



Order F26-52

## BOARD OF EDUCATION OF SCHOOL DISTRICT 36 (SURREY)

David S. Adams  
Adjudicator

June 19, 2026

CanLII Cite: 2026 BCIPC 64  
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 64

**Summary:** An applicant requested information related to bids to build an elementary school from the Board of Education of School District 36 (the District) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). One of the bidders (the third party) objected to the District's decision to disclose to the applicant some of the information contained in its bid. The adjudicator found that s. 21(1) (harm to third party business interests) did not apply to any of the information the District proposed to disclose and confirmed the District's decision to disclose it to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, s. 21(1)(c).

### INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a land-use consulting group (the applicant) requested copies of the pre-qualification documents and submission requirements for contractors who submitted bids to the Board of Education of School District 36 (the District) for the contract to construct Ta'talu Elementary School (the Project), a copy of each construction contractor bid submitted, and a copy of the construction contract that was eventually awarded.

[2] In response to this request, the District located bid documents submitted by a construction company (the third party). It notified the third party, under s. 23(1), that it was planning to give the applicant access to some of the information in the responsive records, but that it planned to withhold some of the information under ss. 21(1) (harm to third-party business interests) and 22(1) (harm to third-party personal privacy).<sup>1</sup>

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<sup>1</sup> As I will explain below, the information the District proposes to withhold is not at issue in this inquiry.

[3] The third party objected to the District's decision to give access to some of the information and requested that the Office of the Information and Privacy Commissioner (OIPC) review the decision. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry.

[4] The applicant was invited to participate in this inquiry but declined to do so. The District and the third party each provided brief submissions.

## **ISSUE AND BURDEN OF PROOF**

[5] The issue I must decide in this inquiry is whether the District is required to withhold information under s. 21(1) of FIPPA.

[6] Under s. 57(3)(b) of FIPPA, it is up to the third party to prove that the applicant has no right of access to the information to which the District intends to give access.

## **DISCUSSION**

### **Background**

[7] The District is responsible for the operation of schools in the Surrey area. The third party is a general contractor which, in 2022, was one of the bidders for the Project. The procurement process associated with the Project has now concluded.

### **Information at issue**

[8] The information at issue between the parties is the information the District intends to disclose to the applicant but the third party believes must be withheld under s. 21. It consists of the bid for the construction of Ta'talu Elementary School submitted by the third party to the District. The disputed information includes the third party's corporate profile, a limited amount of information related to its key personnel, a list of projects that are underway, information related to safety and quality control, and other information related to the Project.

[9] For added clarity, the information that the District proposes to withhold under ss. 21(1) or 22(1) is not at issue in this inquiry because no one has disputed that severing and asked the OIPC to review it. Therefore, I will make no decision about whether ss. 21(1) or 22(1) apply to that information. I will decide only whether s. 21(1) applies to the information in dispute between the District and the third party.

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

[10] Section 21(1) of FIPPA provides that a public body must refuse to disclose to an applicant information whose disclosure could reasonably be expected to harm the business interests of a third party. In relevant part, it provides:

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

(a) that would reveal

(i) trade secrets of a third party, or

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

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

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

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied, [or]

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

[11] All three of the following criteria must be met in order for s. 22(1) to apply:

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

[12] The District says s. 21(1) does not apply to the information it intends to disclose, while the third party says s. 21(1) applies to all of that information.

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<sup>2</sup> Order F22-33, 2022 BCIPC 37 (CanLII) at para 25.

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

[13] Section 21(1)(c) addresses harm that could reasonably be expected to result if information were disclosed. The Supreme Court of Canada has held that where the phrase “could reasonably be expected to” is used in access to information statutes, the standard of proof is a middle ground between what is merely possible and what is probable.<sup>3</sup>

[14] The evidence offered to meet this standard of proof must be detailed and convincing enough to establish specific circumstances for the anticipated harm that could reasonably be expected to result from disclosure of the information; it must establish a clear and direct connection between disclosure of the withheld information and the harm. General speculative or subjective evidence will not suffice.<sup>4</sup> At the same time, the test does not require proof that the harm is more likely to occur than not. To meet the standard, there must be a reasonable basis for believing that harm will result; the standard does not require a demonstration that harm is probable.<sup>5</sup>

[15] The third party characterizes the information at issue as being private, confidential, and proprietary in nature. It says that disclosure of this information would significantly harm its competitive position in the marketplace and would be a disincentive to future tenderers to the District.

[16] The District says it has carefully reviewed the third party’s bid documents for the Project, and that based on its review, the information at issue does not meet the requirements of s. 21(1). It says the third party has provided only very general assertions about harm, not the evidence of harm that would meet the reasonable expectation standard. It says that s. 21(1) should be applied narrowly in the context of public procurement, and that disclosure of the information at issue would advance FIPPA’s objectives of transparency and accountability.

[17] In reply, the third party says the information at issue forms the foundation of its prequalification submissions and competitive proposals and reflects unique processes and strategies on which the third party relies to secure work through competitive tendering. It says if this information were disclosed to competitors, its competitive position could be materially harmed.

[18] Although it bears the burden of proof, the third party has provided no evidence or explanation of any kind about how disclosure of the information at

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<sup>3</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

<sup>4</sup> Order F08-03, 2008 CanLII 13321 (BC IPC) at para 27.

<sup>5</sup> *United Association of Journeymen and Apprentices in the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 1080 (CanLII) at para 42.

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issue could lead to any of the harms set out in s. 21(1)(c). I agree with the District that the third party has provided only general assertions of the harm it expects. In my view, these assertions, unsupported by any evidence, fall far short of establishing a reasonable expectation of harm if the information at issue were disclosed. In addition, on my review of the information itself, I can see nothing about its nature that suggests harm could reasonably be expected to follow disclosure.<sup>6</sup>

[19] I noted above that all three criteria in the s. 21(1) analysis must be met in order for the section to apply. Since the third party has not met its burden of establishing a reasonable expectation of harm resulting from disclosure, the third criterion is not met. There is therefore no need to consider whether the other two criteria are met. I find that s. 21(1) does not apply to any of the information at issue.

## **CONCLUSION**

[20] For the reasons given above, under s. 58 of FIPPA, I confirm the District's decision to give the applicant access to the information in dispute.

June 17 2026

## **ORIGINAL SIGNED BY**

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David S. Adams, Adjudicator

OIPC File No.: F23-93849

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<sup>6</sup> For a similar finding, see Order F25-27, 2025 BCIPC 33 (CanLII) at paras 63-69.