



Order F21-65

## CITY OF VANCOUVER

Elizabeth Barker  
Director of Adjudication

December 17, 2021

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**Summary:** The applicant requested information about short term rental accommodation and Airbnb in the City of Vancouver. The City refused access to the requested information under ss. 15(1) (harm to law enforcement), 19(1) (harm to individual safety), 21(1) (harm to third party business interests) and 22(1) (harm to third party personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that the City was authorized or required to refuse access to a small amount of the information under ss. 15(1)(f), 19(1)(a) and 21(1). However, none of the exceptions applied to the rest of the disputed information and the City was ordered to disclose it to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(f), 15(1)(l), 19(1)(a), 21(1), 22(1), 22(2)(a), 22(2)(b), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), 22(3)(g) and 22(4)(i).

## INTRODUCTION

[1] This inquiry is about records related to short term rental accommodation (STR) within the City of Vancouver (City). The applicant asked for information the City receives from Airbnb Ireland UC (Airbnb) about Airbnbs operating in the City. He also requested the addresses of all STRs operating under a City business licence, not just those associated with Airbnb.

[2] The City refused to disclose any information in the records to the applicant under ss. 15(1)(l) (harm to law enforcement), 19(1) (harm to individual or public safety), 21(1) (harm to a third party's business interests) and 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[3] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the City's decision. He also asserted that the City must disclose the records under s. 25 (disclosure in the public interest). Only the s. 25 issue was resolved at mediation, and the other issues proceed to inquiry.

[4] After the notice of inquiry was issued, Airbnb requested leave to participate in the inquiry. The OIPC provided Airbnb a copy of the applicant's request for review and invited it to make representations regarding ss. 21(1) and 22(1).<sup>1</sup>

## Preliminary Matters

### *Section 15(1)*

[5] In its initial submission the City says that its reasons for refusing access also include s. 15(1)(f).<sup>2</sup> This is not an exception that the City mentioned when it issued its decision refusing the applicant access to the records. The City's decision letter said it was relying on ss. 15(1)(l), 19(1), 21(1) and 22(1).<sup>3</sup>

[6] There are 12 different types of harm listed in s. 15(1).<sup>4</sup> Section 15(1)(f) is about danger to the life or physical safety of a law enforcement officer or any other person. Section 15(1)(l), on the other hand, is about harm to the security of any property or system, including a building, a vehicle, a computer system or a communication system.

[7] The notice of inquiry specified the issues to be decided in this inquiry and said that, in general, the adjudicator will only consider the issues in the investigator's fact report. The notice of inquiry also advised the parties to review the OIPC's *Instructions for Written Inquiries*, which say that parties may not add new issues without the OIPC's prior consent and the request to add a new issue must be made before the date for initial submissions. Previous orders and decisions have reinforced this by saying that a party may only introduce a new issue into an inquiry if the OIPC grants permission to do so.<sup>5</sup>

[8] The City did not obtain prior consent to add s. 15(1)(f) into the inquiry. Despite that, I have decided it is appropriate in this case to add s. 15(1)(f) into the inquiry. That is because the OIPC investigator's fact report and the notice of inquiry refer only to "s. 15" and do not say which exceptions under s. 15 are at issue. I think it would have been reasonable for the parties to conclude, based on the lack of specificity in the OIPC's fact report and the notice of inquiry, that all of

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<sup>1</sup> Pursuant to ss. 54 and 56(3) of FIPPA.

<sup>2</sup> City's initial submission at para. 47.

<sup>3</sup> City's June 17, 2019 decision letter.

<sup>4</sup> Sections 15(2) and 15(3) also contain different exceptions to disclosure.

<sup>5</sup> For instance, see Order F21-21, 2021 BCIPC 26 at para. 8 as well as the cases cited there.

s. 15 was at issue in the inquiry. Further, the applicant did not object to the City including s. 15(1)(f) as an issue and he addressed it in his inquiry submission.

### *Section 19(1)*

[9] I also see that the City's access decision letter, the OIPC fact report and the notice of inquiry all say the City is relying on s. 19(1) to refuse access to the records. They do not specify if the City means s. 19(1)(a) or s.19(1)(b), which deal with different types of harm. In its submissions, the City mentions only s. 19(1)(a), so I conclude s. 19(1)(b) is not an issue in the inquiry.<sup>6</sup>

## **ISSUES**

[10] The issues to be decided in this inquiry are as follows:

1. Is the City authorized to refuse to disclose the information in dispute under ss. 15(1)(f), 15(1)(l) and 19(1)(a) of FIPPA?
2. Is the City required to refuse to disclose the information in dispute under ss. 21(1) and 22(1) of FIPPA?

[11] Section 57(1) of FIPPA places the burden on the City to prove the applicant has no right of access to the information withheld under ss. 15(1)(f), 15(1)(l), 19(1)(a) and 21(1).

[12] Where a public body refuses access under s. 22(1), s. 57(2) puts the burden on the applicant to establish that disclosing any personal information would not unreasonably invade a third party's personal privacy. However, the public body has the initial burden of proving the information qualifies as personal information.<sup>7</sup>

## **DISCUSSION**

### **Background**

[13] The following background information was provided by the City and was not disputed by the applicant or Airbnb.<sup>8</sup>

[14] Prior to April 2018, STRs were not allowed in Vancouver outside of licensed hotels and bed and breakfasts. Despite this, thousands of STRs in Vancouver were posted online through platforms such as Airbnb.

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<sup>6</sup> City's initial submission at para. 47.

<sup>7</sup> Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

<sup>8</sup> The information largely comes from the affidavit and Exhibits of the City's Chief Licence Inspector and Director of Licensing and Community Standards (Licencing Director).

[15] Airbnb is a company established under the laws of the Republic of Ireland, and its online platform connects individuals seeking short term accommodation (guests), with those offering it (hosts). The City says that Airbnb is the largest of several platforms offering STRs in Vancouver and accounts for at least 82% of all active STR listings. The next largest platform is Expedia (including VRBO) followed by Flipkey (owned by TripAdvisor).<sup>9</sup>

[16] In 2016 the City began studying and implementing a regulatory framework for STRs in Vancouver. The goal was to address the long-term rental supply, health and safety, tax and regulatory equity and neighbourhood fit.

[17] The City amended its bylaws in April 2018 to regulate STRs.<sup>10</sup> The specific licensing requirements for STRs are set out in the City's License Bylaw 4450 (Bylaw). Under the Bylaw, a person who provides temporary accommodation in a dwelling unit, other than a bed and breakfast or hotel, is deemed an STR operator and must obtain a City business licence. STR operators with a business licence are subject to audit and inspection by the City's enforcement team.

[18] An individual is only allowed to operate an STR in their principal residence, i.e., in their own home and not in an investment property or secondary residence. Further, corporations and societies are not allowed to operate an STR in the City. Because STR operators are always an individual, the business licence is issued to the STR operator in their own name and the address on the licence is their home address.

[19] Managing licensed STR units on behalf of others is allowed as long as a Property Manager business licence is obtained.

[20] Most companies offering online STR platforms are registered outside of BC, so the City has few ways to compel them to operate within provincial and municipal rules. As a result, the City attempts to engage and negotiate with them, and on April 10, 2018, the City and Airbnb entered into a Memorandum of Understanding (MOU).

[21] Under the MOU, Airbnb agreed that its Vancouver hosts would need a City business licence number to list on Airbnb. Airbnb also agreed to regularly give the City information about active Vancouver listings, specifically each Airbnb host's name, business licence number, email address and STR address. Under the terms of the MOU, the City may use this information for the purposes of administering, enforcing and refining its bylaws related to STRs.<sup>11</sup>

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<sup>9</sup> City's initial submission at para. 15.

<sup>10</sup> License Bylaw No. 4450, Zoning and Development Bylaw No. 3575.

<sup>11</sup> MOU at para. 1.10.

[22] The City routinely and publicly discloses information on its Open Data Portal about the business licences it issues, including licences to operate STRs. The information listed for most businesses includes the name of the licensee and the address of the business. However, while the City posts some STR information on the Open Data Portal, it does not post STR operators' names or STR addresses.<sup>12</sup>

[23] The applicant made two separate access requests for information. The first was for the information Airbnb shares with the City, specifically the Airbnb host's name, the City business license number and the address of the STR. The second request was for the location information of all STRs (not just Airbnbs) listed on the City's Open Data Portal. Both requests were for the same five-month time frame.<sup>13</sup>

### **Information in Dispute**

[24] The information in dispute is in two Excel files, which I will refer to as Spreadsheet A and B.<sup>14</sup> Spreadsheet A contains the information that responds to the applicant's request for the data Airbnb provides to the City about listings on Airbnb's platform. Spreadsheet B has information responsive to the applicant's request for data about the City's STR business licences more broadly, not just the Airbnbs.

[25] The spreadsheets contain more types of information than the applicant requested. I wrote to the applicant about this, and he replied that he only wants the STR's business licence numbers and their associated STR addresses and STR operators' names.<sup>15</sup> Therefore, I conclude that the City's decision to refuse the applicant access to other types of information in the spreadsheets is not in dispute. I will make no decision about the information that is not in dispute.

[26] For added clarity, the information in dispute is as follows:

- STR addresses, STR operators' names and the associated business licence numbers in Spreadsheet A (i.e., the information from Airbnb), and
- STR addresses and the associated business licence numbers in Spreadsheet B (i.e., the City's own information).

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<sup>12</sup> The City posts the licence number and status, whether fee is paid, local area etc.

<sup>13</sup> Both requests were for information between November 1, 2018 and March 15, 2019. The City treated them as one request and responded with a single decision letter dated June 17, 2019.

<sup>14</sup> Spreadsheet A refers to the record the City and Airbnb call the "Airbnb Information" and the "Record". Spreadsheet B refers to the record the City calls the "Business Licence Information". Spreadsheet A has 12036 rows of data and Spreadsheet B has 7847 rows of data.

<sup>15</sup> The applicant confirmed this in an email dated September 23, 2021.

**Harms under ss. 15(1)(f), 15(1)(l) and 19(1)(a)**

[27] The City relies on ss. 15(1)(f) and (l) and 19(1)(a) to withhold the information in dispute in Spreadsheets A and B. What the City says about these three exceptions is combined, so I will address them together to avoid repetition.

[28] Although Airbnb's submissions were exclusively about the application of ss. 21(1) and 22(1) to Spreadsheet A (i.e., the information from Airbnb), what it says provides helpful context regarding ss. 15(1)(f), (l) and 19(1)(a), so I have considered it here as well.

[29] The relevant provisions state:

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(f) endanger the life or physical safety of a law enforcement officer or any other person,

...

(l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

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

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

[30] The standard of proof applicable to harms based exceptions, like s. 15(1) and 19(1), is "a reasonable expectation of probable harm". The Supreme Court of Canada has described this as a middle ground between that which is probable and that which is merely possible. The standard does not require proof that harm will occur on the balance of probabilities, but something well beyond the merely possible or speculative must be shown. In addition, the evidence needs to be detailed and convincing enough to establish a clear and direct connection between disclosure of the specific information and the alleged harm.<sup>16</sup>

***City's submission***

[31] The City submits that disclosing the information in dispute could reasonably be expected to:

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<sup>16</sup> All principles in this paragraph can be found in *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras 197, 199, 206 and 210; and Order F08-03, 2008 CanLII 13321 (BC IPC) at para 27.

- 1) threaten the safety, or mental or physical health of STR operators or their guests;
- 2) endanger the life or physical safety of the STR operators or their guests; and
- 3) harm the security of the STR operators' principal residences.<sup>17</sup>

[32] In support, the City provides affidavit evidence from its Chief Licence Inspector and Director of Licensing and Community Standards (Chief Licence Inspector) and from its Director of Access to Information and Privacy (Access Director).

[33] By way of background, the City says that applications for general business licences may be made for home-based businesses and there are numerous conditions that apply, including that residential premises are only to be used for administrative purposes and clients are not entitled to attend the premise at any time.<sup>18</sup> The only exception is for STRs, where the business must be carried out in the principal residence of the licence holder.<sup>19</sup>

[34] The City says it routinely posts datasets containing business licence information on its online Open Data Portal. Until a few years ago, the Open Data Portal displayed the name of the licence holder and their address regardless of whether the business was run from a home or a commercial location. However, in April 2018, the City decided to stop posting the addresses of home-based businesses on its Open Data Portal. The Access Director says that this change was due to requests from business owners, such as a medical professional who did not want their home address known to potentially dangerous clients.

[35] The Access Director says that after the City stopped posting home addresses, it continued to receive reports of concerns relating to disclosure of STR operators' names. The Access Director says that she had several discussions with the Chief Licence Inspector and City staff about STR operators being harassed and bullied on-line.

[36] The Access Director says she also spoke with an STR operator in April 2019 who was a victim of stalking and was concerned about their information being posted on the Open Data Portal. This person had changed cities to get away from the stalker and believed that even disclosing the city where they lived could pose a real danger to their health and safety. In light of these concerns, the Access Director says, the City reviewed its practices and in July 2019 it decided to stop posting STR operators' names on the Open Data Portal.

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<sup>17</sup> City's initial submission at para. 58.

<sup>18</sup> Access Director's affidavit at para. 11.

<sup>19</sup> Chief Licence Inspector's affidavit at para. 23.

[37] The Chief Licence Inspector also provides evidence about what led up to the decision to stop posting STR operators' names on the Open Data Portal. She says that there is public opposition to STRs and several individuals "have engaged in vigilante activities identifying STR Operators and harassing them online and in person."<sup>20</sup>

[38] The City has received reports of people observing, following and confronting STR operators and their guests, the Chief Licence Inspector says. She provides an example where a woman's neighbours repeatedly approached her and her mother and guests to question whether the property was a principal residence and even hired a private investigator to confirm their suspicions. These same neighbours booked the STR under false pretences for the purpose of photographing it and filing hazardous material reports to support their complaints. The City investigated and found the STR complied with the requirements of the STR program.

[39] According to the Chief Licence Inspector, numerous Twitter posts used "obscenities and other aggressive and threatening language toward STR Operators, seeking to name and shame specific STR Operators, or referred to STR listings as infestations."<sup>21</sup> She says that some Twitter posts identify Airbnb hosts by name, include their pictures and even mention their employers. She says some posts urge "protestors to occupy specific Airbnb residences and even to destroy Airbnb lock boxes on public property."<sup>22</sup> The Chief Licence Inspector provides screenshots of the Twitter posts.

[40] The Chief Licence Inspector explains that many of the Twitter posts targeted individuals for being associated with multiple STR listings and being suspected commercial operators. She says that through audits and investigations of STR operators who have been flagged for posting multiple STR listings, the City found that some were friends or family assisting for free or were property managers. Property managers are permitted under the Bylaw as long as the individual or company holds a Property Manager business licence. She explains that concerns being raised about people acting for STR operators became so prevalent that the City amended the Bylaw to clarify that a Property Manager business licence was a requirement.

[41] The STR program went live on April 18, 2018, the City Licence Inspector explains, and there was an initial five-month licensing and education period. On September 1, 2018, the City commenced enforcement against all non-compliant STR operators. She explains that the City uses its business licence data, Airbnb data, third-party screen scrape data and community complaints to identify potential violations for staff to investigate and follow-up with enforcement.

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<sup>20</sup> Chief Licence Inspector's affidavit at para. 62.

<sup>21</sup> Chief Licence Inspector's affidavit at para 63.

<sup>22</sup> Chief Licence Inspector's affidavit at para. 64.



Generally, she says, the data analytics looks for invalid business licence numbers or the same licence used at multiple addresses.

[42] The City investigates all complaints, the Chief Licence Inspector says, and encourages people who have concerns about specific STRs to file a report with the City. City staff are able to appropriately investigate the circumstances of individual STR operators and ensure appropriate procedural fairness before taking any enforcement action.

[43] The Chief Licence Inspector also says:

STR Operators are the only group of business licence holders that have been subject to this level of harassment. I believe that disclosure of the Airbnb and Business Licence Information would threaten the safety or mental or physical health of STR Operators as it would lead to their names and addresses being circulated on social media and further encourage vigilante activity. Public disclosure of the name and address of STR Operators will allow adversarial parties to independently verify suspicions and use this information to continue their harassment.<sup>23</sup>

[44] The Chief Licence Inspector explains that information about STR operators is anonymized on Airbnb and other STR platforms. She says that STR operators typically only use a first name or pseudonym and the platforms only show the general location of the STR, not an exact address. She says that STR operators are only required to disclose their address after they have accepted a booking.

[45] City staff have observed that Airbnb listings sometimes reveal biographic details about the STR operator, and the Chief Licence Inspector provides samples of listings. The listings contain information such as STR operators' first names, professions, hobbies, names and ages of their children and when the children will be active at home. STR platforms usually provide a calendar of availability, the Chief Licence Inspector says, and many STR operators list their property for when they are going to be away. She adds that disclosing the information in dispute "particularly in conjunction with STR listing information, would harm the security of residences used for STR as it would provide details of likely occupancy, contents of suites, and access points, that would enable or encourage criminal activities such as vandalism and robbery."<sup>24</sup>

#### *Airbnb's submission*

[46] Airbnb provides affidavit evidence from its Senior Campaign Manager, Canada/US (Airbnb Manager), who says that disclosing the information in

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<sup>23</sup> Chief Licence Inspector's affidavit at para. 68.

<sup>24</sup> Chief Licence Inspector's affidavit at para. 69.

dispute poses a serious risk to the safety of the “Airbnb Host community.”<sup>25</sup> He says that to protect privacy and safety, Airbnb listings only indicate an approximate location of the Airbnb. Guests only receive the Airbnb’s address when a booking is confirmed.

[47] The Airbnb Manager says that in recent years short term rentals and Airbnb have been the subject of extensive and sometimes contentious discussion and debate, including in Vancouver. He says that opponents of Airbnb “have engaged in efforts to identify and harass Airbnb Hosts and engage in or encourage property damage at Airbnb listings.”<sup>26</sup> He says that opponents have occupied or taken over host properties, held protests and picketed outside of host properties, and have caused or encouraged property damage.

[48] The Airbnb Manager provides a link to a 2019 news video that says Airbnb opponents occupied an Airbnb in Montreal and shows protesters marching in the street.<sup>27</sup> He also provided a 2018 news article about seven Airbnb protesters chanting “Justice now!” outside an apartment building in Los Angeles and awakening residents around 7:00 am. There is also a news article about protesters marching in San Francisco in 2014 and putting stickers on buildings that say the building is being used for illegal short term rentals through Airbnb or similar services.

[49] Airbnb opponents on Twitter try to identify hosts and the full address of the listings and then publicly disseminate that information, the Airbnb Manager says. In some posts opponents have tagged the host’s employer or Canada Revenue Agency with the suggestion that the host is engaged in unlawful conduct, including tax evasion. He also provides copies of online news articles that identify Airbnb hosts by name, provide the address of their Airbnb and report what the host said to the reporter. He also provides Twitter posts which are largely the same as the ones the City provided.

#### *Applicant’s submission*

[50] The applicant disagrees with the City’s approach to STRs and believes STRs legalize a harmful activity that exposes citizens to rental shortages, increased rents, noisy party-houses and increased neighbourhood violence. He says that disclosure of the requested information would give “citizens some opportunity to understand and potentially mitigate such risks.”<sup>28</sup>

[51] In response to the Access Director’s evidence about the stalking victim, the applicant says it was unreasonable for that person to expect secrecy in

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<sup>25</sup> Airbnb Manager’s affidavit at para. 39.

<sup>26</sup> Airbnb Manager’s affidavit at para. 40.

<sup>27</sup> <https://montreal.citynews.ca/video/2019/05/09/airbnb-protest-in-the-plateau/>.

<sup>28</sup> Applicant’s submission at para. 36.

running a business, and the City should have made a decision that favoured transparency and told the person that they had the option to cancel their licence and delist their unit from STR platforms. He says that “Short-term business owners can easily mitigate any of the risks described by the City by simply deactivating their listings.”<sup>29</sup>

[52] The applicant submits that the City has not established a clear and direct connection between the disclosure of specific information and the harms alleged. He claims that what the Chief Licence Inspector says about how disclosure of the information may make enforcement harder is speculation.

[53] The applicant also says that the Twitter posts the City provides in evidence are mostly examples of concerned citizens calling attention to egregious violations of the STR bylaws as well as flaws in the bylaws and the City’s enforcement process.

*City’s reply submission*

[54] The City says:

The City acknowledges that some of the Tweets relating to harassment of STR Operators do not raise to the level of a reasonable expectation of harm to life or physical safety, but submits that this evidence is nevertheless relevant to establish a reasonable expectation of harm to STR Operator mental wellbeing under section 19(1) or to STR Operators generally under section 22(2)(e).<sup>30</sup>

[55] The City also disputes the applicant’s submission that individuals invite, or consent, to harm by becoming an STR Operator. STR operators, the City says, are not required to stop engaging in a legal business and cancel their licence in order to qualify for the protection provided by ss. 15 and 19 of FIPPA.

[56] The City also says that at the time it collected the information in dispute, STR operators were proceeding on the basis that the City did not disclose STR addresses and the City expects STR operators “would have specific concerns regarding the release of their names and addresses were they aware that this information may now be disclosed.”<sup>31</sup>

*Findings - ss. 15(1)(f) and 19(1)(a)*

[57] In this case, the anticipated harms under ss. 15(1)(f) and 19(1)(a) are linked in that they both address harm to individuals. As a result, I will consider the two together, and then I will address s. 15(1)(l).

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<sup>29</sup> *Ibid.*

<sup>30</sup> City’s reply at para. 7.

<sup>31</sup> City’s reply at para. 9.

[58] To start, I have approached this case on the basis that disclosing the information would effectively be disclosure to the world.<sup>32</sup> FIPPA places no restriction on what an access applicant can do with the information that they receive under FIPPA. Thus, there is nothing in FIPPA to prevent the applicant from posting the information publicly. The evidence shows that the applicant has posted numerous times on Twitter about Airbnb and STRs, so it is reasonable to expect that he will share the information he receives in response to this access request in a public forum.

[59] I have carefully reviewed the parties' evidence and arguments about harm under ss. 15(1)(f) and 19(1)(a) and for the reasons that follow I find that the City has met its burden, but only with respect to the information about the victim of stalking. This is the individual the Access Director spoke to who was concerned their stalker could locate them if their address and name were posted on the Open Data Portal. In my consideration, there is more than a mere possibility that the stalking victim's identity and whereabouts could be discoverable to their stalker through an internet search, which would allow the stalking to continue. I find that disclosing the information about the stalking victim could reasonably be expected to endanger or threaten their safety or mental or physical health under ss. 15(1)(f) and 19(1)(a). It seems trite to say that stalking endangers a victim's physical safety and wellbeing and can cause great mental and psychological distress.

[60] The City has not said if Spreadsheets A and B actually include information about the person who is being stalked. However, if they do, ss. 15(1)(f) and 19(1)(a) apply to that person's name, address and business licence number. To be clear, I include the business licence number because, from what I understand based on the parties' evidence, the business licence number can be used to find an Airbnb listing on the Airbnb platform, and from the contents of the listing glean information about the STR operator and where they reside, even if it does not reveal the exact address.

[61] However, for the reasons that follow, I find that the City has not established that ss. 15(1)(f) and 19(1)(a) apply to the names, addresses and business licenses of the other STR operators on Spreadsheets A and B.

[62] I accept that the Twitter posts and the online print media reports the City and Airbnb provide show that Airbnb opponents have identified hosts by their full names, provided the address of their listings and identified where the host works. Some Twitter posters also have mentioned/tagged the hosts' employers, Revenue Canada and the City.

[63] Most of the Twitter posts are one-off sarcastic barbs about Airbnb, the City and how certain individuals are conducting the business of operating an Airbnb.

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<sup>32</sup> Order 03-35, 2003 CanLII 49214 (BC IPC) at para. 31.

The posts call-out Airbnb hosts for perceived violations of the STR rules and the City for allegedly failing to enforce the STR rules. Many of the Twitter posts seem to be misplaced complaints that would have been better sent directly to the City's enforcement department. While it certainly seems unfair to raise concerns about an Airbnb host's activities on Twitter in this way, none of the tweets or media articles say anything that even remotely alludes to physically harming any person or building. They do not threaten or express hostility towards the individuals for reasons related to who they are as individuals; rather they are about how individuals conduct their STR business.

[64] The following examples are illustrative:

@CityofVancouver @CanRevAgency I'd like to report an illegal Airbnb [screenshot of listing]. Airbnb host is [realty company] real estate agent who also has it listed for sale as land assembly. Capital Gains Tax ... And we have another RE agent Airbnb'ing an entire property. Unethical, illegal and taking homes away from locals.

Hey @[realty company] @rebgv [Real Estate Board of Greater Vancouver], looks like [name] is one of yours. This is a clear ethics violation. Please place it lovingly in the forgettin' place like you usually do.

1 host with 6 Airbnb listings under an expired "Personal Services" biz licence issued to a numbered company that was fined \$20,000 for providing unlicensed rental property management services. Are you sleeping, @City of Vancouver?"

More easy fines @CityofVancouver. One license ... 2 different and entire self contained suites at one house [address and Airbnb listing number plus screen shot of Airbnb listing].

@CityofVancouver [City employee] refuses to shutdown illegal Airbnb hotels in Vancouver, I started messaging guests and asking them to stop what they're doing". [includes a screen shot of messages telling hosts that Airbnb is illegal in Vancouver].

[65] It is true that some of the posts use inflammatory language such as "parasite", "bedbugs", "infestation" and the F-word to refer to STRs, Airbnb and Airbnb users generally. The harshest tweet that is about a specific individual (and the only one with profanity) says: "I doubt he has problems renting out his condos long term. He's probably short-term renting. F... him – Vancouver has 0.6% vacancy rate because of AirBnB." The City and Airbnb did not provide the thread this person is replying to, so I cannot see if it is about someone whose information actually appears in Spreadsheets A and B, and they do not say. Even if it did, however, I do not think it is reasonable to conclude that this tweet or any other provided by the City and Airbnb rises to the level of endangering or threatening harm to anyone or their property.

[66] I accept the evidence that there have been Airbnb protests outside buildings in California and in Montreal, and that in Montreal the protest included occupying an Airbnb. I also accept that there was a Twitter post encouraging people to book an Airbnb and then refuse to leave, and that a Vancouver Airbnb was booked by the STR operator's neighbours under false pretences in order to report the STR operator for allegedly breaking the rules. However, the City and Airbnb have not actually explained how this kind of activity could reasonably be expected to harm the life or safety of anyone or threaten anyone's mental or physical health.

[67] It is evident that Twitter and the online media are popular platforms for public expression and the airing of criticism and concerns. Some of what has been said on those platforms about STRs and Airbnb has been harsh, sarcastic and perhaps unreasonable or ill-informed. Some of it has been directed at named individuals. I recognize that disclosing the information in dispute may cause more of the same. However, even if that were the case, what the City and Airbnb provide as evidence does not reasonably support describing that kind of activity as the type of harm ss. 15(1)(f) and 19(1)(a) address.<sup>33</sup> The tweets and media stories do not, in my view, even remotely rise to the level of a reasonable expectation of threatening or endangering anyone's life, physical safety, physical health or mental health.

[68] I also note that the evidence in this case does not support concluding that anyone's mental well being - other than the stalking victim's - could potentially be impacted in the way past orders have said amounts to a threat to mental health under s. 19(1)(a). Past cases have said that a threat to mental health under s. 19(1)(a) means serious mental distress or anguish, not just inconvenience, upset or unpleasantness in dealing with a difficult or unreasonable person.<sup>34</sup> I agree with that interpretation and have applied it here. In my view, the City and Airbnb's evidence and submissions do not support concluding that type of harm could reasonably be expected to result from disclosure - with the exception of the information about the person being stalked.

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<sup>33</sup> For example: Order F10-22, 2010 BCIPC 33 (CanLII) - s. 15(1)(f) applied to the names of police officers who work undercover; Order 01-01, 2001 CanLII 21555 (BCIPC) - ss. 15(1)(f) and 19(1)(a) applied to information that could identify abortion service providers because there was evidence of a reasonable expectation of harassment, stalking and violence, including attempted murder; Order 03-08, 2003 CanLII 49172 (BC IPC) - ss. 15(1)(f) and 19(1)(a) applied because the evidence established the applicant had a pattern of threatening violence or death; Order F15-39, 2015 BCIPC 42 (CanLII) - s. 15(1)(f) applied to information about jail cell occupancy, schematics, layouts and staffing levels; Order F20-54, 2020 BCIPC 63 (CanLII) - s. 19(1)(a) applied as there was evidence of verbal and physical violence and how the impact on employees would rise to level of a threat to their "mental health".

<sup>34</sup> See Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 74.

[69] In conclusion, I find that ss.15(1)(f) and 19(1)(a) apply to the information about the person who is being stalked but they do not apply to the balance of the information in dispute.

*Security of property, s. 15(1)(l)*

[70] The City and Airbnb also submit that disclosing the information in dispute could harm the security of the STR properties.<sup>35</sup>

[71] The City and Airbnb point to a Twitter post which they say encourages protesters to vandalize Airbnb key lock boxes. However, I find that post has been misconstrued by the City and Airbnb. The post replies to a tweet about how the *municipality of Montreal* destroyed Airbnb key lock boxes attached illegally to public infrastructure. The poster says that is a fantastic idea and asks the City “to please take note.” It is inaccurate to say that this is a tweet encouraging Airbnb opponents to vandalize key lock boxes. I do not consider this post to be persuasive evidence that disclosing the information could reasonably be expected to result in key lock boxes being vandalized. While the City and Airbnb do not need to prove harm will occur on the balance of probabilities, something well beyond the merely possible or speculative must be shown. I find their evidence and argument about key lock boxes being vandalized fails to reach this required level of proof.

[72] The City and Airbnb also submit that disclosing the information could provide the extra detail needed, in combination with the Airbnb listing, to enable or encourage criminal activities such as vandalism and robbery, thereby harming the security of residences used for STRs. Their evidence, which I accept, is that Airbnb listings sometimes include biographic details and photos that can reveal where doors and windows are located, as well as when the STR is available to be booked. However, I am not persuaded by what the City and Airbnb say about harm under s. 15(1)(l) because their evidence and submissions lack explanatory detail and do not show a clear and direct connection between disclosure of the specific information and a reasonable expectation of the harms alleged. In particular, there is no explanation about how a robber or vandal, knowing the STR’s address and calendar of future availability, would be any further ahead. I fail to see how the information would benefit them because it does not provide any assurance that when the date actually arrives, the STR will be unoccupied or devoid of security. The City is not required to prove that robbery or vandalism will occur on the balance of probabilities, but something well beyond the merely possible or speculative must be shown. I find that the City has not established that is the case here.

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<sup>35</sup> The City and Airbnb did not submit that disclosure could cause any of the other harms listed in s. 15(1)(l).

[73] The City and Airbnb also refer me to a Twitter post that encourages Airbnb opponents to occupy an Airbnb and not leave until forced to by the Residential Tenancy Branch or the police. The Airbnb Manager provides a link to a news video about a 2019 protest against Airbnb in Montreal, and the reporter says that an Airbnb was occupied. There was no information that sheds light on whether the Montreal protesters chose that particular Airbnb because they already had its address and targeted it for that reason.

[74] It is obvious that if protesters want to book an Airbnb under false pretences for the purpose of occupying it until forced to leave, they could pick any random listing they found desirable on the Airbnb platform. There would be no need to first have an address or the name of the host. I note that in the present case, there was no information of any particular STR or STR operator being targeted for that kind of occupation. The Twitter posts and media articles do not mention occupation of a specific STR or show that protesters are aiming to occupy a certain person's STR. I am not persuaded that having access to the information in dispute will increase the probability of this type of occupation occurring.

[75] The City and Airbnb also suggest that disclosing the information in dispute could lead to protests outside STRs, similar to what happened in California and Montreal. However, even if access to the names and addresses result in protests outside a specific Airbnb, I do not accept that this could reasonably be categorized as harm to the security of a property or building. The City and Airbnb did not provide sufficient explanatory evidence to show how it would amount to that type of harm.

[76] For the City to successfully establish that s. 15(1)(l) applies, it must show that disclosing the information in dispute could reasonably be expected to harm the security of an STR. I find that the evidence and submissions provided by the City and Airbnb fail to show the necessary direct connection between disclosure of the information and harm under s. 15(1)(l). I conclude that s. 15(1)(l) does not apply to the information in dispute.

*Summary, ss. 15(1)(f), 15(1)(l) and 19(1)(a)*

[77] In summary, I find that ss. 15(1)(f) and 19(1)(a) apply to the information about the person who is being stalked but they do not apply to the balance of the information in dispute. I also find that the City has not established that s. 15(1)(l) applies to the information.



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

[78] The City and Airbnb both say that the information in Spreadsheet A (i.e., the information from Airbnb) must be withheld under s. 21(1).<sup>36</sup>

[79] 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.<sup>37</sup> The following parts of s. 21(1) are relevant in this case:

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

(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,...

[80] The principles for applying s. 21(1) are well established. All three of the following elements must be met in order for s. 21(1) to apply:

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

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<sup>36</sup> City's initial submission at para. 73 and Airbnb's initial submission at paras 2-3. The City did not apply s. 21(1) to Spreadsheet B. Airbnb made no submissions about Spreadsheet B and it did not say s. 21(1) applied.

<sup>37</sup> A third party is any person, group of persons or organization other than the person who made the access request, or a public body. See FIPPA, Schedule 1 for definitions.

*Type of information, s. 21(1)(a)*

[81] The information in dispute in Spreadsheet A is the names of Airbnb hosts, the addresses of their STRs and their business licence numbers.

[82] The City submits the information is registration details of Airbnb's customers, so it is commercial or financial information.

[83] Airbnb says the information is its commercial information because the information relates to commercial transactions between itself and hosts using its platform. Airbnb says it collects the information from hosts who use Airbnb's platform and pay a service fee for confirmed bookings.

[84] The Applicant's submission about s. 21 is limited to arguing that exception does not apply because the information is not associated with the buying, selling or exchange of Airbnb's goods or services.

[85] FIPPA does not define the terms "financial" and "commercial". Past orders have said that "commercial" information relates to commerce, or buying, selling, exchanging or providing of goods and services, and the information does not need to be proprietary in nature or have an independent monetary or marketable value.<sup>38</sup> Further, previous orders have decided that information about money and its uses, for instance, prices, expenses, hourly rates, contract amounts and budgets is "financial" information.<sup>39</sup>

[86] In my view, the information is not financial information because it provides no details about money, fees, rates or earnings, etc. Instead, I find it is commercial information of or about Airbnb. The information is about Airbnb's business, namely the hosts who pay it fees in exchange for Airbnb's services, and it is, in essence, a customer list. The information is also commercial information in the sense that Airbnb provided it to the City for a business purpose, namely to comply with the terms of the MOU.

*Supplied in confidence, s. 21(1)(b)*

[87] For s. 21(1)(b) to apply, the commercial information must have been supplied, implicitly or explicitly, in confidence. Both the City and Airbnb submit that Airbnb supplied the information to the City explicitly in confidence.

[88] The City says that it agreed in the MOU to treat the information disclosed pursuant to the MOU as strictly confidential and as commercial information

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<sup>38</sup> Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 17; F20-23, 2020 BCIPC 27 at para. 10; F19-03, 2019 BCIPC 04 at para. 43.

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

supplied in confidence by Airbnb. The City also says that it has taken steps to ensure the information supplied by Airbnb is kept confidential, including restricting access to a limited number of approved employees.

[89] Airbnb says that under the express terms of the MOU, Airbnb supplied the information to the City in strict confidence and reasonably expected that it would remain confidential. Airbnb cites paragraph 1.9 of the MOU in support:<sup>40</sup>

1.9 The City will treat the Disclosed Data provided to the City as strictly confidential and will comply with all applicable laws (including applicable privacy laws) with respect to the Disclosed Data. The City agrees that the Disclosed Data is Personal Information, a trade secret and commercial information supplied in confidence by Airbnb.

[90] I find the MOU is persuasive evidence of an objectively reasonable expectation of confidentiality at the time Airbnb gave the information to the City. For that reason, I am satisfied that that Airbnb supplied the information in Spreadsheet A to the City in confidence.

*Reasonable expectation of harm, s. 21(1)(c)*

[91] The standard of proof for harm under s. 21(1) is the same as it is for ss. 15(1)(f),(l) and 19(1)(a) (see paragraph 30 above).

*Submissions, s. 21(1)(c)*

[92] The City and Airbnb submit that ss. 21(1)(c)(i), (ii) and (iii) apply to the Airbnb hosts names, their STR addresses and the business licence numbers in Spreadsheet A.

[93] First, I am not persuaded that disclosing the business licence numbers could reasonably be expected to cause the s. 21(1)(c) harms the City and Airbnb claim. The business licence numbers are posted publicly on the City's Open Data Portal and STR operators are required to clearly indicate their licence number in all of their marketing.<sup>41</sup> If there were any potential harm from disclosing the business licence numbers, it has already occurred and would not be the result of disclosure in response to the applicant's FIPPA access request. For that reason, I do not see a clear and direct connection between disclosure of the business licence numbers in the spreadsheets and the alleged harms. I conclude that s. 21(1)(c) does not apply to the business licence numbers.

[94] However, for the reasons that follow, I find that s. 21(1)(c)(iii) applies to the Airbnb hosts' names and their STR addresses.

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<sup>40</sup> Airbnb's submission at paras. 41-42.

<sup>41</sup> Bylaw, para. 25.1(8) and Chief Licence Inspector's affidavit at Exhibit E.

[95] The City does not make any submissions specific to s. 21(1)(c)(iii) other than to say that it defers to Airbnb on the issue of whether disclosure could reasonably be expected to result in undue financial loss or gain.

[96] Airbnb says that the information in Spreadsheet A is effectively its customer list, which it created as a result of significant effort to attract and build relationships with hosts in Vancouver. The Airbnb Manager says that Vancouver is one of the most booked Airbnb regions in the country and the STR business in Vancouver is competitive. Airbnb believes that its competitors would use the names and addresses of Airbnb's hosts to contact them and attempt to persuade them to switch to the competitors' platforms. The Airbnb Manager provides an example of the competitive nature of the STR business by providing details about a VRBO marketing campaign that is recruiting hosts from other platforms.<sup>42</sup>

[97] Airbnb believes its competitors would be able to take advantage of Airbnb's cooperation with the City to access valuable competitive information for free which they could use to make inroads on Airbnb's market share. The Airbnb Manager says that this would be a significant harm to Airbnb's competitive position and be a loss of revenue.

[98] The Airbnb Manager says that to his knowledge, none of Airbnb's competitors in Vancouver have also entered into data-sharing arrangements with the City for the purpose of administering or enforcing the Bylaw. For that reason, Airbnb does not have access to the same type of information about its competitors' hosts.

[99] Airbnb submits that a reduction in hosts would mean a loss in the revenue it earns from the service fees hosts pay. Airbnb says that loss would be undue "because it would be unfair and inappropriate for Airbnb to lose Hosts and revenue as a result of the disclosure of the Record, while Airbnb's competitors could use the Record to 'reap a competitive windfall'."<sup>43</sup>

*Findings - s. 21(1)(c)(iii)*

[100] Establishing that s. 21(1)(c)(iii) applies to the Airbnb hosts' names and their STR addresses in Spreadsheet A, requires establishing two things: 1) that disclosure could reasonably be expected to result in a financial loss or gain and 2) that the loss or gain is "undue".

[101] For the reasons that follow, I find that disclosure of the Airbnb hosts' names and their STR addresses could reasonably be expected to result in financial loss to Airbnb and financial gain to its competitors.

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<sup>42</sup> Airbnb Manager's affidavit at para. 49, exhibit LL.

<sup>43</sup> Airbnb's initial submission at para. 62.

[102] First, I have once again approached this analysis on the basis that disclosing the information would effectively be disclosure to the world, including Airbnb's competitors. In addition, I accept Airbnb's evidence that Vancouver is a competitive market for companies providing online listing platforms for STRs. I also accept that the Airbnb hosts' names and their STR addresses together are, in essence, Airbnb's customer list. Given the competitive nature of the STR market, it is reasonable to conclude that Airbnb's competitors would use the customer list to contact the hosts directly for the purposes of marketing their own platforms. If any of Airbnb's hosts are persuaded to switch platforms, Airbnb would lose the revenue generated by the hosts' service fees and the competitor would gain fees. In that way, I find the Airbnb hosts' names and their STR addresses are valuable competitive information whose disclosure could reasonably be expected to result in a financial loss to Airbnb and a financial gain to its competitors.

[103] Turning to whether the financial loss and gain would be "undue", previous orders have said that the meaning of "undue" financial loss or gain includes a loss or gain that is excessive, disproportionate, unwarranted, inappropriate, unfair or improper, having regard for the circumstances of each case.<sup>44</sup> Past orders have also said that if the disclosure would give a competitor valuable competitive information for free and allow them to make inroads into another's market share that would be undue gain to the one and undue loss to the other.<sup>45</sup>

[104] The context for this case is that Airbnb has chosen to enter into an MOU and voluntarily cooperate with the City's efforts to regulate and enforce the Bylaw. For that reason, Airbnb shares information about its hosts and their listings with the City. There is no evidence that Airbnb's competitors do the same or require their hosts to obtain a City business licence to list on their platforms.

[105] If the hosts' names and addresses in Spreadsheet A were disclosed, Airbnb would be at a relative disadvantage when it comes to its competitors. Its competitors would acquire valuable competitive information (i.e., Airbnb's customer list) for free but Airbnb would not have equal access to information about the competitors' customers or have the same ability to contact them directly for the purposes of marketing. The disadvantage to Airbnb would flow solely from its willingness to cooperate with the City and share information that assists the City in regulating STRs. Given that context, I find that any financial loss from Airbnb's hosts being lured away, and the competitors' resulting financial gain, would be unfair and inappropriate. In that sense it would be an "undue" financial loss to Airbnb and an "undue" financial gain to its competitors.

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<sup>44</sup> Order 00-10, 2000 CanLII 11042 at pp. 17-19; Order F16-17, 2016 BCIPC 19, at para. 33.

<sup>45</sup> Order 00-10, *ibid*, at pp. 17-19; Order F09-22, 2009 CanLII 63564 (BC IPC) at para. 37; Order F15-66, 2015 BCIPC 72 at paras. 36-39.

[106] In conclusion, I find that the evidence and submissions provided by the City and Airbnb establish that s. 21(1)(c)(iii) applies to the Airbnb hosts' names and the STR addresses in Spreadsheet A. There is a sufficiently clear and direct connection between disclosure of that information and a reasonable expectation of undue financial loss to Airbnb and an undue financial gain to its competitors.

[107] Because I find that s. 21(1)(c)(iii) applies to the Airbnb hosts' names and the STR addresses, it is unnecessary to decide if ss. 21(c)(i) and (ii) also apply.

*Summary, s. 21(1)*

[108] In summary, the City has established that the information it withheld under s. 21(1) in Spreadsheet A (i.e., the information from Airbnb), is commercial information of or about Airbnb and that Airbnb supplied that information to the City in confidence. It has also established that disclosing the Airbnb hosts' names and their STR addresses could reasonably be expected to result in undue financial loss to Airbnb and undue financial gain to Airbnb's competitors under s. 21(1)(c)(iii). Therefore, s. 21(1) applies to the Airbnb hosts' names and the STR addresses in Spreadsheet A and the City is required to refuse to disclose that information to the applicant.

[109] However, I find that s. 21(1) does not apply to the business licence numbers in Spreadsheet A because the City has not established that disclosing those numbers could reasonably be expected to cause harm under s. 21(1)(c).

***Unreasonable Invasion Personal Privacy – s. 22(1)***

[110] Section 22(1) says that the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[111] Given my finding above that s. 21(1) applies to some information, the only information remaining at issue under s. 22(1) is the business licence numbers in Spreadsheet A (i.e., the information from Airbnb) and the business licence numbers and STR addresses in Spreadsheet B (i.e., the City information).

*Personal information*

[112] Section 22 only applies to personal information, so the first step is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." Information is about an identifiable

individual when it is reasonably capable of identifying an individual, either alone or when combined with other available sources of information.<sup>46</sup>

[113] Contact information is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”<sup>47</sup> The purpose of the contact information exclusion from the definition of personal information is to clarify that public bodies need not have s. 22(1) privacy concerns about disclosing information that is intended as a means of communicating with a person at their place of work, in a business capacity.<sup>48</sup> Whether information is contact information in any given circumstance depends on its context.<sup>49</sup>

[114] The City and Airbnb do not say if they think a business licence number is personal information. However, they both submit that an STR address is recorded information about an identifiable individual and it is not contact information.

[115] The City says the STR addresses are not contact information because the addresses are supplied by STR operators for the purpose of applying for the licence. The City gives licence applicants the choice of how to receive communications from the City, and it says the majority choose communication by email, so that is the primary method. However, the City says that enforcement related communications are sent via registered mail to the STR address.<sup>50</sup> The City did not identify which specific addresses in the spreadsheet it has used to communicate with STR operators.

[116] According to the City, STR operators typically do not provide their names and the STR address in public advertisements for their listing. In general, they use only a first name or pseudonym and the general location of the STR. Each STR operator only needs to disclose the actual address once they accept a booking.<sup>51</sup> What Airbnb says about this parallels the City’s submission. In addition, the Airbnb Manager says that when Airbnb communicates with hosts, it does so through the platform and in some cases by email.<sup>52</sup>

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<sup>46</sup> See for example: Order F16-38, 2016 BCIPC 42 (CanLII) at para. 112; Order F13-04, 2013 BCIPC 4 (CanLII) at paras. 22- 23; Order P12-01, 2012 BCIPC 25 (CanLII) at para. 85.

<sup>47</sup> See FIPPA, Schedule 1 for definitions.

<sup>48</sup> Order F08-03, 2008 CanLII 13321 at para. 82.

<sup>49</sup> Order F15-32, 2015 BCIPC 35 (CanLII) at para. 15; Order F14-45, 2014 BCIPC 48 (CanLII) at para. 41; Order F19-15, 2019 BCIPC 17 (CanLII) at para. 43; F21-35 Order F08-03, *ibid*, at para. 82.

<sup>50</sup> City’s initial submission at paras. 92-96. Chief Licence Inspector’s affidavit at para. 27.

<sup>51</sup> City’s initial submission at para. 94. Chief Licence Inspector’s affidavit at paras. 55-56 and Exhibits E-G.

<sup>52</sup> Airbnb Manager’s affidavit at para. 12.

[117] The applicant submits that the information in dispute is about a business, not an individual. He says that STR operators “are running a business as sole proprietorship,” and for that reason they have no privacy interests under s. 22.<sup>53</sup>

*STR addresses*

[118] For the following reasons, I find that that the STR addresses are not personal information because they are “contact information”.

[119] While the addresses in Spreadsheet B are the STR operators’ home addresses, they are also the addresses where their businesses operate. The fact that a location is a home does not mean that it cannot also be a business if the context reveals that is how it is being used. In this case, the addresses are where the STR operators’ customers come to receive the services they have paid the STR operator to provide. In addition, the City’s submissions establish that an STR operator provides their address to the City because it is a requirement of obtaining a licence to operate a business at that specific address. The STR operator declares the address of their business on their licence application.

[120] I am satisfied that the STR addresses are “business addresses” and, for that reason alone, they meet the definition of contact information. Contact information means “information to enable an individual at a place of business to be contacted **and includes the ... business address ...**” [emphasis added].

[121] While not necessary, I also considered the City’s argument that the STR addresses are not information that would enable an individual at a place of business to be contacted. Contrary to what it submits, the City’s own evidence shows that the City uses the addresses to contact STR operators for reasons related to their STR businesses. For instance, the City says that, on occasion, it sends regular mail to STR operators who have chosen that means of communicating about their business licence. The City also sends registered mail when it commences enforcement action related to a business licence. The City also says that it investigates complaints about STRs and conducts on-site inspections. The latter, presumably, requires going to the STR address to meet with the STR operator, at least in some cases. Furthermore, I recognize that STR operators can be present at the address when a renter is there. Any business-related contact a renter has with the STR operator at the STR address would be contact at the place of business. I find that the STR addresses enable STR operators to be contacted at their place of business.

[122] In conclusion, I find the STR addresses are “contact information”, so they do not meet the definition of “personal information”.

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<sup>53</sup> Applicant’s submission at para. 44.



*Business licence numbers*

[123] I find that the business licence numbers, in the context of these spreadsheets, are about identifiable individuals. That is because each business licence number is associated with other information (i.e., on the same row in the spreadsheet) and that would allow one to determine the identify of the person who holds the business licence.

[124] For instance, in Spreadsheet A the business license numbers are about identifiable individuals because they are directly associated with the STR operators' names. While the business licence numbers in Spreadsheet B are only associated with STR addresses, these are home addresses that can be combined with publicly available information to identify the property owner. One can search publicly accessible data at BC Assessment and the Land Title and Survey Authority of British Columbia to learn a property owner's identity.<sup>54</sup> I conclude that each business license number associated with an STR address can also be linked back to an identifiable individual.

[125] Because the business licence numbers are about identifiable individuals they are personal information.<sup>55</sup>

*Information about a licence, a permit or any other similar discretionary benefit, s. 22(4)(i)*

[126] The second step in the s. 22 analysis is to determine if the information that I have concluded is personal information falls into any of the types of information listed in s. 22(4). If s. 22(4) applies, disclosure would not be an unreasonable invasion of a third party's personal privacy.

[127] Although I found above that only the business licence numbers are personal information, for the sake of completeness, I will also consider the STR addresses at this step.

[128] The parties both raise s. 22(4)(i), which says the following:<sup>56</sup>

22 (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(i) the disclosure, in respect of

(i) a licence, a permit or any other similar discretionary benefit, or

(ii) a degree, a diploma or a certificate,

<sup>54</sup> Obtaining a parcel identifier (PID) from BC Assessment allows one to obtain title information from LTSA.

<sup>55</sup> There is no question that the business licence numbers are not "contact information".

<sup>56</sup> Section 22(4)(i)(ii) is not engaged because it is about "a degree, a diploma or a certificate".

reveals any of the following with respect to the applicable item in subparagraph (i) or (ii):

- (iii) the name of the third party to whom the item applies;
- (iv) what the item grants or confers on the third party or authorizes the third party to do;
- (v) the status of the item;
- (vi) the date the item was conferred or granted;
- (vii) the period of time the item is valid;
- (viii) the date the item expires, or

[129] In order for s. 22(4)(i) to apply, the information must meet the following two criteria:

1. it must be about a licence, a permit or any other similar discretionary benefit, and
2. reveal the type of information listed in s. 22(4)(iii) - (viii).

[130] For the reasons that follow, I find that both criteria are met.

*Parties' submissions, s. 22(4)(i)*

[131] The City says that its authority to grant business licences under the Bylaw comes from s. 272 of the *Vancouver Charter*, which says:

By-laws respecting business regulation and licensing

272 (1) The Council may from time to time make by-laws

...

(a) for providing for the licensing of any person carrying on any business, trade, profession, or other occupation;

...

(j) for revoking or suspending any licence;

...

(k) for delegating to the Chief Licence Inspector, where deemed proper, the power to grant a licence in cases where he is satisfied that the applicant therefor has complied with the requirements of the relevant by-laws;<sup>57</sup>

[132] The City does not dispute that the information at issue is about "licences". Rather, it submits s. 22(4)(i) does not apply because a business licence to operate an STR is "mandatory" and not a "discretionary benefit".

<sup>57</sup> *Vancouver Charter*, S.B.C. 1953, c. 55.

[133] The City submits that a licence is not a discretionary benefit because the Bylaw says: “Subject to the provisions of this section 4, the Chief Licence Inspector shall issue a licence to an applicant.”<sup>58</sup> The Chief Licence Inspector says, “With specific regard to a business licence for an STR Operator, I understand that my powers to issue a licence is nondiscretionary and I must issue a licence if the requirements for the licence are met. Further, I may only refuse to issue or suspend a licence on the basis expressly set out in the Licence By-law.”<sup>59</sup>

[134] However, the City also says that in certain circumstances the Chief Licence Inspector will refer the application to City Council to decide.<sup>60</sup> The City says, “the ability of the Chief Licence Inspector to refer an application for a licence to Council, in effect, merely codifies the fact that Council always retains residual discretion over the issuance of a licence as it has statutory authority over the licensing scheme.”<sup>61</sup>

[135] The applicant says that s. 22(4)(i) applies because the Bylaw says that the Chief Licence Inspector “may” refer any application for a licence to Council who may grant or refuse the application. He says that the use of the word “may” is fatal to the City’s assertion that the business licence is a non-discretionary benefit.<sup>62</sup>

*Interpretative approach to s. 22(4)(i)*

[136] The City does not dispute that a business licence to operate an STR is a “licence”; instead, it says that it is not the type of licence meant by s. 22(4)(i). It argues that there are licences that are “mandatory” and licences that are “discretionary benefits” and s. 22(4)(i) only applies to the latter. The City cites Order F08-14 in support of this interpretation.<sup>63</sup>

[137] Order F08-14 is the only previous BC order that has considered the application of s. 22(4)(i) to a licence. The information in Order F08-14 included driver’s licence details. Adjudicator Francis noted that there were no previous BC orders to assist her in deciding how to apply s. 22(4)(i).<sup>64</sup> Instead, she followed the approach the Alberta Information and Privacy Commissioner took when considering the same provision in Alberta’s *Freedom of Information and Protection of Privacy Act*. In Alberta Order 98-018, then Commissioner Clark said that the words “other similar discretionary benefit” imply that “licence” and “permit” must also have the characteristic of being a “discretionary benefit”. He

<sup>58</sup> City’s initial submission at para. 104 and reply at paras. 15-19.

<sup>59</sup> Chief Licence Inspector’s affidavit at para. 21.

<sup>60</sup> Under ss. 4(3) and (4) of the Bylaw.

<sup>61</sup> City’s reply at para. 18.

<sup>62</sup> Applicant’s submission at paras. 54-55.

<sup>63</sup> Order F08-14, 2008 CanLII 41152 (BC IPC).

<sup>64</sup> In other BC orders, the information was clearly not even about a licence.

did not question that the hunting licence in that case was a “licence”; instead, his analysis focussed on whether it was also a discretionary benefit.<sup>65</sup> Adjudicator Francis did the same with the driver’s licence. In both cases, the outcome was based on whether the statute that authorized the licences said the decision-maker “may” issue or “must” issue the licence. Neither Commissioner Clark nor Adjudicator Francis provided analysis about why they adopted this two-part interpretation.

[138] For the reasons that follow, my interpretation of s. 22(4)(i) differs from Orders F08-14 and 98-018, and I conclude that if the information relates to a licence that suffices to bring s. 22(4)(i) into play. One does not also need to demonstrate that the licence is not, to use the City’s terminology, a “mandatory” licence.

[139] The prevailing rule of statutory interpretation is that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act, and the intention of the Legislature.<sup>66</sup>

[140] FIPPA does not define “licence”.<sup>67</sup> The *Canadian Oxford Dictionary* defines it as “a permit from an authority to own or use something...do something...or carry on a trade.” The word “permit” is defined as “a document granting legal permission”.<sup>68</sup>

[141] Answering the question of what is meant by “licence” in s. 22(4)(i) also requires considering its placement within the phrase “licence, permit or any other similar discretionary benefit”. The structure of the provision, i.e., specific examples followed by a shared general characteristic, conveys that being a discretionary benefit is an inherent characteristic of licences and permits. The provision conveys that licences and permits are the precise types of records the Legislature meant to be captured by s. 22(4)(i). Section 22(4)(i) does not require, as the City suggests, the added step of determining whether or not a licence is “mandatory”.

[142] In my view, the City’s interpretation is not supported by the objects of FIPPA or the purposes of s. 22(4)(i). The objects of FIPPA are to make public bodies more accountable to the public and to protect personal privacy by giving the public a right of access to records, subject only to limited exceptions. The

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<sup>65</sup> Order 98-018, *Alberta Environmental Protection (Re)*, 1999 CanLII 19658 (AB OIPC) at para. 18. The *Wildlife Act*, S.A. 1984, c. W-9.1 uses “may issue” rather than “must issue” the licence.

<sup>66</sup> *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para. 21.

<sup>67</sup> There is also no definition in the *Interpretation Act*, RSBC 1996, c 238.

<sup>68</sup> *Canadian Oxford Dictionary*, 2<sup>nd</sup> ed, (Ontario: Oxford University Press Canada, 2004). Examples in definition omitted.

Supreme Court of Canada has considered the general purpose of access to information legislation and has affirmed that access laws facilitate democracy by ensuring that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable.<sup>69</sup>

[143] Section 22(4)(i) fosters FIPPA's goals of protecting personal privacy while at the same time ensuring public bodies are transparent and accountable when granting licences, permits and similar benefits of a discretionary nature.<sup>70</sup> How a public body decides who gets a licence, permit or other discretionary benefit is an area where public scrutiny is desirable. It allows the public to be assured that the decision-maker is using open and equally-applied principles and is making decisions that are in the public's interest. This provision also allows individuals to satisfy themselves that appropriate permits and licences have been obtained or granted.

[144] The argument that s. 22(4)(i) does not apply to what the City says are "mandatory" licences implies that the Legislature decided that the purposes fostered by s. 22(4)(i) should not apply equally to all licences and permits granted by public bodies. I am not persuaded by what the City says that there was any legislative intention to carve-out an exception in s. 22(4)(i) for something called a "mandatory" licence. I see no language in s. 22 or elsewhere in FIPPA that would support that interpretation of s. 22(4)(i). Further, I find the approach taken in Order F08-14 and Order 98-018 is not persuasive due to the absence of explanation and interpretative detail.

[145] Therefore, I conclude that if the information at issue relates to a licence or permit, s. 22(4)(i) is engaged. Nothing further about the nature of the licence or permit must be established.

*Findings, s. 22(4)(i)*

[146] As previously mentioned, there are two criteria to meet for s. 22(4)(i) to apply. The first is that the information must be about "a licence, a permit or any other similar discretionary benefit". In this case, I find that the information in dispute is about a "licence". Section 272 of the *Vancouver Charter* clearly authorizes the City to make bylaws to provide for the licensing of businesses. I accept the City's evidence that it made the Bylaw for that purpose, and the information at issue relates to licences issued under the Bylaw. I am satisfied that licences issued under the Bylaw grant legal permission or authorization to conduct business in Vancouver, and for that reason, they are "licences" under s. 22(4)(i).

<sup>69</sup> *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC) at para. 6.

<sup>70</sup> For a similar statement, see Order F10-05, 2010 BCIPC 8 (CanLII) at para. 36.

[147] As discussed above, it is not necessary to go further and decide whether the STR business licences are also “discretionary benefits”. If it were, though, I would start by noting that not only did the City acknowledge it “always retains residual discretion over the issuance of a licence”, but s. 275 of the *Vancouver Charter* says the following about the City’s business licences:

Powers discretionary

275. The granting or refusing of a licence to an applicant therefor, and the revocation or suspension of a licence which has been granted, shall be deemed to be in the discretion of the Council, and the Council may grant, refuse, revoke, or suspend a licence without stating any reason therefor, save in respect of a licensee who by reasonable efforts cannot be found, the Council shall not revoke a licence without giving the holder thereof an opportunity to be heard.

[148] On the other hand, it is necessary to decide if the second of the two criteria in s. 22(4)(i) is met, and I find that it is. The information reveals the type of information listed in s. 22(4)(i)(iv). The business licence numbers and the STR addresses reveal what the licences authorize the licence-holders to do: operate an STR business at that specific address.

[149] While the names of the STR operators were not in dispute under s. 22(1),<sup>71</sup> if they had been, it seems that s. 22(4)(iii) would apply. The name of the STR operator is “the name of the third party to whom the item applies”.

[150] In conclusion, I find that s. 22(4)(i) applies to the business licence numbers in Spreadsheet A and the business licence numbers and STR addresses in Spreadsheet B. Disclosing that information would not be an unreasonable invasion of third-party personal privacy under s. 22(1).

## CONCLUSION

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

1. Subject to items 2 and 3 below, the City is not authorized or required to refuse the applicant access to the information in dispute under ss. 15(1)(f), 15(1)(l), 19(1)(a), 21(1) or 22(1).
2. The City is authorized by ss. 15(1)(f) and 19(1)(a) to refuse the applicant access to any information in the two spreadsheets that is about the person who is being stalked.

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<sup>71</sup> I found s. 21(1) applied to the STR operators’ names in Spreadsheet A and the information in dispute in Spreadsheet B did not include names.

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3. The City is required by s. 21(1) to refuse to disclose the Airbnb hosts' names and the STR addresses in Spreadsheet A.
  4. The City is required to give the applicant access to the information in dispute that is not described in items 2 and 3 above.
  5. The City must concurrently copy the OIPC Registrar of Inquiries with the City's cover letter and the records sent to the applicant in compliance with this order.

[152] Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by January 28, 2022.

December 17, 2021

**ORIGINAL SIGNED BY**

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Elizabeth Barker, Director of Adjudication

OIPC File No.: F19-79634