by Global would be maintained in confidence" in accordance with the "confidential process followed for the RFP" (para. 10). She further deposed that Global had understood that the confidential process for the Second RFP "would be maintained for the purpose of any subsequent follow-up questions or clarification" (para. 10).

[36] The province's explicit confidentiality assurance in section 5.6 of the Second RFP is sufficient to satisfy the "in confidence" aspect of s. 21(1)(b). See, for example, Order 01-20, [2001] B.C.I.P.C.D. No. 21 and Order 01-39, [2001] B.C.I.P.C.D. No. 40. The explicit marker of confidentiality found in the Proposal itself further supports such a finding. The disputed information was explicitly supplied in confidence to the province. It is therefore not necessary for me to make any finding based on Derrien Karr's evidence as to implicit understandings of confidentiality.

[37] The disputed information in this case is found in records submitted to the public body or is found in public body records that reveal information so submitted. There is no contract with the public body. The Second RFP invited the submission of proposals and the Proposal was submitted in response, but the evidence indicates no contract with the province resulted. This is, therefore, not a case in which the contents of a proposal or tender either express or reflect contractual terms.

Harm to third-party interests

[38] As noted above, the case for harm under s. 21(1)(c) turns on Global's submissions. According to Global, there is a reasonable expectation of three of the four kinds of harm mentioned in s. 21(1)(c) resulting from disclosure of the disputed information.

[39] According to Global, the market for Internet payment services is fiercely competitive. There is a small number of competitors, including Global, the applicant, First Data Merchant Services/TD Bank and Moneris. It says disclosure of this information would give Global's competitors a competitive advantage and would result in a corresponding detriment to Global's competitive position.

[40] The severed information has, Global says, been developed or acquired over time at great expense and disclosure of this information respecting service offerings, pricing and strategic project approach would significantly harm its interests (pp. 10-12, initial submission). The information consists, Global contends, of "sensitive pricing" information. Disclosure of the information about the "overall commercial significance" of the value of the province's account, the "contractual nature of the agreement between Global and Eigen", the nature of CIBC's role in the undertaking. Specific terms and conditions of the Proposal would effectively give competitors a blueprint for the successful Proposal, Global says.

[41] Global contends that it "is expected that the Ministry will issue a new RFP in the near future" (p. 10, initial submission). Disclosure would therefore be especially harmful to its competitive interests and especially helpful to the applicant and other competitors (p. 10, initial submission). Release of this information would, Global says at p. 11 of its initial submission, allow competitors such as the applicant to gain access to

> … information relating to Global's business thinking and information (*i.e*. the framing/structure of a successful technical proposal) and would show a competitor the areas that Global chose <u>not</u> to pursue in its response. [original emphasis].

[42] At para. 23 of her affidavit, Arlene LaBelle deposed as follows:

> Were a competitor to obtain access to Global's response [*i.e*. the Proposal], the competitive playing field would be seriously impacted and the disclosure would, or could reasonably be expected to, significantly affect Global's future competitiveness.

[43] At para. 24, she expressed the view that disclosure of the information would jeopardize Global's ability to compete in future RFPs. She also deposed, at para. 24, that other competitors would, in light of the insight into Global's successful response that they would gain from disclosure of the disputed information, have their competitiveness unfairly enhance. This is, she deposed at para. 24, because they would have "an opportunity to review the competitive/commercial process of a successful competitive industry that would not otherwise be available commercially."

[44] As in other such cases, my analysis proceeds on the basis that disclosure of the disputed information to the applicant should be treated as disclosure to the world.

[45] In Order 00-10, [2000] B.C.I.P.C.D. No. 11, I said the following about the meaning of s. 21(1)(c)(i) (at p. 11):

> It is neither possible nor wise to attempt an exhaustive definition of what is meant by "harm significantly". It is something more than mere harm, but it is difficult to go further than that in defining it. At the very least, the party bearing the burden of proof must prove that the anticipated harm is, when looked at in light of the circumstances affecting the third party's competitive position or negotiating position, a material harm to that party's competitive position. Among other things, in determining whether a feared harm is "significant", the extent of the harm in relation to the assets or revenues of the third party may be relevant. Take an example where disclosure could reasonably be expected to cause a $100,000 loss to a third party. The impact of that loss on the competitive position of a struggling startup business will obviously be greater than the impact of the same loss on a large multi-national corporation. This difference was recognized in Order No. 57-1995, where my predecessor found it "highly unlikely" that disclosure of environmental test results about one gas station site could reasonably be expected to harm significantly the competitive position of Chevron Canada Limited.
>
> The LDB and the third parties did not specify, in dollar terms, the competitive harm the third parties could be expected to suffer from disclosure. On Molson's behalf, it was said in the affidavit of Scott Ellis, Molson's Vice President of Corporate Affairs for its Western Division, that disclosure of the information would allow competitors to refine existing data about Molson's business, the result being that "given the magnitude of Molson's British Columbia sales the economic significance of even a one per cent refinement represents millions of dollars" (para. 72). This was echoed in parts of the affidavit of Paul Smith, sworn in support of Labatt's case.
>
> In this case, as in many others, it is not possible to analyze these issues in quantifiable, dollar terms. Apart from the affidavit evidence just referred to, the evidence in this case is, necessarily, more qualitative than quantitative. Other cases will similarly not permit precise quantification, in monetary amounts, of gain, loss or harm. This does not mean a reasonable expectation of significant harm from disclosure has not been shown. To the contrary, for the following reasons I find that the LDB has established a reasonable expectation of significant harm to the competitive positions of Molson and of Labatt.

[46] In Order 00-22, [2000] B.C.I.P.C.D. No. 25, I dealt with a request for access to pricing information in a contract for nursing services. In finding that a reasonable expectation of significant harm had been established respecting disclosure of this information, I said the following (at p. 10):

> 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.

[47] Order 00-22 was upheld on judicial review: *Jill Schmidt, Health Services Inc.* v. *British Columbia (Information and Privacy Commissioner)*, [2001] B.C.J. No. 79, 2001 B.C.S.C. 101.

[48] In this case, unlike Order 00-10, I do not have quantitative evidence as to the magnitude of harm, in dollar terms, that is feared from disclosure of the severed information. As I have noted in previous cases rejecting opinions as to harm, the views or opinions deposed to by Arlene LaBelle in her affidavit are by no means determinative of the harm issue. There is evidence, however, that the market for Internet payment transaction-processing services is highly competitive, with a small number of competitors. There is also evidence that the applicant's competitive interests are engaged – it denies that it is a Global competitor, but acknowledges that it was a sub-contractor for a competing proposal at one time submitted by the TD Bank. There is the further evidence that, at the time of the inquiry, the Ministry was expected to issue a new RFP for a contract for Internet transaction-processing services. These factors, coupled with my review of the nature of the disputed information itself and the evidence as to the benefits that access to the disputed information would confer on competitors, persuade me that the necessary reasonable expectation of harm has been established within the meaning of s. 21(1)(c)(i).

[49] I am also persuaded that disclosure of this competitive information to the applicant could reasonably be expected to result in harm within the meaning of s. 21(1)(c)(iii), *i.e.*, there is a reasonable expectation that disclosure would result in undue loss to Global and undue gain to the applicant or direct Global competitors. The reasons for this conclusion follow.

[50] In Order 00-22, I said the following about s. 21(1)(c)(iii):

> 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.

[51] In that case, the nature of the relationships among various affected third parties weakened the contention that the loss or gain would be "undue" within the meaning of the section. This situation is closer to the circumstances in Order 00-10. As in Order 00-10, the applicant here is a direct competitor of the third parties. There is also the fact that the Ministry, according to the evidence, is expected to issue a new RFP for the same or similar services, which heightens the expectation that the applicant or other competitors could be expected to make use in competing in that new RFP, of the commercially valuable insight that the disputed information would give into Global's methods of business, technologies and strategy.

[52] As I indicated in Order 00-10, decisions under Ontario's *Freedom of Information and Protection of Privacy Act* "consistently show that if disclosure would give a competitor an advantage, usually by acquiring competitively valuable information, effectively for nothing, the gain to the competitor will be undue" (p. 18). As was the case in Order 00-10, the applicant and other competitors would gain some competitive insight from disclosure of the information in dispute here. That insight would, as in Order 00-10, provide the applicant with an undue gain that would, in my judgement, be an unfair and inappropriate competitive windfall.

[53] In light of my finding that the kinds of harm described in ss. 21(1)(a)(i) and (ii) have been established here, I need not consider Global's contention that s. 21(1)(a)(ii) has been satisfied.

4.0 CONCLUSION

[54] For the above reasons, under s. 58 of the Act, I require the Ministry to refuse to disclose the information that has been withheld under s. 21(1) of the Act.

July 24, 2003

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia