Decision F25-01

CITY OF VANCOUVER

Lisa Siew
Adjudicator

May 7, 2025

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Summary: This decision arises out of a court-ordered partial reconsideration of Order F21-65, which dealt with an applicant's access request involving the City of Vancouver (City) and Airbnb Ireland UC (Airbnb). The records in Order F21-65 were related to short-term rental (STR) operators who provided STR accommodations within the City for a specific timeframe, including the STR operators who had listed on Airbnb's online platform at that time. Airbnb filed a petition for a judicial review of Order F21-65. At the judicial review, Airbnb and the City argued for the first time that the OIPC should have provided notice under s. 54(b) to the approximately 20,000 STR operators and given them an opportunity to participate in the inquiry. The BC Supreme Court quashed Order F21-65 and directed the OIPC to reconsider Order F21-65 after first providing notice to the STR operators. The OIPC appealed. The BC Court of Appeal allowed the OIPC's appeal to the limited extent of setting aside the requirement that the OIPC must provide notice to the STR operators under s. 54(b). The Court of Appeal held that it is for the OIPC at first instance to determine and give reasons on whether it is appropriate to provide notice to the STR operators and allow them to participate in the reconsideration of Order F21-65. The OIPC adjudicator concluded the OIPC is not required to, and will not, issue notice under s. 54(b) to the STR operators.

Statute and sections considered in this decision: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 2(1), 54(b), 56(3).

INTRODUCTION

[1] On March 15, 2019, the applicant made two access requests to the City of Vancouver (City) for records related to short term rental accommodations (STR) within the City. The first was for the information Airbnb Ireland UC (Airbnb) shared with the City about the STR operators who listed on Airbnb's online platform, specifically the name of each STR operator, their business licence number and the address of the STR accommodation. 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 information between November 1, 2018 and March 15, 2019.

[2] The requested records consisted of two Excel spreadsheets, which were referred to as Spreadsheet A and Spreadsheet B. Spreadsheet A has 12,036 rows of data, while Spreadsheet B has 7,847 rows of data. The information in the two spreadsheets relates to approximately 20,000 STR operators. Airbnb refers to the STR operators who list on its online platform as hosts.

[3] The City refused to disclose any information in those records to the applicant pursuant to several FIPPA exceptions. The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the City's decision. Mediation did not resolve the dispute between the parties and it proceeded to inquiry. The OIPC granted Airbnb's request to make representations at the inquiry.

[4] During the inquiry, the applicant withdrew his request for some of the information in the two spreadsheets.[1] Therefore, the only information that remained in dispute at the inquiry was the following information:

- *Spreadsheet A*: Airbnb addresses, Airbnb hosts' names and the associated business licence numbers. The City refused access to this information under ss. 15(1)(f), 15(1)(l), 19(1)(a), 21(1) and 22(1).

- *Spreadsheet B*: STR addresses and the associated business licence numbers for all STRs, not just Airbnbs, listed on the City's Open Data Portal. The City refused access to this information under ss. 15(1)(f), 15(1)(l), 19(1)(a) and 22(1).

[5] Order F21-65 was issued on December 17, 2021. The adjudicator ultimately concluded the City was not authorized or required, under the FIPPA exceptions at issue, to refuse access to the business licence numbers in Spreadsheets A and B and the STR addresses in Spreadsheet B. However, the adjudicator determined the City was authorized under ss. 15(1)(f) and 19(1)(a) or required under s. 21(1) to withhold the balance of the information in dispute, which consists of the Airbnb hosts' names and addresses in Spreadsheet A[2] and all the information about a person being stalked.

[6] Airbnb filed a petition for judicial review to challenge the part of Order F21-65 that held the City was not authorized or required to withhold information under ss. 15(1)(f), 15(1)(l), 19(1)(a) or 22(1). Airbnb and the City also argued for the first time at the judicial review that the OIPC should have provided notice under

[1] Order F21-65, 2021 BCIPC 76 at paras. 24-26.
[2] Order F21-65, 2021 BCIPC 76 at paras. 78-109.

s. 54(b) to the approximately 20,000 operators and given them an opportunity to participate in the inquiry.

[7] In July 2023, the BC Supreme Court issued *Airbnb Ireland UC v. Vancouver (City)*, its judicial review of Order F21-65.[3] The Honourable Mr. Justice Basran issued his judgment which quashed the adjudicator's order and remitted it back for reconsideration based on his reasons and after the OIPC provides "proper notice" to the relevant individuals who provide STRs.[4] No party sought a judicial review of the parts of Order F21-65 where the adjudicator determined the City was authorized or required to refuse access to information in the responsive records under ss. 15(1)(f), 19(1)(a) and s. 21(1) of FIPPA. Therefore, that part of the adjudicator's order still stands.

[8] The OIPC appealed Justice Basran's judgment. In September 2024, the BC Court of Appeal issued their decision which partly upheld Justice Basran's judgment but allowed the OIPC's appeal to the limited extent of setting aside the requirement that the OIPC notify the STR operators under s. 54(b) and allow them to participate in the reconsideration of Order F21-65. The issue of notice to the STR operators was not raised during the inquiry that led to Order F21-65 and the adjudicator made no decision on the notice issue.[5] The Court of Appeal said, "…the issue of notice to the Hosts should have been explicitly addressed before the Adjudicator so that she could make a reasoned decision that could then be subject to judicial review on a proper record."[6] As a result, the Court of Appeal concluded Justice Basran erred in determining that advance notice to the STR operators was required for the reconsideration of Order F21-65.[7] The Court of Appeal held that it is for the OIPC at first instance to determine and give reasons on whether it is appropriate to provide notice to the approximately 20,000 STR operators and allow them to participate in the reconsideration of Order F21-65.[8]

[9] As directed by the Court, the OIPC will reconsider Order F21-65. However, before the reconsideration can commence, the OIPC must address the issue of whether to exercise the discretion and authority available under s. 54(b) to notify the approximately 20,000 STR operators and provide them with an opportunity to make representations during the reconsideration of Order F21-65. I am the Commissioner's delegate assigned to decide this preliminary matter.

[10] The OIPC invited the parties to provide submissions about notice under s. 54(b). The City, Airbnb and the applicant provided written submissions. I will

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[3] 2023 BCSC 1137.
[4] *Airbnb Ireland UC v. Vancouver (City)*, 2023 BCSC 1137 at para. 85.
[5] *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at para. 46.
[6] *Ibid* at para. 48.
[7] *Ibid* at para. 55.
[8] *Ibid* at paras. 55 and 67.

consider those submissions below, along with the relevant statutory provisions and related jurisprudence.

ISSUE

[11] The issue I must decide is whether, pursuant to ss. 54(b) and 56(3) of FIPPA, the OIPC is required to provide notice to the approximately 20,000 STR operators and give them an opportunity to make representations during the reconsideration of Order F21-65.

DISCUSSION

Notice to an appropriate person under s. 54(b)

[12] Sections 54(a) and 54(b) of FIPPA state that, on receiving a request for review, the Commissioner must give a copy of that request to the head of the public body concerned and to any other person that the Commissioner considers appropriate.

[13] In terms of timing, previous OIPC orders have concluded the phrase "on receiving a request for review" under s. 54 means the determination of whether it is appropriate to provide notice to "any other person" under s. 54(b) should occur during the OIPC's investigation and review process.[9] The Commissioner or their delegate, however, has the authority to provide notice at a later step in the OIPC's process.[10] For instance, there may be cases in which the relevance of additional disclosure exceptions and the need for notice to further persons under s. 54(b) will only become evident during an inquiry.[11]

[14] If a matter proceeds to inquiry, a person given a copy of a request for review under s. 54(b) is entitled to certain participatory and informational rights. Under s. 56(3), that person must be given an opportunity to make representations to the Commissioner or their delegate during the inquiry. On completing an inquiry, under s. 58(1), the Commissioner or their delegate must dispose of the issues in the inquiry by making an order in accordance with ss. 58(2) or 58(3). Under s. 58(5)(c), a person given a copy of a request for review under s. 54 must be given a copy of the order. Therefore, the notification under s. 54(b) gives the notified person the opportunity to participate at the relevant inquiry and be informed of its outcome.

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[9] Order F18-19, 2018 BCIPC 22 (CanLII) at para. 95 and Order F17-31, 2017 BCIPC 33 (CanLII) at para. 10.
[10] Order F18-19, 2018 BCIPC 22 (CanLII) at para. 95.
[11] Order F18-19, 2018 BCIPC 22 (CanLII) at para. 95 and May 10, 2002 decision letter at p. 11 of the pdf, related to Order 01-52, 2001 CanLII 21606 (BC IPC) which is available online at: <https://www.oipc.bc.ca/decisions/140>.

[15] The BC Court of Appeal has determined that s. 54 affords a "fair measure of discretion" to the OIPC to decide who would be appropriate to notify and, therefore, given formal standing at any inquiry.[12] The Court of Appeal emphasized that, in exercising that discretion, the OIPC must engage in a process of consideration and analysis to reach an informed decision.[13] The exercise of discretion under s. 54(b) requires the Commissioner or their delegate to determine who might reasonably be thought to be affected by the outcome of the inquiry and have a sufficient interest in the inquiry proceedings to become a participant in the process.[14]

Is there a situation where notice would be mandatory under s. 54(b)?

[16] A noted, the Courts have clearly determined that the Commissioner's authority to give notice under s. 54(b) is discretionary and not mandatory. However, both the City and Airbnb argue notice under s. 54(b) should be mandatory to ensure procedural fairness.[15] The applicant disputes the City's arguments and Airbnb's claims that notice is mandatory and says the Courts have clarified that the Commissioner's authority to give notice under s. 54(b) is discretionary.

[17] In support of its position, the City argues the nature of the records and the STR operators' interest in those records means procedural fairness requires that all affected STR operators be provided with notice under s. 54(b).[16] The City says the STR operators "should by right have the opportunity to participate in the Inquiry, without the need for approval, but may be given a limited time to advise as to their intention to participate."[17]

[18] Airbnb also contends it should be mandatory for the OIPC to give notice to ensure procedural fairness. Airbnb submits "the OIPC has a standalone duty to uphold procedural fairness" which it describes as, "an opportunity for those affected by the decision to put forward their views and evidence fully and have

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[12] *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at para. 51; *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII) at paras. 29 and 33.
[13] *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII) at para. 29.
[14] *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII) at para. 29.
[15] I considered whether the City and Airbnb meant s. 54(b) was discretionary but that notice was required in this case to ensure procedural fairness; however, both the City and Airbnb specifically use the word "mandatory" in their arguments. Furthermore, the City and Airbnb did not dispute the applicant's characterization of their submissions which the applicant interpreted as the City and Airbnb claiming notice under s. 54(b) is mandatory. Therefore, I conclude the City and Airbnb mean s. 54(b) should be mandatory in certain situations.
[16] City's submission dated January 10, 2025 at para. 12.
[17] City's submission dated January 10, 2025 at para. 14.

them considered by the decision-maker."[18] Airbnb says the STR operators "were not given notice or the opportunity to be heard when the City made its initial decision, because the City found that it was not required to disclose the Records under FIPPA."[19] Airbnb is referring here to s. 23 of FIPPA which sets out a public body's obligation to give notice to third parties[20] when the responsive records contain information that may be excepted from disclosure under ss. 18.1, 21 or 22 of FIPPA.

[19] I find the best summary of the notice provisions under s. 23 is found in Order F17-31 which said:

> …If the public body intends to disclose a third party's personal information, s. 23 states that it must provide notice to that third party. If the public body intends to withhold the information then it may (but is not required to) give notice to the third party. Where notice is given under s. 23, the third party has the right to consent to the disclosure or make submissions as to why he or she believes the information should be withheld under s. 22(1). The notice provisions ensure procedural fairness for third parties affected by a public body's decision. The notice provisions also help to inform a public body's decision making process by ensuring it has all of the relevant information when it makes its disclosure decisions.[21]

[20] In this case, the City decided to withhold the information at issue under several FIPPA exceptions including s. 22(1). The City chose not to issue a s. 23 notice to any of the STR operators informing them of the applicant's access request nor did it consult with them when it decided to withhold information in the responsive records. Given the City did not provide notice, Airbnb contends the OIPC must now give notice to "the very parties whose safety and privacy interests are at stake" to ensure procedural fairness.[22]

[21] I understand the City and Airbnb are arguing notice should be mandatory under s. 54(b) when a person's privacy interests are engaged and they are unaware information related to them is part of an OIPC inquiry and may be ordered disclosed. However, there is no obligation on the Commissioner or their delegate to give notice under s. 54(b) to every group or individual who may be impacted by the outcome of an inquiry or an OIPC proceeding. As noted by former Commissioner Loukidelis, "It simply is not tenable for every person who has an interest in the outcome of an access request or an inquiry under the Act to have a sufficient interest to attract a right of notice and participation."[23]

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[18] Airbnb's submission dated January 10, 2025 at para. 15.
[19] Airbnb's submission dated January 10, 2025 at para. 15.
[20] Schedule 1 of FIPPA defines a "third party" as "in relation to a request for access to a record…any person, group of persons or organization other than the person who made the request or a public body."
[21] Order F17-31, 2017 BCIPC 33 (CanLII) at para. 11, citations omitted.
[22] Airbnb's submission dated January 10, 2025 at para. 15.
[23] Decision letter dated May 10, 2002, *supra* note 11, at p. 15 of the pdf.

Furthermore, the BC Court of Appeal has made it clear that a decision to give notice under s. 54(b) is discretionary and based on a fact-specific assessment which requires consideration and analysis to reach an informed decision.[24] Therefore, a public body's decision not to provide notice under s. 23 and whether a person's privacy interests are engaged may be factors to consider in determining whether notice is required under s. 54(b), but those two specific factors do not dictate a particular outcome.

[22] To support its position about mandatory notice under s. 54(b), Airbnb relies on a part of Justice Basran's decision which the BC Court of Appeal ultimately set aside. The relevant part is Justice Basran's conclusion that the OIPC breached its duty of procedural fairness by not notifying the affected STR operators. Justice Basran said, "I am satisfied that the IPC had reason to believe that the Hosts' information 'might be' excepted from disclosure so they were under a duty to provide notice to all Hosts of the Request and an opportunity to participate, before making its decision on disclosure of the Records."[25]

[23] Airbnb cites this part of Justice Basran's judgment to argue, "it would be anomalous if hosts were required to receive notice and an opportunity to participate if the City intended to disclose their information but not even entitled to notice at the OIPC in respect of the same question."[26] I understand Airbnb is arguing that if the City had decided to disclose the information at issue instead of withholding it, then the City would have been required under s. 23(1) to notify the STR operators and, therefore, the OIPC should also be required under s. 54(b) to notify those individuals when the Commissioner or their delegate decides information cannot be withheld under a FIPPA exception.

[24] As I will explain, I find Airbnb's arguments are not persuasive. First, Airbnb's position ignores the clear differences in wording between s. 23(1) and s. 54(b) which read:

> Notifying the third party
> 23 (1) If the head of a public body intends to give access to a record that the head has reason to believe contains information that might be excepted from disclosure under section 18.1, 21 or 22, the head must give the third party a written notice under subsection (3). [My emphasis]
>
> Notifying others of review
> 54 On receiving a request for a review, the commissioner must give a copy to…(b) any other person that the commissioner considers appropriate. [My emphasis]

[24] *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at paras. 51-52.
[25] *Airbnb Ireland UC v Vancouver (City)*, 2023 BCSC 1137 (CanLII) at para. 81.
[26] Airbnb's submission dated January 10, 2025 at para. 16.

[25] The BC Court of Appeal concluded the phrase "that the commissioner considers appropriate" in s. 54(b) affords a fair measure of discretion to the Commissioner about who is to be given notice and indicates the "Commissioner is to exercise his judgment as to who might reasonably be thought to be affected by his decision."[27] In contrast, s. 23(1) does not contain language of a discretionary nature similar to s. 54(b) but instead uses the word "must" which means the public body has no discretion under s. 23(1) and is required to give the requisite notice to the third party under the specified circumstances.

[26] Moreover, I find Justice Basran's reasons about notice and procedural fairness does not support Airbnb's position that it should be mandatory for the OIPC to give notice under s. 54(b). As part of his judgment, Justice Basran cited s. 54(b) but incorrectly applied the test under s. 23(1) to conclude, *"…*the IPC had reason to believe that the Hosts' information 'might be' excepted from disclosure so they were under a duty to provide notice…before making its decision on disclosure of the Records."[28] The phrase "might be excepted from disclosure" comes from s. 23(1), and not s. 54(b), and places a statutory obligation on the head of the public body (not the Commissioner) to give notice about the access request to any affected third parties if the head of the public body has reason to believe the records contain information that might be excepted from disclosure under section 18.1, 21 or 22 and intends to give the applicant access to the requested record. There is no similar requirement in s. 54(b), which the BC Court of Appeal has said "is framed in much more general terms" than s. 23.[29]

[27] Taking all the above into account, I am not persuaded by the City's submissions that the OIPC must give notice. I am also not persuaded by Airbnb's argument that Justice Basran's findings about notice mandate the OIPC to give notice under s. 54(b) and that the same considerations under s. 23(1) should also apply to s. 54(b). Accordingly, for the reasons given above, I conclude there are no specific factors or relevant court decision that changes the discretionary authority under s. 54(b) into a mandatory obligation for the OIPC to give notice under s. 54(b).

How to determine whether notice should be provided under s. 54(b)

[28] The BC Court of Appeal has said that a determination of whether notice should be provided to any other person under s. 54(b) requires "the consideration of case specific factual matters,"[30] which may include the following: the nature of

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[27] *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII) at para. 29.
[28] *Airbnb Ireland UC v Vancouver (City)*, 2023 BCSC 1137 (CanLII) at para. 81, my emphasis.
[29] *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII) at paras. 27-29.
[30] *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII) at para. 34.

the records in issue, the number of potentially affected third parties, the practical logistics of providing notice, whether there are alternative means of doing so, and potential institutional resource issues.[31]

[29] Prior jurisprudence has also considered the following factors regarding notice under s. 54(b):

- Would issuing notice under s. 54(b) result in an additional delay of the OIPC proceedings?
- Is notice under s. 54(b) unnecessary because the person has already been notified of the OIPC proceedings in another way?
- Is notice under s. 54(b) unnecessary because the person's views and interests are already being heard or represented at the OIPC proceedings?
- If notice was issued under s. 54(b), would the prejudice to the applicant be greater than the prejudice to any relevant persons for not receiving notice of the OIPC proceedings?[32]

[30] These factors are non-binding and non-exhaustive. Instead, what factors are relevant in determining whether notice is required under s. 54(b) depends on the facts and circumstances of every case.

What factors are relevant in this case regarding notice under s. 54(b)?

[31] I have considered the parties' submissions to determine what factors are relevant in this case. The City submits notice under s. 54(b) should be given to all STR operators because of the following: it says the records and information at issue relate solely to those individuals and engage their personal privacy rights, the STR operators are unaware their names and home addresses may be disclosed, they have the best evidence to offer regarding ss. 15(1), 19(1) and 22(1), any potential administrative burden to the OIPC can be mitigated, and the number of STR operators who decide to participate in the reconsideration will likely be low. The City also argues FIPPA's purpose of protecting personal privacy outweighs other factors relating to the applicant's access rights and any potential administrative burden to the OIPC.

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[31] *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at para. 52.

[32] *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII) at paras. 31 and 35; *Construction and Specialized Workers Union, Local 1611 v. British Columbia (Information and Privacy Commissioner)*, 2015 BCSC 1471 (CanLII) at paras. 98-99, 106-107, 112, 114 and 124-126 and Order F14-39, 2014 BCIPC 42 (CanLII) at paras. 64-65.

[32] Airbnb argues notice under s. 54(b) should be given to all STR operators because the information at issue is about them and they would be negatively impacted if that information was disclosed. Airbnb also contends there would be minimal administrative burden to the OIPC to send the s. 54(b) notice and receive submissions from the STR operators.

[33] The applicant contends notice under s. 54(b) is not appropriate in this case because notifying all STR operators would not be an effective administration of FIPPA and there are alternative methods of protecting any potential privacy interests and ensuring procedural fairness.

[34] Based on my review of the parties' submissions, Order F21-65, the jurisprudence on s. 54(b) and considering the circumstances of this case, I find the following factors are relevant to consider:

- Would the STR operators be concerned if their business licence number and STR address were disclosed at the outcome of the reconsideration?
- Would notifying the STR operators assist with the determination of the issues at the reconsideration?
- Would notifying the STR operators create an administrative burden for the OIPC?
- Would notifying the STR operators be a fair, timely and efficient administration of FIPPA?
- Are there any alternatives to issuing notice to the STR operators under s. 54(b)?

[35] I will discuss and consider these factors below, along with what the parties say about those factors, to determine whether the OIPC should exercise the discretion and authority available under s. 54(b) to provide notice to the approximately 20,000 STR operators.

Would the STR operators be concerned if their business licence number and STR address were disclosed at the outcome of the reconsideration?

[36] Both Airbnb and the City submit notice should be given to the individual STR operators because the information at issue is "their personal information and would if disclosed, allow members of the public to infer or determine a further wealth of information about them."[33]

[33] Airbnb's submission dated January 10, 2025 at para. 10.

[37] The City submits the information at issue is the "sensitive" personal information of the individual STR operators because "it identifies individuals engaged in STR and these individuals' principal residences."[34] The City also argues the information in the records would reveal "cumulative information that would be disclosed through connecting the information in the records with existing anonymous or de-identified public information."[35] The City contends disclosing the STR operators' names and addresses in the responsive records would allow someone to connect that information to "currently anonymized STR Listings" and "'enable the discovery of a treasure trove of information' contained in these listings."[36]

[38] Airbnb says the information at issue in Order F21-65 includes the names and home addresses of the STR operators. Airbnb submits this information can be used to obtain further information about the STR operators in the following way:

> The name, home address, and STR licence number of an individual host can easily be used to obtain further information about the host by connecting this information with publicly available information about that host's STR listings (such as listings on the Airbnb marketplace). Listings often contain significant amounts of personal information about the host and their family or tenants, either directly from the host or through reviews left by past guests. Any reasonably informed person would be able to link the information in the Records, if publicly released, with a specific STR listing and obtain this wealth of additional and possibly sensitive personal information.[37]

[39] Therefore, Airbnb says the STR operators are "inherently affected" by any potential disclosure decision and have a "profoundly significant stake in the outcome of the proceedings" and should be notified because "disclosure would have a direct and profound impact on their privacy rights."[38]

[40] I note that both Airbnb and the City talk about the STR operators' *names* and home addresses. To be clear, the information at issue in the reconsideration of Order F21-65 is the business licence numbers in Spreadsheets A and B and the STR addresses in Spreadsheet B. Order F21-65 did not order any names disclosed to the applicant so none of the STR operator's names are at issue in the reconsideration of Order F21-65.

[41] Considering the information at issue in the reconsideration, there is nothing inherently sensitive about a business licence number which is usually

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[34] City's submission dated January 10, 2025 at para. 16.
[35] City's submission dated January 10, 2025 at para. 16.
[36] City's submission dated January 10, 2025 at para. 17, citing Justice Basran's reasons in *Airbnb Ireland UC v Vancouver (City)*, 2023 BCSC 1137 (CanLII) at para. 69.
[37] Airbnb's submission dated January 10, 2025 at para. 5.
[38] Airbnb's submission dated January 10, 2025 at para. 10.

posted in a location visible to the public as part of an operating permit. Similarly, the City routinely and publicly posts the business licence number of the STR operators on its Open Data Portal, including the status of the licence, whether applicable fees have been paid and the local area.[39] The evidence in the inquiry leading to Order F21-65 also indicates that STR operators are required to "indicate their licence number in all of their marketing."[40] Given the business licence numbers are already publicly posted and accessible, I cannot see how this information is sensitive, confidential information or why the STR operators would be concerned or interested in knowing that their business licence numbers could be disclosed at the outcome of the reconsideration.

[42] Both the City and Airbnb contend the information at issue in the reconsideration can serve as a gateway to other sensitive information about the STR operators found in their public STR listings. However, the City also says STR Listings are "currently anonymized"[41] and the evidence in the inquiry leading to Order F21-65 indicates 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."[42] Therefore, given STR listings are partially or fully anonymized and no exact address is disclosed on the listing, it is unclear how disclosing the business licence number would in all cases allow a particular individual or property to be identified. As well, Airbnb's evidence indicates that all the information that it says is "sensitive" is already publicly available on the STR operator's listing.[43] If the STR operators have voluntarily posted that information about themselves or their family in their STR listings or this information is publicly accessible on their STR listing, then it is unclear why STR operators would consider it "sensitive" information or be concerned if someone were to review that information on the STR online platform.

[43] As for the STR addresses, the City says it has never publicly disclosed that information and the STR Operators would not expect the addresses to be publicly disclosed.[44] The evidence in the inquiry leading to Order F21-65 also indicates the STR listings posted online only show the general location of the STR and not an exact address, and that each STR operator only needs to disclose the actual address once they accept a booking.[45] Therefore, unlike the business licence numbers, there is no evidence the STR addresses are publicly posted and available. Airbnb also explains that, under the City's bylaws, an individual is only allowed to operate an STR in their principal residence, which

[39] Order F21-65, 2021 BCIPC 76 at para. 22 and footnote 12. Airbnb's submission dated January 10, 2025 at para. 6.
[40] Order F21-65, 2021 BCIPC 76 at para. 93.
[41] City's submission dated January 10, 2025 at para. 17.
[42] Order F21-65, 2021 BCIPC 76 at para. 44.
[43] Airbnb's submission dated January 10, 2025 at para. 5.
[44] City's submission dated January 10, 2025 at para. 20.
[45] Order F21-65, 2021 BCIPC 76 at paras. 44 and 116.

means the STR is operated out of their home.[46] Given the STR addresses are not publicly posted and would reveal where the STR operators live, I find the STR operators may be concerned and interested in knowing their STR addresses could be disclosed at the outcome of the reconsideration.

[44] Taking all the above into account, I find the fact that the reconsideration could potentially result in the disclosure of the STR addresses weighs in favour of notice to the STR operators. However, I am not persuaded that the potential disclosure of the business licence numbers weighs in favour of notice.

Would notifying the STR operators assist with the determination of the issues at the reconsideration?

[45] The issues to be determined at the reconsideration are whether the City is authorized or required to withhold the business licence numbers in Spreadsheets A and B and the STR addresses in Spreadsheet B under ss. 15(1)(f) (danger to life or physical safety), 15(1)(l) (harm to security of property or system), 19(1)(a) (threat to safety or mental or physical health) and 22(1) (unreasonable invasion of third party personal privacy).[47]

[46] The City submits the STR operators have the best evidence to offer regarding ss. 15(1) and 19(1) and may have relevant evidence to offer regarding s. 22(1). In support of its position, the City cited the following parts of Justice Basran's reasons regarding notice:

- "Hosts are inherently affected by the IPC's decision because it is their personal information and privacy interest at stake if the Subject Records are disclosed."[48]

- "The person most likely to be affected by the disclosure of the record is best placed to explain the impact of its disclosure."[49]

- "The IPC held that the City's evidence from the stalking victim...rose to the level of a reasonable expectation of probable harm. Similarly, serious, or analogous submissions may have been provided by other Hosts had they been notified of the Request."[50]

[47] The City says it provided all the evidence it had regarding the expected harms under ss. 15(1) and 19(1). It also notes Airbnb's standing at the inquiry

[46] Airbnb's submission dated January 10, 2025 at para. 3.
[47] The information at issue in the reconsideration does not include the name, address and business licence number of the stalking victim.
[48] *Airbnb Ireland UC v Vancouver (City)*, 2023 BCSC 1137 (CanLII) at para. 79
[49] *Airbnb Ireland UC v Vancouver (City)*, 2023 BCSC 1137 (CanLII) at para. 79.
[50] *Airbnb Ireland UC v Vancouver (City)*, 2023 BCSC 1137 (CanLII) at para. 79.

leading to Order F21-65 was limited to providing submissions on s. 22(1) and Airbnb was not permitted to address ss. 15(1) and 19(1).[51] Therefore, the City says the STR operators likely have significant additional information regarding ss. 15(1) and 19(1) that was not available to the City.

[48] Airbnb contends "the OIPC was not prepared to rely only on the evidence regarding risks to hosts as a whole adduced by the City and Airbnb to demonstrate the applicability of Sections 15 and 19 of FIPPA," and that the adjudicator was only satisfied ss. 15 and 19 applied when the evidence was about a specific individual.[52] Therefore, Airbnb submits the participation of the STR operators is necessary, relevant and essential to the reconsideration because it says, "there is no other party, including Airbnb, that can sufficiently address their privacy, safety, and other interests."[53] Airbnb further argues the STR operators "are uniquely positioned to provide individualized perspectives and evidence highly relevant to the Commissioner's decision" and "no other party can bring such information before the Commissioner sufficiently on behalf of the hosts."[54] Airbnb also says submissions from the STR operators will be required to determine the legal and factual issues under s. 22(1).

[49] The applicant submits individual notice is not required for privacy protection because there are alternative mechanisms that exist to protect privacy. The applicant argues if the STR operators have legitimate privacy interests, then those interests "can be protected through careful categorical analysis rather than individual notice."[55] The applicant also says, "The Commissioner's specialized expertise enables effective evaluation of privacy risks and implementation of protective measures at a categorical level."[56] I understand the applicant is arguing the Commissioner or their delegate will already be considering any relevant privacy interests and the impact of disclosure as part of adjudicating the issues in the reconsideration and, therefore, individual submissions from the STR operators are not necessary.

[50] This is not the first time the issue of notice has come up after an order has been issued. In determining whether the inquiry that led to Order 01-52 should be re-opened, former Commissioner Loukidelis had to consider whether notice should have been issued to an association under s. 54(b).[57] The association argued they were entitled to notice under s. 54(b) and should have been allowed to participate in the inquiry because of the following factors: their economic and safety interests were directly and adversely affected by the outcome of the inquiry, they were not given an opportunity to provide a submission on the

[51] City's submission dated January 10, 2025 at paras. 19-20.
[52] Airbnb submission dated January 10, 2025 at para. 11.
[53] Airbnb submission dated January 10, 2025 at para. 11.
[54] Airbnb's email dated February 19, 2025.
[55] Applicant's submission dated February 6, 2025 at p. 2.
[56] Applicant's submission dated February 6, 2025 at p. 2.
[57] Decision letter dated May 10, 2002, *supra* note 11.

application of s. 18(b) to the information at issue, and the lack of notice was procedurally unfair. As part of his decision, former Commissioner Loukidelis concluded notice under s. 54(b) was not required because the association was aware of the inquiry and had provided evidence in support of the public body's decision to withhold information under s. 18(b), and the association's arguments and evidence relating to s. 18(b) did not differ in a significant way from what was presented and argued by the public body in the inquiry that led to Order 01-52.[58]

[51] Applying former Commissioner Loukidelis' analysis to the present case, the City did not notify any of the STR operators when it decided to withhold information under ss. 15(1)(f), 15(1)(l) and 19(1)(a) and it was not required to do so under s. 23 of FIPPA, nor did it consult with or obtain evidence from any of the STR operators to support its decision at the inquiry. Therefore, the STR operators may not have been aware of the inquiry or even know about the upcoming reconsideration. Airbnb, however, did participate in the inquiry and even though Airbnb was only invited to provide submissions on ss. 21(1) and 22(1), the adjudicator in Order F21-65 also considered Airbnb's submissions in deciding ss. 15(1)(f), 15(1)(l) and 19(1)(a).[59] The question, therefore, is whether the STR operators could assist with the determination of the issues at the reconsideration by providing arguments and evidence that is significantly different from what was presented by the City and Airbnb at the inquiry. I will first consider this question in relation to ss. 15(1)(f), 15(1)(l) and 19(1)(a), and then consider it for s. 22(1).

[52] At the inquiry, the City provided affidavit evidence from two City employees to support its decision to withhold information under ss. 15(1)(f), 15(1)(l) and 19(1)(a). One of the affiants said they 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."[60] Based on this evidence, the adjudicator in Order F21-65 was satisfied that disclosing the stalking victim's business license number and address could reasonably be expected to result in harm under ss. 15(1)(f) (danger to life or physical safety) and 19(1)(a) (threat to safety or mental or physical health).[61]

[53] I find it reasonable to conclude there may be other STR operators with similar concerns who may be able to provide evidence relevant to the adjudication of ss. 15(1)(f) and 19(1)(a). In the inquiry, neither the City nor Airbnb

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[58] Decision letter dated May 10, 2002, *supra* note 11 at p. 13 of the pdf, upheld on judicial review in *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 (CanLII).
[59] Order F21-65, 2021 BCIPC 76 at para. 28.
[60] Order F21-65, 2021 BCIPC 76 at para. 36.
[61] Order F21-65, 2021 BCIPC 76 at paras. 59-60.

provided similar evidence about another STR operator or consulted with any of the STR operators. Therefore, I find this potential evidence from the STR operators would be significantly different from the existing evidence provided at the inquiry and may be relevant to the determination of ss. 15(1)(f) or 19(1)(a).

[54] Regarding s. 22(1), one of the central questions at the reconsideration will be whether the STR addresses qualify as "personal information" or "contact information" as defined in FIPPA. In Order F21-65, the adjudicator concluded the business licence numbers qualified as personal information, but found the STR addresses were business addresses and, therefore, qualified as contact information and not personal information under FIPPA. The adjudicator's decision about the STR addresses was overturned by Justice Basran on judicial review. The BC Court of Appeal upheld Justice Basran's finding that the adjudicator failed to properly consider the context in which the STR operator's home addresses were provided to the City and the implications of disclosing that information.[62] The Court of Appeal said:

> While administrative decision makers are not expected to deploy the same legal techniques as judges, their decisions "must be consistent with the 'modern principle' of statutory interpretation, which focusses on the text, context, and purpose of the statutory provision". FIPPA provides for a legislative scheme, one of the principal purposes of which is the protection of personal privacy. Respectfully, the Adjudicator's interpretation of s. 22 is overly formalistic and fails to consider this aspect of the factual and legislative context. As such, her decision lacks the "justification, transparency and intelligibility" which are the hallmarks of reasonableness.[63]

[55] Therefore, unlike ss. 15(1)(f), 15(1)(l) and 19(1)(a), whether the STR addresses are personal information and not contact information as defined in FIPPA is a matter of statutory interpretation, analysis and argument. Both the City and Airbnb were represented at the inquiry by legal counsel and argued an STR address is personal information because it is recorded information about an identifiable individual and not contact information.[64] The City also made submissions at the inquiry about the relevant context.[65] I am also satisfied that the Commissioner or their delegate at the reconsideration has the expertise to conduct the necessary legal analysis and will already have the benefit of the Court's reasons on this matter. As a result, I am not persuaded individual submissions from the STR operators would vary significantly from the City or

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[62] *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at para. 60.
[63] *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at para. 62, citations omitted.
[64] Order F21-65, 2021 BCIPC 76 at para. 114.
[65] Order F21-65, 2021 BCIPC 76 at paras. 115-116.

Airbnb's inquiry submissions or assist with the determination of this matter at the reconsideration.

[56] If the information at issue is found to be "personal information" as defined in FIPPA, the second question to be addressed at the reconsideration regarding s. 22(1) is whether s. 22(4)(i) applies to the business licence numbers and STR addresses. Even though the adjudicator concluded the STR addresses were "contact information" and not "personal information" as defined in FIPPA, she still went on to consider whether s. 22(4)(i) applied to the STR addresses. If s. 22(4)(i) applies, the disclosure of the personal information would not be an unreasonable invasion of a third party's personal privacy. 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 ss. 22(4)(i)(iii) – (viii).[66] In Order F21-65, the adjudicator concluded the criteria under s. 22(4)(i)(i) had been met and, therefore, the City was not required to withhold the business licence numbers and STR addresses under s. 22(1).

[57] At the inquiry, both the City and Airbnb argued s. 22(4)(i)(i) did not apply. The City provided submissions about the interpretation and application of s. 22(4)(i)(i). Based on the City's inquiry submissions, the adjudicator discussed the proper interpretative approach to s. 22(4)(i)(i).[67] Therefore, unlike ss. 15(1)(f), 15(1)(l) and 19(1)(a), whether s. 22(4)(i)(i) applies is a matter of statutory interpretation, analysis and argument which has already been addressed in the parties' inquiry submissions. Both the City and Airbnb were represented at the inquiry by legal counsel and made relevant submissions and arguments about s. 22(4)(i)(i). I am also satisfied that the Commissioner or their delegate at the reconsideration has the expertise to conduct the necessary legal analysis. Therefore, I am not persuaded individual submissions from the STR operators would vary significantly from the City or Airbnb's inquiry submissions about s. 22(4)(i)(i) or assist with the determination of that issue at the reconsideration.

[58] However, if the adjudicator at the reconsideration determines that the information in dispute is personal information rather than contact information and that s. 22(4)(i)(i) does not apply to the STR operator's business licence number and the STR addresses, then the adjudicator would proceed to consider the remaining provisions under s. 22(4), the presumptions under s. 22(3), the factors listed under ss. 22(2)(a) to (i) and any other relevant circumstances to determine whether disclosing the personal information at issue would be an unreasonable invasion of a third party's personal privacy. In Order F21-65, the adjudicator did

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[66] The type of information listed in ss. 22(4)(i)(iii) – (viii) are the following: (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; and (viii) the date the item expires.
[67] Order F21-65, 2021 BCIPC 76 at paras. 136-145.

not conduct this analysis because she found s. 22(4)(i)(i) applied; however, at the inquiry, the City and Airbnb both made submissions relevant to this analysis.[68] In particular, Airbnb argued disclosure of the information at issue would unfairly expose the STR operators who list on Airbnb's online platform to harm under s. 22(2)(e).

[59] I find those submissions provided by the City and Airbnb at the inquiry adequately address the relevant provisions under s. 22. However, the STR operators may also have evidence to offer that could be relevant to the s. 22(1) analysis, including s. 22(4)(a) which provides that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the third party has, in writing, consented to the disclosure. There may be some STR operators who are not concerned with the disclosure of their business licence numbers and STR addresses, particularly if this information is publicly available on their STR listing or already disclosed as part of the STR booking process.

[60] To summarize, for the reasons discussed above, I find notifying the STR operators could potentially assist at the reconsideration with the determination of ss. 15(1)(f), 15(1)(l) and 19(1)(a), but not for the adjudication of whether the information at issue qualifies as "personal information" under FIPPA or the application of s. 22(4)(i). However, if s. 22(4)(i) does not apply, then the STR operators could have relevant evidence to offer regarding whether the disclosure of their business license numbers and STR addresses would be an unreasonable invasion of a third party's personal privacy under s. 22(1).

Would notifying the STR operators create an administrative burden for the OIPC?

[61] The applicant submits Airbnb and the City "place undue emphasis on mandatory notice while understating crucial administrative and practical considerations."[69] Citing the Supreme Court of Canada decision of *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, the applicant argues requiring notice to all "indirectly affected parties" would "create an 'endless series of challenges', risk administrative paralysis, present extreme identification difficulties, and generate potential subsequent challenges from unnotified parties."[70] I will refer to the Supreme Court of Canada case cited by the applicant as *Telecommunications*.

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[68] City's inquiry submission dated April 19, 2021 at paras. 105-114 and Airbnb's inquiry submission dated April 19, 2021 at paras. 25-36.
[69] Applicant's submission dated February 6, 2025 at p. 3 of pdf.
[70] Applicant's submission dated February 6, 2025 at p. 2 of pdf, citing *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, 1995 CanLII 102 (SCC).

[62] In the majority decision of *Telecommunications*, Justice L'Heureux-Dubé concluded the Canada Radio-television and Telecommunications Commission (CRTC) was not required to give notice to the Telecommunications Workers Union (TWU) because, while the TWU may have been affected by the CRTC decision, the TWU was not a party nor did it have a direct interest in the proceedings before the tribunal.[71] As part of their reasons, Justice L'Heureux-Dubé also said requiring the CRTC to provide notice to the TWU "would have grave consequences that could paralyse regulatory agencies" in the following way:

> Effectively, it would mean that all individuals with contractual relations with a regulatee would have to be given notice of regulatory proceedings concerning that regulatee if such proceedings were likely to effect, even indirectly, the person in question. Given the wide scope of many regulatory agencies, their decisions are likely to have an indirect effect on a large number of individuals in contractual relations with the regulatee. As a result, all such parties would have to be provided with notice of the regulatory proceedings. This is particularly problematic in light of the extreme difficulty of ascertaining exactly who these parties are in advance of the hearing and the possibility that, in the absence of notice, these parties would be able to challenge the legality of the regulatory decision. This could result in an endless series of challenges that would effectively paralyse regulatory agencies. Accordingly, the audi alteram partem rule should not be interpreted as requiring that notice be provided to parties indirectly affected by regulatory proceedings.[72]

[63] The City acknowledges that notifying the approximately 20,000 STR operators could create a potential administrative burden to the OIPC, such as concerns about delay, the volume of submissions, preparing and delivering the individual notices, dealing with email addresses that are no longer functional, answering questions about notice, and receiving and reviewing the individual submissions and evidence.[73] However, the City submits there are ways to mitigate this burden. The City says the OIPC can impose strict deadlines to address delay and place limits on the submission process or "reserve the right to impose additional restrictions on representations after a certain number of responses."[74]

[64] The City also offers to assist the OIPC in providing notice by contacting the STR operators through their preferred method of communication such as sending out a mass email or sending notice through regular mail and making reasonable efforts to provide notice via regular mail for email addresses that are

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[71] *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, 1995 CanLII 102 (SCC) at para. 32.
[72] *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, 1995 CanLII 102 (SCC) at para. 33.
[73] City's submission dated January 10, 2025 at paras. 22, 25-27.
[74] City's submission dated January 10, 2025 at para. 25.

no longer functional. The City also offers to address questions from the STR operators regarding notice. However, the City says it would be prejudicial to the STR operators to have the City receive their submissions and evidence instead of the OIPC because the City plays a significant role in compliance and enforcement of the STR program. The City believes the STR operators may be wary of sharing additional personal information with the City, particularly if that information could be relevant to the City's compliance and enforcement activities.[75]

[65] The City also submits the anticipated number of STR operators who would be interested in participating in the reconsideration is likely to be low. The City notes it is difficult to accurately predict the number of STR operators who may provide submissions at the reconsideration; however, the City estimates that number to be under 144 or even under 70. The City bases this estimate on the number of written submissions it received (144), and the number of people who chose to publicly speak to City council (70), when it held a public hearing in 2017 about the introduction of the City's STR program. For a variety of reasons, the City argues the number is likely to be less for the reconsideration. For example, the City says there was more public and media interest in the City's STR program when it was introduced in 2017 and the number of submissions is likely to be low given the nature of the reconsideration and the passage of time.[76]

[66] Airbnb submits Justice L'Heureux-Dubé's concerns about "regulatory paralysis" do not apply in this case.[77] Airbnb submits the logistics of providing notice to the STR operators, such as the distribution of the notices or receiving their submissions, is neither challenging nor resource-intensive because one generic notice is sufficient for every STR operator and the City has the contact information for the relevant STR operators and can distribute the notices on behalf of the OIPC. Airbnb says the generic notice can inform the STR operators about the reconsideration, explain what information is at issue and direct the STR operators to provide their submissions to the OIPC rather than the City.

[67] Airbnb also argues it will not be overly burdensome to receive and review the STR operators' submissions because the STR operators can provide their submissions by email, "unless they require alternative methods as a manner of accessibility accommodation," and the number of STR operators who will participate in the reconsideration "will likely be low enough that each submission can be reviewed individually, and the parties can each file a single responding submission to address the hosts' comments."[78] However, if there is a high number of submissions, Airbnb says "the parties can consult on appropriate methods to address this, including whether the volume and nature of those

[75] City's submission dated January 10, 2025 at para. 27.
[76] City's submission dated January 10, 2025 at paras. 22-24.
[77] Airbnb's submission dated February 19, 2025.
[78] Airbnb's submission dated January 10, 2025 at para. 22.

concerns demonstrate that no host's information should be disclosed because the reasonable expectation of probable harm exists at a group level."[79]

[68] I agree with Airbnb that it is not necessary to create a notice that is specific to each STR operator. A generic notice that informs the STR operators about the reconsideration, explains what type of information is at issue, identifies the FIPPA exceptions relied on by the City and then invites the STR operators to make submissions by a set date and method may be sufficient. I also find the City's offer to send out the proposed s. 54(b) notice to the STR operators, on the OIPC's behalf, by utilizing the available contact information in the City's records would be of assistance.

[69] I note that both the City and Airbnb predict the number of potential submissions from the STR operators may be low, but this assumption is purely speculative. There is no way to accurately predict the number of individual STR operators who would want to participate in the inquiry and provide a submission. Therefore, the decision to provide notice under s. 54(b) must be made on the assumption there could potentially be approximately 20,000 individual submissions.

[70] With that in mind, there is no guarantee the City will be able to successfully deliver the s. 54(b) notice to the approximately 20,000 STR operators. The information at issue is from November 2018 to March 2019; therefore, some of the available contact information associated with this information may be outdated with old mailing addresses or email addresses that are no longer in use. Airbnb submits "a standard of perfection in delivery of these notices is not required" and that "it is appropriate to send a standardized notice to the contact information on file."[80] I understand Airbnb is arguing successful notice is not required for all of the approximately 20,000 STR operators and that the OIPC's notice obligations will be satisfied if the OIPC attempts to make contact and only some of those individuals successfully receive the notice. However, Airbnb provided no legal authorities to support their position, and I am not aware of any that do. Instead, if the OIPC decides to issue the s. 54(b) notice and the City fails to successfully contact every affected STR operator on behalf of the OIPC, then the STR operators who did not successfully receive notice could challenge the reconsideration decision by petitioning the Court to judicially review that decision because they did not receive the notice. This outcome would result in what Justice L'Heureux-Dubé in *Telecommunications* described as "an endless series of challenges that would effectively paralyse regulatory agencies."[81]

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[79] Airbnb's submission dated January 10, 2025 at para. 23.
[80] Airbnb's submission dated January 10, 2025 at para. 20.
[81] *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, 1995 CanLII 102 (SCC) at para. 33.

[71] As well, if the OIPC issued notice to the STR operators under s. 54(b), the City and Airbnb both argue that the OIPC should receive and process the STR operators' individual submissions. In that scenario, the OIPC's registrar of inquiries would be responsible for receiving and processing those individual submissions. This process would require the registrar to communicate with and answer questions from the parties about the notice, the submission process and the reconsideration; decide any adjournment requests from the STR operators; coordinate any requests from the STR operators for *in camera* material to be included in their submissions and forward that request to an adjudicator for a decision; coordinate the exchange of the STR operators' submissions to the other parties and follow up on any missed deadlines; and if necessary facilitate communications between the adjudicator assigned to decide the reconsideration and the STR operators. If you apply this time and effort to potentially 20,000 individual STR operators and their submissions and requests and questions, then the demand on the registrar's time and attention is substantial, even if those submissions are limited to, for example, five pages or less.

[72] In terms of human resources, the OIPC currently employs two full-time registrars and one part-time registrar who collectively support the work of the Director of Adjudication and currently eleven adjudicators. One of the registrars would be responsible for receiving and processing the STR operators' submissions, which would leave the rest of the work needed to support the OIPC's adjudication division to the other full-time registrar and the part-time registrar. As well, the time and effort that the assigned registrar spends on this one reconsideration would impact all their other duties and responsibilities and restricts their ability to work on other inquiries.

[73] These same concerns would also apply to the adjudicator delegated to decide the reconsideration. One adjudicator will have to review potentially 20,000 individual submissions from the STR operators. The time and effort needed to review and address 20,000 individual submissions would impact the adjudicator's ability to work on other inquiries and lengthens the time required to conduct and complete the reconsideration.

[74] Currently, the adjudication division has a backlog of more than 200 inquiries waiting for inquiry services, it received over 150 new inquiries for the 2024-2025 fiscal year and the demand for inquiry services is predicted to increase for the 2025-2026 fiscal year.[82] If a registrar and an adjudicator are unavailable to work on other inquiries, then the other parties currently waiting for inquiry services will have to wait longer to receive an order deciding their dispute. Accordingly, some of the OIPC's limited resources would be diverted to address the reconsideration and its expanded submission and review process, thereby, taking resources away from work on other inquiries. This would significantly

[82] OIPC/ORL supplemental budget submission for 2025/26 at pp. 7 and 8 of the pdf, available online at: <https://www.oipc.bc.ca/documents/budget-annual-report-service-plans/2953>.

impact the OIPC's ability to provide timely and efficient services to all parties engaged in the OIPC's inquiry process.

[75] Moreover, an OIPC inquiry is typically conducted openly with the identities of the parties known to each other and with inquiry submissions and inquiry-related communications shared amongst all parties. However, it is important to note that the adjudicator in Order F21-65 determined the City was required to withhold the names of the STR operators in Spreadsheet A under s. 21(1) of FIPPA.[83] Therefore, for the reconsideration, any notification or submission process must ensure the names of the STR operators in Spreadsheet A are not disclosed or revealed by the parties or the OIPC. This requirement would involve the registrar implementing additional administrative processes to safeguard those identities.

[76] As well, some of the STR operators associated with the information in Spreadsheet B may have concerns with the disclosure of their identity, even though their names are not at issue in the reconsideration.[84] In that scenario, the OIPC has a process in place that allows a participant in an inquiry to request anonymity. The request must be made in writing to the registrar and explain why the person believes it is necessary to have their identity hidden during the inquiry. If the request is approved, then the person's identity is anonymized throughout the submission process and in any communications between the parties. Therefore, I find issuing notice to the STR operators would add an additional administrative burden during the notification and submission process by requiring the OIPC to ensure the STR operators' identities are anonymized as required.

[77] Moreover, even if the notification results in only 70 individual submissions as predicted by the City, it would still put additional strain and demands on the OIPC's limited resources. Typically, an inquiry into a decision to refuse access will involve the public body and the applicant and may, at most, include one or two third parties. The addition of one or two third parties to an inquiry naturally lengthens the time and effort needed to complete the submission process and complete the inquiry. Seventy additional parties in an inquiry, with the added complication of ensuring the identity of those participants are protected, substantially increases the time and effort needed to complete the submission process and to conduct and decide the inquiry.

[78] To mitigate the additional workload and burden to the OIPC, the City has offered to answer questions from the STR operators about notice under s. 54(b). However, the OIPC is responsible for ensuring any questions about its processes

[83] Order F21-65, 2021 BCIPC 76 at para. 108.
[84] The applicant was only interested in obtaining access to the STR addresses and business licence numbers from Spreadsheet B and did not request the names of the STR operators associated with that information.

and its governing statute are answered correctly. Moreover, I find the City's suggestion could unnecessarily complicate the submission process by requiring the STR operators to communicate with the City on the topic of notice but with the OIPC for all other questions about the submission process and the reconsideration. It also would not save time and effort because the registrar would still be required to communicate with and answer questions from the STR operators. In my view, it would be more efficient to not divide the task of communicating with the STR operators, as suggested by the City. Otherwise, it greatly increases the chance that some communications may be missed or unaddressed and that inconsistent or incorrect information may be given out to the STR operators.

[79] To address the potentially high number of submissions, the City says the OIPC can "reserve the right to impose additional restrictions on representations after a certain number of responses."[85] Airbnb also submits if there is a high number of submissions, then "the parties can consult on appropriate methods to address this, including whether the volume and nature of those concerns demonstrate that no host's information should be disclosed because the reasonable expectation of probable harm exists at a group level."[86]

[80] The City and Airbnb, however, do not explain how stopping the processing and review of the STR operators' submissions after a certain number of submissions are received would be procedurally fair, and offer no authority in support of this suggestion. While the OIPC does have the authority to control its own processes, it must do so fairly and consistently. I find changing the review process midway would be procedurally unfair to the STR operators who decide to make submissions. Moreover, s. 56(3) is clear that "any person given a copy of the request for a review must be given an opportunity to make representations to the commissioner during the inquiry." Therefore, if the OIPC decides to issue the s. 54(b) notice to the STR operators, then any submissions received from the STR operators must be processed and reviewed. Accordingly, I am not persuaded that the City's and Airbnb's proposal for mitigating the potential administrative burden to the OIPC of processing and reviewing a high number of submissions from the STR operators would be fair or consistent with s. 56(3).

[81] Ultimately, for the reasons discussed above, I find individual notification to the approximately 20,000 STR operators would create an administrative burden to the OIPC and there are currently no reasonable options to mitigate this burden. Whether the number is 70 or 20,000 individual submissions, I am satisfied that receiving, processing and reviewing the STR operators' submissions and communicating with the STR operators would be a time-consuming process that would strain the OIPC's limited resources and impede the OIPC's ability to provide efficient and timely service to the participants of

[85] City's submission dated January 10, 2025 at para. 25.
[86] Airbnb's submission dated January 10, 2025 at para. 23.

other inquiries. Therefore, I find the potential administrative burden to the OIPC weighs against issuing notice under s. 54(b) to the approximately 20,000 STR operators.

Would notifying the STR operators be a fair, timely and efficient administration of FIPPA?

[82] A relevant consideration in this case is the fact that Airbnb and the City both raised the issue of notice to the STR operators only at the judicial review of Order F21-65.[87] Previous OIPC orders have said that the issue of notice should be raised before an inquiry begins and not afterwards or based on the outcome of the inquiry and certainly not after the adjudicator has made a decision.[88] In Order F17-31, the adjudicator noted, "The public body is generally in the best position to provide notice to third parties who may be affected by disclosure decisions and can do so at a much earlier stage than the OIPC."[89] In Order F18-19, the adjudicator remarked a public body is in the best position to provide the third party with "a description of the contents of the records" and "typically has the names and contact information of the third parties and can contact them to determine their view on disclosure."[90]

[83] The adjudicators in those prior decisions considered, among other things, whether notification, at that late stage, would prejudice the applicant and promote the fair, timely and efficient administration of FIPPA. For example, in the inquiry leading to Order F14-39, the public body argued the OIPC should give approximately 80 third parties an opportunity to provide submissions if the adjudicator decided, based on the materials already provided during the inquiry, that the information at issue could not be withheld under s. 22(1).[91] The adjudicator in Order F14-39 rejected that request, in part, for the following reasons: the public body had the opportunity to raise the issue of notice with the OIPC as early as possible but failed to do so, it could have provided evidence from the third parties as part of its submissions but chose not to, notice would prejudice the applicant by delaying the inquiry to seek submissions from the third parties, and it would allow the public body another opportunity to add further evidence to bolster its position.[92]

[84] Likewise, in the inquiry leading to Order F17-31, the public body decided not to provide notice to the individuals who may have a privacy interest in the withheld information, chose not to raise the issue of notice with the OIPC earlier in the inquiry process, provided no evidence or arguments or details as to why it

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[87] *Airbnb Ireland UC v Vancouver (City)*, 2023 BCSC 1137 (CanLII) at para. 7.
[88] For example, Order F17-31, 2017 BCIPC 33 (CanLII) at para. 12 and Order F18-19, 2018 BCIPC 22 (CanLII) at para. 93.
[89] Order F17-31, 2017 BCIPC 33 (CanLII) at para. 12.
[90] Order F18-19, 2018 BCIPC 22 (CanLII) at para. 89.
[91] Order F14-39, 2014 BCIPC 42 (CanLII) at para. 61.
[92] Order F14-39, 2014 BCIPC 42 (CanLII) at paras. 63-64.

did not raise this issue earlier and could have obtained affidavit evidence from the third parties but chose not to. The adjudicator remarked that for the OIPC to provide notice in those circumstances "would be highly prejudicial to an applicant to not only be forced to endure a lengthy delay, but to also have to respond to new evidence and submissions that a public body could have provided much earlier in the process."[93] The adjudicator said, "This effectively gives the public body a second opportunity, after the inquiry process has closed, to add further evidence to shore up its position…" and that "this tactic is contrary to the fair, efficient and timely resolution of disputes under FIPPA and should not be routinely employed by public bodies."[94]

[85] In the present case, even though there was plenty of opportunity to do so, at no time before or during the inquiry resulting in Order F21-65 did Airbnb or the City inform the OIPC that they believed it was necessary for the STR operators to be notified and invited to participate in the inquiry. Instead, despite the importance that Airbnb and the City now place on notification, Airbnb and the City waited until after Order F21-65 was issued before raising the matter of notice during Airbnb's petition for a judicial review of Order F21-65.

[86] Moreover, the City and Airbnb both had the opportunity and the names and relevant contact information to consult with or obtain affidavit evidence from the STR operators as part of their inquiry submissions but chose not to. The City did not consult with any of the STR operators when it decided to withhold information under ss. 15(1)(f), 15(1)(l) and 19(1)(a) and it was not required under s. 23 of FIPPA to do so. However, at the inquiry leading to Order F21-65, the City had the burden of proving those disclosure exceptions applied to the information at issue and it was responsible for supporting its decision with argument and evidence. The City is now arguing that the STR operators have the best evidence to offer about the alleged harms under ss. 15(1)(f), 15(1)(l) and 19(1)(a). However, for reasons the City does not explain, it chose not to consult with or obtain evidence from those individuals during the inquiry process. Where a public body believes an individual may have evidence relevant to the determination of an issue at an inquiry, it should consult with that individual as early as possible instead of waiting until after a decision is made at an inquiry about the issues in dispute.

[87] The City says it provided the evidence that it had regarding the expected harms under ss. 15(1) and 19(1) at the inquiry and that it "identified its limitations in collecting such evidence" and "highlighted the fact that STR Operators likely had significant additional information that was not currently available to the City."[95] I understand the City is arguing that it alerted the OIPC at the inquiry to the fact that notice should be issued to the STR operators. The City cited various

[93] Order F17-31, 2017 BCIPC 33 (CanLII) at para. 14.
[94] Order F17-31, 2017 BCIPC 33 (CanLII) at para. 14.
[95] City's submission dated January 10, 2025 at para. 20.

parts of its inquiry submissions to prove that it raised the issue of notice earlier and that it informed the OIPC that evidence was needed from the STR operators.[96] For example, the City notes that its inquiry submission indicated that "it reasonably expects based on its past experience with other home-based businesses that STR Operators would have specific concerns regarding the release of their names and addresses were they aware that this information may now be disclosed."[97]

[88] Having reviewed the inquiry submissions and evidence cited by the City, I find the City's characterization of its inquiry submissions and evidence is inaccurate. I am unable to conclude from the City's inquiry materials that it raised the issue of notice to the STR operators during the inquiry. Nowhere in those submissions does the City suggest or request the OIPC issue a notice to the STR operators under s. 54(b). Furthermore, inconsistent with its current position, there is no indication the City thought its own submissions and evidence at the inquiry were insufficient to prove ss. 15(1)(f), 15(1)(l) and 19(1)(a) applied and that evidence was needed from the STR operators. Instead, the City's inquiry submissions were full of arguments and statements about how "it has clearly outlined the alleged harms to [individuals'] physical safety and mental wellbeing, as well as harms to security of residences" and that it had established "a reasonable expectation of probable harm and that is sufficient to satisfy sections 15 and 19."[98] Therefore, I am not persuaded the City raised the issue of notice during the inquiry and or that it informed the OIPC that evidence was needed from the STR operators to decide the issues at the inquiry.

[89] Additionally, consistent with previous OIPC orders, I find notifying the STR operators and obtaining their submissions, along with the other parties' responses to those submissions, would prejudice the applicant by delaying the reconsideration. Given the large number of STR operators, the notification and submission phase of the reconsideration would be a lengthy process and a resolution to the applicant's request for a review of the City's decision to refuse access would be further delayed.

[90] I also find Airbnb's decision to raise the matter of notice only after Order F21-65 was issued is prejudicial to the applicant and contrary to a fair and efficient administration of FIPPA because it unnecessarily prolongs the resolution of the applicant's dispute with the City. Airbnb and the City could have easily raised the relevance or necessity of the STR operators' evidence and participation much earlier in the inquiry process but chose not to. Instead, Airbnb

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[96] The City cited Affidavit #1 of K. Holm at paras. 61-69, Affidavit #1 of B. Van Fraassen at paras. 10-17, its initial inquiry submission at paras. 45 and 114, and its reply inquiry submission at para. 9.

[97] City's submission dated January 10, 2025 at para. 20, citing its reply inquiry submission at para. 9.

[98] City's reply inquiry submission at paras. 7 and 8.

only brought up the issue of notice for the first time during the judicial review of Order F21-65.[99] Parties are expected to raise any concerns about notice or other matters relevant to an inquiry as early as possible and not wait until after an order has been issued when they realize they could have done something differently to advance their case at the inquiry. The circumstances of this case indicate the issue of notice under s. 54(b) to the STR operators could have been dealt with at the inquiry. This approach would have avoided the prolonged time and effort of addressing the issue of notice under s. 54(b) through the more complex and lengthy court system and would have reduced the time the applicant has spent waiting for a resolution of his dispute with the City.

[91] Parties participating in an inquiry are also expected to provide their best arguments and evidence from the very beginning. The Supreme Court of Canada has said, "The law rightly seeks a finality to litigation" and "To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so."[100] Considering the circumstances of this case, I find notification to the STR operators at this late stage would undermine the fair, timely and efficient administration of FIPPA and the integrity of the OIPC inquiry process because it would remove the incentive for parties to put their best case forward from the outset. It would set a precedent that encourages parties to wait until after an order is issued and if they are unhappy with the inquiry decision, attempt to improve their position and arguments by raising issues that they could have and should have presented during the inquiry. It would also effectively shift the City's statutory burden by putting the onus on the OIPC to seek out additional evidence and arguments to bolster the City's case.[101] It amounts to a public body utilizing the OIPC to obtain evidence that the public body itself should have sought earlier to support its decision and position at the inquiry, which in my view, would be an improper use of the Commissioner's discretion under s. 54(b).

[92] Ultimately, for the reasons discussed above, I find issuing a s. 54(b) notice to the STR operators would not be a fair, timely or efficient administration of FIPPA. In my view, it would have been fairer and more efficient for the City or Airbnb to have brought up the issue of notice to the STR operators as early as possible in the OIPC review process instead of waiting until the judicial review of Order F21-65. Therefore, I find this factor weighs against the OIPC issuing notice under s. 54(b) to the approximately 20,000 STR operators.

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[99] *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 (CanLII) at paras. 46-47.
[100] *Danyluk v. Ainsworth Technologies Inc*., 2001 SCC 44 (CanLII) at para. 18.
[101] Section 57(1) of FIPPA states, "At an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part."

Are there any alternatives to issuing notice to the STR operators under s. 54(b)?

[93] The applicant submits individual notice under s. 54(b) to the STR operators is not required in this case because there are alternative methods of protecting any potential privacy interests and satisfying procedural fairness. The applicant describes one of those alternatives as "careful categorical analysis that considers both the nature of the information and the broader statutory framework."[102] The applicant also argues, "The Commissioner's specialized expertise enables effective evaluation of privacy risks and implementation of protective measures at a categorical level," which the applicant says, "…provides robust privacy protection while maintaining administrative functionality."[103]

[94] Airbnb disputes the applicant's position that "categorical analysis" is a viable alternative in this case rather than individual notice to the STR operators. Among other things, Airbnb argues regulators cannot "simply conduct a 'categorical analysis' of parties that will be directly and significantly affected by a decision just because there is a large number of them."[104] Airbnb submits the case law supports its position that the STR operators are "directly affected parties…because their privacy and safety interests are directly and profoundly at stake and, as a result, they have a highly relevant interest to represent [*sic*] before the regulator."[105] As well, Airbnb contends individual notice is the only way to ensure procedural fairness,[106] while the applicant argues procedural fairness obligations vary with the context and can be satisfied without individual notice.[107]

[95] The question at this point of the s. 54(b) analysis is whether the STR operators' viewpoints and interests can be represented at the reconsideration without the OIPC issuing a s. 54(b) notice to the approximately 20,000 STR operators. As I will explain, I find an alternative method to notice is available through the City and Airbnb.

[96] Starting with the City, I find a viable alternative to issuing notice under s. 54(b) is to give the City an opportunity to make new submissions at the reconsideration. In that scenario, the City would have the option of providing affidavit evidence from the STR operators. The City is already participating in the reconsideration and has the relevant information needed to contact the STR operators to obtain any available evidence. Moreover, if needed, the City would be able to ensure the identities of the STR operators are anonymized in its submissions and evidence, as it did during the inquiry regarding the identity of

[102] Applicant's submission dated February 6, 2025 at p. 1 of pdf.
[103] Applicant's submission dated February 6, 2025 at p. 2 of pdf.
[104] Airbnb's email dated February 19, 2025.
[105] Airbnb's email dated February 19, 2025.
[106] Airbnb's submission dated January 10, 2025 at para. 15.
[107] Applicant's submission dated February 6, 2025 at p. 2 of pdf.

the stalking victim. The City also has the option of requesting the OIPC allow it to provide some of its submissions *in camera*. Where information is approved *in camera*, the decision-maker at the reconsideration considers this information privately and the other parties will receive the inquiry submissions with the *in camera* material redacted.

[97] I also note the City has offered to assist the OIPC with notifying the STR operators under s. 54(b), but its time and resources can instead be directed towards obtaining this evidence from the STR operators. This approach is also consistent with the fact that the City bears the burden of proving ss. 15(1)(f), 15(1)(l) or 19(1)(a) apply to the information that it has redacted in Spreadsheets A and B[108] and for proving that the information it has withheld under s. 22(1) is "personal information" as defined in FIPPA.[109] The City is responsible for supporting its decision about the applicability of those FIPPA exceptions to the information at issue with any relevant and necessary evidence.

[98] The City has expressed concerns about receiving evidence from the STR operators. It submits the STR operators may be wary of sharing additional personal information with the City, particularly if that information could be relevant to the City's compliance and enforcement activities.[110] However, the City can mitigate this concern by informing and reassuring the STR operators that their information and evidence will be collected for the purpose of the reconsideration and will not be used or disclosed for any other purpose and will not be shared with other unrelated City departments and employees.

[99] Additionally, it is unclear and the City does not sufficiently explain how any potential evidence from the STR operators about ss. 15(1)(f), 15(1)(l), 19(1)(a) and 22(1) would provide proof of non-compliance or be relevant to the City's compliance and enforcement activities regarding STR accommodations. I note the City's compliance and enforcement activities are about ensuring the requirements to operate an STR accommodation have been met such as verifying operators have a valid business licence and display it on their listing or advertising and were operating the STR accommodation in their principal residence, as well as ensuring they were not operating in an unsafe or nuisance property or operating a commercial short-term rental.[111]

[100] The City appears to suggest the STR operators could reveal information that shows the STR operators were violating one or more of those requirements. However, I find it highly unlikely that, when they provide information to assist the City during the reconsideration, any STR operator would willingly divulge information that proves they were not complying with the City's STR

[108] Section 57(1) of FIPPA.
[109] Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.
[110] City's submission dated January 10, 2025 at para. 27.
[111] City's inquiry submission dated April 19, 2021 at para. 23.

requirements. Instead, I find it reasonable to conclude they would be careful to avoid saying anything that would alert the City about a possible violation.

[101] Moreover, I am satisfied that the STR operators can provide any relevant information and evidence to the City about harm under ss. 15(1)(f), 15(1)(l), 19(1)(a) and 22(2)(e) without giving away any information to indicate they were violating the City's STR requirements. For example, even if the STR address listed in Spreadsheet A or B is not the STR operator's principal residence, they could still prove that the disclosure of this address could reasonably be expected to result in harm under the relevant FIPPA provisions, without admitting that address is not their principal residence. For the purposes of adjudicating the relevant issues at the reconsideration, the focus is on the potential harm from disclosure of the information at issue rather than the legitimacy of the address and the accommodations.

[102] To be clear, any evidence from the STR operators would just need to show how the disclosure of their business licence number or STR address could reasonably be expected to endanger a person's life or physical safety, harm the security of their property, threaten anyone's safety or mental or physical health under ss. 15(1)(f), 15(1)(l) and 19(1)(a), or would result in an unreasonable invasion of a third party's personal privacy under s. 22(1). It is not apparent and the City does not sufficiently explain why this cannot be accomplished without revealing information that shows the STR operators were violating one or more of the City's STR requirements.

[103] Taking all the above into account, I am not persuaded the STR operators would find it problematic, or be unwilling, to provide any potential information and evidence about ss. 15(1)(f), 15(1)(l), 19(1)(a) and 22(1) to the City.

[104] In considering alternatives to having the OIPC issue notice under s. 54(b) to the approximately 20,000 STR operators, I considered whether Airbnb should also be given an opportunity to make new submissions at the reconsideration regarding ss. 15(1)(f), 15(1)(l), 19(1)(a) and 22(1). This option would allow Airbnb to provide affidavit evidence from the STR operators who listed on Airbnb's online platform during the relevant timeframe. As I will explain, I find there is some merit to this option.

[105] The applicant specifically requested the City provide access to records that contain information about STR operators who listed on Airbnb's online platform. Spreadsheet A contains the information at issue in the reconsideration about the STR operators who listed on Airbnb's online platform from November 1, 2018 and March 15, 2019.[112] At the inquiry leading to Order F21-65, Airbnb

[112] Spreadsheet B contains the business licence number and STR address for all STRs operating under a City business licence for that time period and not just those associated with Airbnb.

described the information in Spreadsheet A as its "customer list."[113] Therefore, the information at issue in the reconsideration is related to Airbnb's business and its operations.

[106] Airbnb is also already participating in the reconsideration and has the relevant information needed to contact its STR operators to obtain any available evidence. I also note that Airbnb has in the past contacted the STR operators who list on its online platform and obtained their express consent to collect and share the information at issue in the reconsideration with the City.[114] Therefore, Airbnb has the knowledge and experience which will allow it to notify and contact their STR operators to get their perspectives about s. 22(1) and about the disclosure of the information at issue and any potential harm under ss. 15(1)(f), 15(1)(l) and 19(1)(a).

[107] Airbnb argues it "has no responsibilities with respect to the distribution of the notice under FIPPA, as it is neither a public body nor the OIPC."[115] However, as part of the inquiry leading to Order F21-65, Airbnb contacted the OIPC and requested that it be allowed to participate in the inquiry as an appropriate person under s. 54(b) for the following reasons:

> Airbnb is the source of information disclosed in certain records at issue in the Inquiry and objected to the release of those records in June 2019. Airbnb would be adversely affected by disclosure of the records and believes that its participation would assist the adjudicator's consideration of the issues in the Inquiry.[116]

[108] The OIPC granted Airbnb's request to participate in the inquiry regarding ss. 21(1) and 22(1) and Airbnb made submissions about harm to their STR operators under s. 22(2)(e). I also note Airbnb describes its hosts as its clients and customers and explains that it charges a service fee in connection with the accommodations that are booked on its online platform.[117] Airbnb also says Spreadsheet A "is effectively Airbnb's customer list, which has been created as a result of significant effort on the part of Airbnb to attract and build relationships with Hosts since its entry into the alternative accommodation business in Vancouver."[118] Therefore, while Airbnb does not have a statutory obligation under FIPPA to notify and seek their STR operators' input for the issues in the

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[113] Order F21-65, 2021 BCIPC 76 at para. 96.
[114] Airbnb's submission dated April 19, 2021 at paras. 2, 8 and 28, provided for the inquiry leading to Order F21-65.
[115] Airbnb's submission dated January 10, 2025 at para. 21.
[116] Airbnb's letter to the OIPC dated February 8, 2021, provided for the inquiry leading to Order F21-65.
[117] Airbnb's submission dated April 19, 2021 at paras. 53, 54 and 61, provided for the inquiry leading to Order F21-65.
[118] Airbnb's submission dated April 19, 2021 at para. 47, provided for the inquiry leading to Order F21-65.

reconsideration, in my view, it clearly has a business incentive in maintaining its relationship with the STR operators who listed on its online platform and an interest in obtaining their perspectives for the reconsideration. Additionally, I find Airbnb recognizes it has a responsibility towards the STR operators who listed on its online platform because it requested the OIPC allow it to participate in the inquiry as an appropriate person and it made submissions on behalf of its STR operators about harm under s. 22(2)(e).

[109] To conclude, for the reasons discussed above, I find an effective alternative to having the OIPC issue notice under s. 54(b) to the approximately 20,000 STR operators is to allow both the City and Airbnb to make new representations about the issues at the reconsideration. This approach would allow the City to contact the STR operators, and allow Airbnb to contact the relevant Airbnb hosts, to obtain any potential evidence about the issues at the reconsideration. I recognize this approach would also result in a delay of the reconsideration, but I find it would cause less delay than the OIPC issuing notice to the STR operators. There would only be submissions from the City and Airbnb to review rather than potentially 20,000 individual submissions.

[110] Furthermore, I note at the inquiry leading to Order F21-65, the City and Airbnb both made submissions and arguments about the potential harm to the STR operators if the information at issue in the inquiry were disclosed. At that time, Airbnb did not directly make submissions about ss. 15(1)(f), 15(1)(l), 19(1)(a), but it can be given that opportunity now. Airbnb also has a business relationship with its STR operators that would allow it to represent their specific concerns and experiences. As well, at the reconsideration, both the City and Airbnb would have the benefit of the adjudicator's analysis and reasons in Order F21-65, along with Justice Basran's judgment and the Court of Appeal's comments and guidance about the issues at the reconsideration. These decisions would allow the City and Airbnb to understand what arguments and evidence they need to provide at the reconsideration. Therefore, even if the City and Airbnb choose not to contact the STR operators and obtain evidence that both the City and Airbnb now argue is essential for the adjudication of the issues at the reconsideration, I find allowing both the City and the Airbnb to provide new submissions in the reconsideration would still ensure the STR operators' perspectives and interests are represented at the reconsideration.

Should the OIPC notify and invite the STR operators to participate in the reconsideration?

[111] Under s. 54(b), the OIPC has the discretionary authority to send a notice to any person that it considers appropriate and provide them with a copy an applicant's request for review and an opportunity to make representations during an inquiry as required under s. 56(3). The question at this point is whether the OIPC should notify and invite the STR operators to make representations during

the reconsideration of Order F21-65. Considering all the factors discussed above, and for the additional reasons that follow, I have decided it is not appropriate to provide notice under s. 54(b) to the approximately 20,000 STR operators.

[112] I found some STR operators may be concerned, or interested in knowing, that their STR address could be disclosed at the outcome of the reconsideration. I also found some STR operators may have evidence to offer about some of the issues to be determined at the reconsideration. However, I conclude those factors are outweighed by the effect individual notification to the approximately 20,000 STR operators would have on the OIPC's limited resources and its ability to fulfill its statutory mandate of providing an independent review of decisions made under FIPPA.[119] The scope and amount of work involved to notify, process and review submissions from such a large group of people would strain the OIPC's limited resources, impact the adjudication division's ability to efficiently complete its duties and responsibilities, and impair the OIPC's ability to provide a timely and efficient resolution of other inquiries. I am satisfied that providing s. 54(b) notification to the STR operators would create a heavy administrative burden for the OIPC and there are currently no reasonable options to mitigate this burden.

[113] I also find notification to the STR operators would not be a fair, timely or efficient administration of FIPPA. Both the City and Airbnb had the opportunity to raise the issue of notice with the OIPC as early as possible but failed to do so. They provided no persuasive evidence or explanation as to why they did not raise this issue earlier. They also could have provided evidence from the STR operators as part of their inquiry submissions but chose not to. An applicant is entitled to expect that the other parties will present their best arguments and any relevant evidence from the very start and not wait until after an order is issued to argue there is other evidence that is necessary for a determination of the matters that were at issue in the inquiry.

[114] Moreover, if the OIPC were to issue notice to the STR operators at this late stage and under those circumstances, then it would encourage parties to wait and see if they are satisfied with the outcome of an inquiry before raising the issue of notice under s. 54(b). It would also amount to a public body improperly utilizing the OIPC and the Commissioner's authority under s. 54(b) to obtain evidence that the public body itself should have sought and provided earlier to support its decision and position at the inquiry.

[115] I also find notification to the STR operators would prejudice the applicant by delaying the reconsideration. The applicant made their access request in 2019 seeking access to records containing information from 2018-2019. The applicant has now been waiting more than five years for a resolution of their dispute with

[119] Section 2(1)(e).

the City over its decision to refuse access. Given the large number of STR operators, the notification and submission process would be a time-consuming process that would further delay the resolution of the applicant's dispute with the City.

[116] Moreover, at the time the applicant made their access request, the records contained recent information of interest to the applicant; however, the information at issue in the reconsideration is now six to seven years old. I find FIPPA's goal of making public bodies more accountable to the public by giving the public a right of access to records would be undermined if the reconsideration is delayed to address a matter that could have been raised earlier by the City or Airbnb.[120] I conclude the longer a decision about a public body's decision to refuse access is delayed, the greater the risk that the requested records and their contents may no longer be of value to the applicant or useful in promoting public accountability.

[117] The City submits FIPPA's purpose of protecting personal privacy outweighs other factors relating to the applicant's access rights and any potential administrative burden to the OIPC. However, the City does not accurately describe FIPPA's purposes which are set out in s. 2(1) of FIPPA as follows:

> 2(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
>
> a) giving the public a right of access to records,
> b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
> c) specifying limited exceptions to the right of access,
> d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
> e) providing for an independent review of decisions made under this Act.

[118] Section 2 explicitly specifies how FIPPA's dual goals of protecting personal privacy and making public bodies more accountable to the public are to be achieved. The provision relevant in the present case is s. 2(1)(c) which advances public body accountability and protects personal privacy by specifying limited exceptions to the right of access. The exceptions to the right of access are found in Part 2 of FIPPA, including ss. 15, 19 and 22(1) which are the exceptions at issue in the reconsideration. Sections 15 and 19 are harms-based exceptions, whereas in terms of protecting personal privacy, s. 22(1) is the exception that protects a third party's personal privacy. Therefore, the relevant question in terms of protecting personal privacy is whether s. 54(b) notice to the STR operators would assist with the determination of s. 22(1) at the reconsideration.

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[120] Section 2(1)(a).

[119] Under s. 22(1), the question to be determined is whether disclosing the personal information at issue would constitute an *unreasonable* invasion of a third party's personal privacy. Therefore, s. 22(1) does not prohibit the disclosure of all personal information in the responsive records nor does it guard against all invasions of personal privacy.[121] Whether the disclosure of personal information will be an unreasonable invasion of third-party personal privacy will depend on the circumstances of each case. I found the STR operators may have some potential evidence relevant to the determination of some matters at issue under s. 22(1). However, I am satisfied in this case that the STR operators' viewpoints and interests can be represented at the reconsideration without the OIPC issuing notice to them under s. 54(b).

[120] I find an effective alternative to having the OIPC issue notice to the STR operators is to allow both the City and Airbnb to make new representations about the issues at the reconsideration. This approach would allow the City to contact the STR operators, and allow Airbnb to contact their relevant hosts, to obtain any available evidence and information that the City and Airbnb think is relevant or necessary to make their case or support their position at the reconsideration. Both the City and Airbnb are already participating in the reconsideration and have the relevant information needed to contact the STR operators to obtain that potential evidence.

[121] Moreover, even if the City and Airbnb choose not to contact the STR operators, I am satisfied that allowing the City and the Airbnb to provide new submissions in the reconsideration would still ensure the STR operators' perspectives and interests are represented at the reconsideration. The City and Airbnb both have the knowledge, motivation and experience to make submissions and arguments about the issues that may be of interest to the STR operators, including s. 22(1).

[122] I recognize this approach would require the applicant to respond to those new submissions and allow the City and Airbnb to provide arguments and evidence that they should have provided earlier at the inquiry. However, I find those concerns are minor in comparison to the time-consuming process the applicant would have to endure if s. 54(b) notice was issued to the STR operators. Instead of potentially reviewing and responding to approximately 20,000 individual submissions from the STR operators, the applicant would only have to review and respond to new submissions and evidence from the City and Airbnb. This approach would reduce the time needed to conduct and complete the reconsideration and support a more timely and efficient resolution of the applicant's dispute with the City.

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[121] Order 02-23, 2002 CanLII 42448 (BC IPC) at paras. 29-31 where former Commissioner Loukidelis found it would not be an unreasonable invasion of a third party's personal privacy to disclose a third party's address.

CONCLUSION

[123] To conclude, for all the reasons given in this decision, I have decided the OIPC is not required to, and will not, issue notice to the approximately 20,000 STR operators under s. 54(b).

[124] The City and Airbnb will, however, be given an opportunity to supplement their original inquiry submissions by providing new submissions, including additional evidence, about the issues at the reconsideration. The applicant will have an opportunity to reply to those submissions.

[125] The OIPC's Registrar of Inquiries will contact the parties to provide a submission schedule for the reconsideration of Order F21-65.

May 7, 2025

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F19-79634