



Decision F25-02

CITY OF VANCOUVER

Allison J. Shamas
Adjudicator

July 11, 2025

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Summary: An applicant requested to participate in an OIPC inquiry without providing their name to the OIPC or the other parties to the inquiry. In an initial decision, the OIPC granted the applicant's request. A third party to the inquiry requested that the OIPC review the initial decision. The adjudicator assigned to conduct the review set the initial decision aside and invited the parties to make fresh submissions in respect of the applicant's anonymity request. Based on those submissions, the adjudicator decided that the applicant was not permitted to participate in the inquiry while remaining anonymous from the OIPC or the other parties. The adjudicator directed the applicant to provide their first and last name to the OIPC and the other parties to the inquiry if they wished for the inquiry to proceed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ss. 21(1), 42(1), s. 47(2)(a), and 56(1); *Personal Information Protection Act*, SBC 2003 cc 63 s. 12(1)(k).

BACKGROUND

[1] The applicant requested records from the City of Vancouver related to the lease of a baseball stadium. The City disclosed records to the applicant but withheld information from them under s. 21(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). Generally speaking, 21(1) requires a public body to refuse to disclose certain information where disclosure could reasonably be expected harm the business interests of a third party.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision to withhold the information. Mediation by the OIPC did not resolve the s. 21(1) issue. Accordingly, matter was referred for an inquiry.

[3] The City identified the Vancouver Canadians as the third party whose business interests could reasonably be expected to be harmed by disclosure of the information in dispute. For this reason, the OIPC invited the Vancouver Canadians to participate in the inquiry under s. 54 of FIPPA.

[4] The applicant did not provide their name to the OIPC or the City when they made their request for review or during the OIPC's mediation process. The OIPC did not require the applicant to do so at those stages. However, the OIPC approaches anonymity differently once a matter is sent to inquiry.

[5] The OIPC publishes an Anonymity Factsheet which provides guidance about its approach to requests to participate in OIPC inquiries anonymously (Factsheet). The Factsheet explains that the starting presumption is openness and full disclosure of participants' identities in an inquiry, but that parties may request to participate anonymously. It explains how to make a request to participate anonymously and provides guidance to parties as to how the OIPC assesses requests to participate anonymously, including by providing a non-exhaustive list of factors that may be relevant to a decision about anonymity.

[6] The Factsheet also explains that decisions about anonymity are typically made *in camera*, meaning only the decision maker sees the requesting parties' submissions and the decision maker does not reveal those submissions in their decision. It also establishes an internal review process under which parties to an inquiry may request that the OIPC review the reasonableness of an initial anonymity decision.

[7] In ordinary course the OIPC provides the Factsheet to the parties to an inquiry where one or more of them has indicated that they wish to remain anonymous when that party's matter is sent to inquiry. However, as I will address in my discussion below, in this case the applicant did not receive a copy of the Factsheet in the ordinary course.

[8] Once the matter was referred to inquiry, the OIPC registrar of inquiries (Registrar) requested the applicant's name. The applicant objected to providing their name to both the OIPC and the other parties. The Registrar considered and granted the applicant's request to participate in the inquiry while remaining anonymous both from the OIPC and the other parties (Initial Decision).¹ Consistent with the Factsheet, the Registrar made their decision on an *in camera* basis.

[9] The Vancouver Canadians requested a review of the Initial Decision. It was not until the applicant received the Vancouver Canadians' request for review that the applicant received a copy of the Factsheet.

¹ Registrar's email dated September 24, 2024 (Initial Decision).

[10] I was assigned to review the reasonableness of the Initial Decision in my capacity as an OIPC adjudicator. I decided that the Initial Decision was not reasonable, and that in the circumstances, the appropriate process was to set the Initial Decision aside and reconsider the applicant's anonymity request *de novo*, based on fresh submissions from all parties (Review Decision).²

[11] All parties provided submissions.³

[12] At the end of the submission process, I adjourned the matter to allow the parties to explore settlement opportunities.⁴ Settlement discussions were ultimately unsuccessful.

[13] What follows is my decision about the applicant's request to remain anonymous from both the OIPC and the other parties during the inquiry, based on the submissions provided by the parties in response to my Review Decision.⁵

DISCUSSION

Overview

[14] This decision concerns the applicant's request to participate in an OIPC inquiry without providing their name to the OIPC or the other parties to that inquiry. To be clear, the OIPC only discloses the names of individual parties to its inquiries to the other parties to those same inquiries. The OIPC does not publish individual's names in its decisions or orders or otherwise disclose their names more broadly.

[15] The applicant's submissions can be divided into four categories: the OIPC's authority to require parties provide their name to participate in an inquiry; the Factsheet; the burden of proof; and the merits of the applicant's anonymity request. The Vancouver Canadians oppose the applicant's request to participate anonymously. The City takes no position on the applicant's request to participate anonymously but makes submissions on some of the issues raised by the applicant.

[16] For the reasons below, I have decided to deny the applicant's request to participate in this inquiry while remaining anonymous from the OIPC and the other parties.

² My letter dated November 20, 2024 (Review Decision).

³ Applicant's submissions dated January 6, 2025 and January 28, 2025; City's submissions dated January 22, 2025; and Vancouver Canadians' submissions dated January 22, 2025.

⁴ My letter dated January 29, 2025.

⁵ Applicant's submissions dated January 6, 2025 and January 28, 2025; City's submissions dated January 22, 2025; and Vancouver Canadians' submissions dated January 22, 2025.

The OIPC's Authority to Require Parties to OIPC Inquiries to Provide their Names

[17] Several of the applicant's arguments concern the OIPC's authority to require parties to provide their names to participate in OIPC inquiries.

Parties' submissions

[18] The applicant submits that the OIPC is not authorized to require parties to provide their names to participate in OIPC inquiries because doing so violates the purposes of FIPPA, OIPC policy, and the Government of British Columbia's FOIPPA Policy and Procedures Manual.

[19] The applicant says that s. 2 of FIPPA, which provides that one of the purposes of FIPPA is protecting personal privacy, gives them a fundamental right to protect their privacy, and that they are doing so by choosing not to disclose their personal information where it is not necessary.

[20] The applicant also argues that the OIPC does not have authority to require them to provide their name to participate because there is no language in FIPPA requiring access applicants identify themselves in order to access the inquiry process.

[21] With respect to OIPC policy, the applicant argues that requiring them to provide their name would violate the OIPC's own guidance document about meaningful consent (Consent Guidance Document).⁶ The Consent Guidance Document relates to the Personal Information Privacy Act (PIPA), BC's private sector privacy legislation. The part of the Consent Guidance Document on which the applicant relies concerns when an organization makes the collection, use or disclosure of an individual's personal information a condition of obtaining a product or service. To be a valid condition, the collection, use or disclosure of the personal information must be required to fulfill the organization's explicitly specified and legitimate purpose. In this regard, the applicant submits that because their name is not necessary to the inquiry, requiring them to provide it to participate is not a valid condition of service.

[22] The applicant also relies on the Government of British Columbia's FOIPPA Policy and Procedures Manual which states that "Applicant anonymity generally should not affect the processing of non-personal FOI requests."

[23] The City says that as an administrative tribunal, the OIPC has discretion to control its process subject to concerns about procedural fairness.

⁶ Obtaining Meaningful Consent, May 2018 available on the OIPC website under guidance documents, <https://www.oipc.bc.ca/resources/guidance-documents/>.

[24] It also submits that the issue of anonymity is contextual and must be considered in accordance with the process under FIPPA to which it relates. It critiques the applicant's submissions on the basis that they fail to distinguish between an access request made to a public body and an OIPC inquiry, which is an adjudicative, quasi-judicial proceeding. In this regard, the City submits that issues of procedural fairness affecting anonymity in an inquiry have no equivalent at the access request stage.

[25] In response to the applicant's submission about the Government of BC's FOIPPA Policy and Procedures Manual, the Vancouver Canadians says that BC government policy about compliance with FIPPA does not bind the OIPC, which has its own powers granted by the legislature pursuant to FIPPA.

Findings and analysis

[26] Before delving into the applicant's specific arguments, it is valuable to take a step back. In general, legal proceedings in Canada are not initiated or conducted anonymously. It is accepted that parties to legal proceedings in this country typically have a right to know who they are dealing with. The suggestion that the OIPC, a statutory body charged with making quasi-judicial decisions, does not have the authority to require the party initiating an inquiry to tell the OIPC and the other parties who they are is unusual.

[27] As I will discuss in more detail below, it is the OIPC that has the power to control the OIPC's processes, not the parties. The approach advocated by the applicant would obstruct the OIPC's ability to carry out the Information and Privacy Commissioner for British Columbia's (the Commissioner's) statutory mandate by denying the OIPC information it requires to exercise important statutory powers and to conduct inquiries in a procedurally fair manner. Finally, the applicant's position is not supported by any of the facts, legislation or policies upon which they rely. For these reasons, and those set out below, I do not accept the applicant's position.

The OIPC's authority to require parties to OIPC inquiries to provide their names

[28] Some of the applicant's arguments seem to arise from a misunderstanding about the source of the OIPC's authority to decide requests for anonymity in its inquiries. The authority to do so does not arise from a specific FIPPA provision. Rather, the OIPC's authority in these respects is found in the Commissioner's general powers under FIPPA informed by the common law.

[29] The Commissioner is an independent officer of the Legislature who provides independent oversight and enforcement of BC's access and privacy laws – FIPPA and its private sector counterpart, the *Personal Information*

*Protection Act*⁷ (PIPA). The Commissioner's powers include conducting inquiries, which are quasi-judicial proceedings in which the Commissioner or their delegate assess evidence and argument and issue final and legally binding decisions about disputes arising under FIPPA and PIPA. OIPC adjudicators have the delegated authority to conduct inquiries and make orders.⁸

[30] It is well-established that the powers of a statutory body or tribunal extend beyond the express language of their enabling legislation to the powers reasonably necessary to perform their intended functions.⁹ The powers conferred by an enabling statute are to be "construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature."¹⁰ Canadian Courts have applied that principle to ensure that administrative bodies have the necessary jurisdiction to accomplish their statutory mandate.¹¹

[31] I begin with the Commissioner's express duties, powers and mandate under FIPPA. Section 42(1) of FIPPA provides that the Commissioner "is generally responsible for monitoring how [FIPPA] is administered to ensure that its purposes are achieved." Those purposes are to make public bodies more accountable to the public and to protect personal privacy by, among other things, providing for an independent review of decisions made under FIPPA.¹² This independent review takes place at investigation and mediation, and when a file is not resolved through these earlier processes, at inquiry.

[32] Section 56(1) of FIPPA gives the Commissioner a broad discretion to decide whether or not to conduct an inquiry.¹³ It is well-established that the Commissioner may decide not to conduct an inquiry under s. 56(1) for reasons that include *res judicata*, *issue estoppel*, and abuse of process.¹⁴ Without delving too deeply into these legal issues, *res judicata*, *issue estoppel*, and abuse of process generally concern a party's past conduct and litigation. Thus, to

⁷ SBC 2003 c 63.

⁸ See the Commissioner's Delegation of Powers, Duties and Functions dated March 31, 2025 available at <https://www.oipc.bc.ca/media/17789/2025-05-12-fippa-delegation.pdf>.

⁹ *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para. 51, citing *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1989 CanLII 67 (SCC) at pp 1756.

¹⁰ *Ibid.*

¹¹ *ATCO supra* note 6 at para. 51, citing *Re Dow Chemical Canada Inc. and Union Gas Ltd.* (1982), 1982 CanLII 3238 (ON SCDC), at pp. 658-59, aff'd (1983), 1983 CanLII 1879 (ON CA); *Interprovincial Pipe Line Ltd. v. National Energy Board*, 1977 CanLII 3163 (FCA); *Canadian Broadcasting League v. Canadian Radio-television and Telecommunications Commission*, 1982 CanLII 5204 (FCA), aff'd 1985 CanLII 63 (SCC).

¹² FIPPA s. 2(1)(e).

¹³ *Cimolai v British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 948 (CanLII) at paras 79-80; Order F25-43, 2025 BCIPC 51 at para 10.

¹⁴ Decision F08-11, 2008 CanLII 65714 (BC IPC) at para 8.

effectively exercise discretion under s. 56(1), the OIPC must be alive to parties' past conduct. To do so, the OIPC needs to know the names of parties to past and current inquiries.¹⁵

[33] Without the names of parties, the Commissioner would be denied, not only the ability to properly exercise their discretion under s. 56(1) but also, the ability to effectively and efficiently fulfill their broader mandate under s. 42(1) to provide independent review of decisions made under FIPPA.

[34] As a publicly funded statutory body, a critical aspect of the OIPC's ability to fulfill the Commissioner's statutory mandate is to ensure that the OIPC's limited public resources are not misused. Thus, the power to decline to conduct an inquiry under s. 56(1) is critical to the Commissioner's duty and ability to responsibly manage the OIPC's limited public resources. When the Commissioner is prevented from identifying and stopping parties who misuse FIPPA's processes, the Commissioner's ability to give timely and equitable attention to other applicants is undermined. As a result, not knowing the identity of parties to its inquiries interferes, not only with the Commissioner's ability to exercise their discretion under s. 56(1), but also with the Commissioner's overall ability to effectively provide an independent review of public bodies' decisions under FIPPA.

[35] The OIPC also discloses the names of parties to its inquiries to the other parties to those inquiries to ensure procedural fairness in its inquiry processes. As the Supreme Court of Canada noted in *Baker v. Canada (Minister of Citizenship and Immigration)*, "[t]he values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision."¹⁶ Thus, it is a fundamental principle of procedural fairness that a party has the right to know the opposing party's case and respond to it.

[36] As a quasi-judicial decision making body, that decides matters affecting the rights and interests of the parties, the OIPC is required to ensure procedural fairness in its inquiry processes.¹⁷

[37] Permitting a party to participate in an inquiry anonymously departs from this principle by impeding the other parties' ability to understand the case and

¹⁵ For recent examples where the OIPC has needed to know the identity of a party to the current and past OIPC proceedings in order to decide whether to exercise its discretion not to conduct an inquiry under s. 56(1), see for example Order F25-43, 2025 BCIPC 51 at paras 1 – 14, and Order F24-100, 2024 BCIPC 114 (CanLII) at paras 11-14.

¹⁶ 1999 CanLII 699 (SCC) at para 28.

¹⁷ For a discussion of the OIPC's obligations for procedural fairness in its inquiries see for example *Airbnb Ireland UC v Vancouver (City)*, 2023 BCSC 1137 (CanLII) at paras 71 – 84.

make meaningful submissions about the issues in dispute. In this regard, context, including the parties' history and connection to the information and records at issue is often relevant to the issues in dispute at an OIPC inquiry. For this reason, allowing a party to participate anonymously limits the other parties' ability to argue their case and undermines the fairness of OIPC inquiries.

[38] Thus, without the ability to require parties to provide their names to participate in inquiries, the Commissioner would be denied the ability to ensure procedural fairness in the OIPC's inquiries – a basic component of any quasi-judicial proceeding.

[39] In short, the OIPC requires parties provide their names to participate in its inquiries so the Commissioner can properly exercise their statutory authorities and ensure procedural fairness in the inquiry process. The OIPC has the authority to require parties to inquiries to provide their names because doing so is necessary for the OIPC to fulfill its mandate and perform its statutory duties in an administratively fair way. The OIPC chooses to exercise its authority to do so in all but rare situations where a party's interest in participating anonymously outweighs these and any other interests favouring openness.

The applicant's remaining arguments about the Commissioner's authority to require parties provide their names during an inquiry

[40] I will now briefly address the balance of the applicant's arguments challenging the OIPC's authority to require parties to provide their names to participate in an inquiry.

[41] I do not accept the applicant's argument that requiring a party provide their name during an inquiry would violate the purposes of FIPPA. Nowhere in FIPPA, including its s. 2 purpose provision, is there language that says one has a right to anonymity in any OIPC proceeding.

[42] I also do not accept the applicant's argument that the absence of an express provision in FIPPA governing anonymity means that the OIPC cannot require parties to provide their names to participate in an inquiry. The OIPC's authority to make decisions about anonymity is found in the Commissioner's general powers under FIPPA informed by the common law.

[43] I am not persuaded by the applicant's submission that requiring a party provide their name would violate the OIPC's Consent Guidance Document. To start, the Consent Guidance Document does not apply to the OIPC. The Consent Guidance Document was prepared to provide guidance to private sector organizations who are governed by PIPA. It does not apply to public bodies like

the OIPC who are governed by FIPPA.¹⁸ The excerpt on which the applicant relies discusses conditions of service in the context of private sector organizations providing products or services. The OIPC's inquiry process is not like a product or service offered by a private sector organization. It is a quasi-judicial function carried out to fulfill the OIPC's statutory mandate of conducting independent reviews.

[44] While I do not agree that conducting an inquiry is the provision of a "service", for the sake of argument even if I did, requiring parties provide their name during an inquiry would be a valid condition. That is because collecting, using and disclosing parties' names during an inquiry is - to use the language of the Consent Guidance Document - "integral to the provision of that product or service such that it is required to fulfill its explicitly specified and legitimate purpose". As I have already explained, the OIPC requires parties' names during inquiries to fulfill the Commissioner's statutory duties and mandate in an administratively fair way as required by common law.

[45] Finally, the Government of BC's FOIPPA Policy and Procedures Manual does not assist the applicant. First, the Manual does not govern the decisions and actions of the OIPC. The Commissioner is an independent officer of the Legislature and the OIPC provides independent oversight and enforcement of the province's access and privacy laws. Moreover, different considerations apply to anonymity in the context of an access request to a public body as opposed to anonymity during an OIPC inquiry. The OIPC's inquiry process is adjudicative in nature, meaning it is more formal and more closely resembles judicial decision making than these other processes. As a result, it attracts heightened procedural fairness considerations.

[46] For the reasons above, I find that the OIPC has the power to control its own processes, including requiring a party provide their name in order to participate in an inquiry.

The Factsheet

[47] The applicant challenges the authenticity of the Factsheet, the OIPC's authority to establish the Factsheet, and the guidance contained in it.

Parties' submissions

[48] The applicant says that the first time they became aware of the Factsheet was when it was provided to them by the Vancouver Canadians in connection with its request for review of the Initial Decision, and that because they were unable to find it on the OIPC's website, they question its authenticity.

¹⁸ Obtaining Meaningful Consent, May 2018 available on the OIPC website under guidance documents, <https://www.oipc.bc.ca/resources/guidance-documents/>.

[49] The applicant argues that the OIPC does not have authority to establish the Anonymity Factsheet, and the guidance contained in it. In this regard, the applicant notes that the Factsheet does not cite any legal authorities under which the OIPC is authorized to require parties to provide their names to participate in inquiries.

[50] The applicant also challenges the statement in the Factsheet that the starting presumption is openness and full disclosure of participants' identities in an inquiry. The applicant submits because the OIPC is subject to sections 25.1 and 30 of FIPPA, which prohibit unauthorized disclosure of personal information and require public bodies to protect personal information, the starting presumption when considering an anonymity request should not be openness and full disclosure.

[51] Finally, the applicant says that the Factsheet contains puzzling information such as the implication that there is a harms test for anonymity and takes issue with the internal review process established in the Factsheet.

[52] The City says that as an administrative tribunal, the OIPC has discretion to control its process subject to concerns about procedural fairness, and that the OIPC has set out such a process in the Factsheet.

Findings and analysis

[53] I begin with the applicant's comments about their receipt of and the authenticity of the Factsheet. Some context is necessary to understand this argument.

[54] The applicant did not receive a copy of the Factsheet prior to making their initial request to participate in the inquiry anonymously. However, the applicant acknowledges that they received a copy of the Factsheet from the Vancouver Canadians when that party requested a review of the Initial Decision. The copy of the Factsheet the applicant received from the Vancouver Canadians was an authentic copy of the Factsheet, and I referred the parties to the Factsheet several times in my Review Decision. In addition, to ensure that the applicant had a full and fair opportunity to be heard, In my Review Decision I decided to give the parties a fresh opportunity to provide evidence and argument in support of their anonymity request before issuing a final decision about the applicant's anonymity request.¹⁹ It was after receiving my Review Decision referencing the Factsheet that the applicant raised the arguments above.

[55] The applicant has now had the opportunity to make two sets of submissions in support of their anonymity request with the benefit of the guidance provided in the Factsheet. Those submissions reference the Factsheet

¹⁹ My letter dated November 20, 2024 (Review Decision).

repeatedly and address a number of the factors identified in it. I am satisfied that the applicant has now had a full and fair opportunity to make submissions in support of their anonymity request informed by the Factsheet.

[56] The applicant's arguments about the OIPC's authority to establish the Factsheet seem to arise from a misunderstanding about the source of the OIPC's authority to create and use explanatory materials such as the Factsheet. The OIPC's authority to do so arises from the Commissioner's general powers under FIPPA informed by the common law to control its own processes.²⁰ In *Prasad v Canada (Minister of Employment and Immigration)*, Justice Sopinka expressed the fundamental principle as follows:

As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.²¹

It is on this basis that the OIPC has the authority to control its own processes, including by developing procedures and issuing explanatory guidance documents, such as the Factsheet.

[57] I am not persuaded by the applicant's challenges to the starting presumption in the Factsheet. I understand the applicant's argument to be that the starting presumption that the names of parties to inquiries will be disclosed to all other parties to that inquiry is contrary to ss. 25.1 and 30 of FIPPA.

[58] The parts of s. 25.1 that concern disclosure of personal information provide that a public body must not disclose personal information except as authorized by FIPPA.²² Section 33 sets out the circumstances in which public bodies are authorized to disclose personal information, and s. 33(2)(d) provides that:

A public body may disclose personal information in any of the following circumstances ...for the purpose for which the information was obtained or compiled, ...

The OIPC discloses the names of parties to ensure procedural fairness in its inquiries - the very same purpose for which the OIPC collects this information. I

²⁰ *Prasad v. Canada (Minister of Employment and Immigration)*, 1989 CanLII 131 (SCC) at pp. 568-569.

²¹ *Prasad, ibid.*

²² Section 25.1 provides that "An employee, officer or director of a public body or an employee or associate of a service provider must not collect, use or disclose personal information except as authorized by this Act."

find that the OIPC's disclosure of parties' names is expressly authorized by s. 33(2)(d).

[59] In addition, s. 47(2)(a), which addresses disclosure of information by the OIPC in its inquiries, provides that:

(2) The commissioner may disclose, or may authorize anyone acting on behalf of or under the direction of the commissioner to disclose, information that is necessary to

(a) conduct an investigation, audit or inquiry under this Act, or ...

Again, the OIPC discloses the names of parties to ensure procedural fairness in its inquiries – a necessary requirement of any quasi-judicial proceeding. I find this purpose to be consistent with s. 47(2)(a). For these reasons, I am not persuaded that the OIPC's starting presumption of openness violates s. 25.1.

[60] The applicant also raises s. 30 of FIPPA. Section 30 provides "A public body must protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized collection, use, disclosure or disposal." It is not clear to me how this provision is relevant to the applicant's arguments about the OIPC's disclosure of parties' names, and the applicant does not explain. I am not persuaded that the OIPC's presumption favouring disclosure of parties' names within an inquiry violates s. 30 of FIPPA.

[61] Finally, it is not clear what, if anything, the applicant seeks from the OIPC in respect of their remaining criticisms of the details of the Factsheet. However, to attempt to quell some of the applicant's concerns, I offer the following explanation about the Factsheet and its application to this case. The Factsheet is intended only to provide guidance about the OIPC's approach to anonymity at inquiry and to assist parties in understanding what kind of information would be relevant to provide in support of their request. As is clear from the language of the Factsheet, OIPC decision makers retain flexibility to make anonymity decisions in a procedurally fair manner given the circumstances of each case. As I have to date, I will consider the applicant's request to participate in the inquiry while remaining anonymous from the OIPC and the other parties guided by the facts and the submissions put forward in this inquiry.

Burden of Proof

[62] The applicant submits that the burden of proof with respect to their anonymity request should fall on the party challenging the request – that is, on the Vancouver Canadians. In support of this position the applicant draws a parallel between s. 57(2) of FIPPA which says the burden of proof is on an applicant when a public body refuses to disclose personal information about a

third party under s. 22(1) of FIPPA and submits that the Vancouver Canadians should be treated as the applicant in this case with the burden to prove that the collection, use, and disclosure of their name is strictly required.

[63] The Factsheet makes clear that the burden of proof is on the party seeking to participate anonymously. However, as noted above, the Factsheet is intended to be applied flexibly, and in my view, the unique circumstances of this review, including the participation of all parties, merit consideration of the applicant's arguments.

[64] FIPPA is silent as to the burden of proof with respect to requests to participate in inquiries anonymously. Where FIPPA does not identify which party bears the burden of proof on a particular issue, past orders have considered who raised the issue, who is in the best position to meet the burden of proof, and what is fair in the circumstances, when deciding which party ought to bear the burden of proof.²³

[65] In this case, it is the applicant who raised the issue by making the request to participate in the inquiry anonymously. It is only the applicant who knows the reasons why they wish to participate anonymously. As discussed above, participating in an OIPC inquiry anonymously is an exception to the OIPC's general practice of requiring parties to provide their names to participate in inquiries, and generally hampers the other parties' interests in procedural fairness. In my view, each of these considerations favour placing the burden on the applicant.

[66] Conversely, there are no circumstances before me that convince me that any party other than the applicant should bear the burden of proof in this case. I am not persuaded by the applicant's attempt to draw a parallel with the burden under s. 57(2) of FIPPA or to characterize the issue as one of the Vancouver Canadians' collection, use and disclosure of their personal information. The issue here is not a public body's refusal to disclose personal information about a third party under s. 22(1), or collection, use, or disclosure of personal information. The question is whether the applicant should be permitted to participate in an OIPC inquiry while concealing their identity from the OIPC and the other parties to that inquiry.

²³ See for example Orders F18-11, 2018 BCIPC 14 (CanLII) at paras 10-23 and F24-04, 2024 BCIPC 5 (CanLII) at paras 16-19 which address the burden of proof in fee estimate disputes; Order 02-38, 2002 CanLII 42472 (BC IPC) at paras. 37 and 38 which sets out the burden of proof under s. 25 of FIPPA; Order 170-1997, 1997 CanLII 1485 (BC IPC) which sets out the burden of proof in establishing that information is excluded from the scope of FIPPA; see Order F21-35, 2021 BCIPC 43 (CanLII), at para. 20; and Order F23-15, 2023 BCIPC 18 (CanLII), at para. 7 which concern the burden of proof under s. 77 of the *Child, Family and Community Service Act*, RSBC 1996, c 46.

[67] Ultimately, it is only the applicant who knows their reasons for seeking to conceal their identity and who knows why these might be appropriate circumstances to depart from the OIPC's usual approach. I find that the burden of proof is on the applicant.

Merits of the Applicant's Anonymity Request

[68] I now turn to the merits of the applicant's request to participate in the inquiry while remaining anonymous from the other parties and from the OIPC. As discussed above, because permitting a party to participate in an OIPC inquiry anonymously adversely impacts the Commissioner's ability to fairly carry out their duties and fulfill their statutory mandate (ss. 56(1), 42(1), and procedural fairness), the starting presumption is openness and full disclosure of parties' identities. The applicant will be permitted to participate anonymously only if their interest in participating anonymously outweighs these and any other considerations that may favour openness in the inquiry.

Parties' submissions

[69] The applicant argues that their identity is not relevant to any question of fact or law that is part of an analysis of s. 21(1), which is the issue in this inquiry. As a result, the applicant says anonymity will not adversely affect the ability of any other party to understand the issues and argue their case.

[70] The applicant also says that they are not employed by, or acting on behalf of, any party that could conceivably be considered to be a competitor of the third party, and that their interest in the information in dispute is purely personal. They also say that their own lawyer knows who they are and has verified their identity and previously provided assurances that the applicant is not using the lawyer's services for any improper or illegal purpose.

[71] The applicant also submits that they have reason to believe that if their name was disclosed to the Vancouver Canadians, the Vancouver Canadians' lawyer would use that information to research them. The applicant submits that any such research would be an unjustified invasion of their privacy.

[72] In addition, in a part of their submission that I accepted *in camera*, the applicant explains the personal reasons why they wish to remain anonymous. These reasons relate to impacts on them and others should their name be revealed. As this information was provided *in camera*, I cannot describe it further without the risk of revealing it.

[73] The applicant refers to the OIPC's audit and compliance report that found the City's freedom of information department treated media applicants differently

between 2013 and 2015 by taking longer to process their access requests.²⁴ The report said that applicants should be treated equally and not distinguished by their employment status. I understand the applicant's point to be that they wish to remain anonymous because they do not trust the City to process their access requests fairly once they know who they are.

[74] The applicant also says that they have addressed the concerns raised about their anonymity by hiring legal counsel to represent them at the inquiry. They state that their legal counsel has previously provided the OIPC with assurances that their services are not being used for any improper or illegal purpose. The applicant says that the decision to hire legal counsel, despite the cost and the fact that the applicant is more than capable of providing their own inquiry submissions, is part of a good faith effort to facilitate the OIPC's adjudication process.

[75] Finally, the applicant argues that their name is not necessary to the inquiry because they were able to participate in other, related processes anonymously. In this regard, the applicant says that their name was not necessary for the public body to respond to their access request, the OIPC's mediation process, consideration of the anonymity issue to date, or to participate in a past OIPC inquiry which resulted in Order F24-69 involving these same parties.

[76] The Vancouver Canadians submits that the applicant's identity is relevant to the analysis under s. 21. In support of its position, the Vancouver Canadians relies on the Supreme Court of Canada's statements in *Merck Frosst Canada Ltd. v. Canada (Health)*, that provisions like s. 21 recognize the need to protect information that is "valuable to competitors and disclosing it may cause financial or other harm to the third party who had to provide it."²⁵ The Vancouver Canadians also cites past OIPC orders in which, it says, the OIPC recognized that the fact that an applicant was a direct competitor of a third party could assist with proving that disclosure would result in significant harm in the form of "an unfair and inappropriate competitive windfall."²⁶

[77] The City says that the audit report relied on by the applicant is not relevant to the matter at issue because the City's processing of access requests has no implication for the issue of anonymity at inquiry. Addressing the audit report itself, the City states that its intent and aim is to respond uniformly to access requests.

²⁴ *Audit and Compliance Report F16-01, City of Vancouver Duty to Assist*, <https://www.oipc.bc.ca/documents/audit-reports/2008>.

²⁵ *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, para. 93 ("Merck Frosst").

²⁶ The orders cited by the Vancouver Canadians are *British Columbia (Provincial Health Services Authority) (Re)*, 2014 BCIPC 4 (Order F14-04) at paras. 62-65 and *Ministry of Finance, Re*, 2003 CanLII 49212 (BC IPC) (Order 03-33) at paras. 39-49.

Findings and analysis

[78] I will begin with the applicant's request to participate in the inquiry while remaining anonymous from the other parties before turning to whether the applicant is permitted to remain anonymous from the OIPC.

[79] A relevant consideration is whether anonymity would significantly undermine the ability of the City or the Vancouver Canadians to understand the issues or make arguments about the issues in dispute.

[80] The issue in dispute in the inquiry is s. 21(1).²⁷ Section 21(1) of FIPPA requires public bodies to withhold certain kinds of information where disclosure of that information could reasonably be expected to harm significantly the competitive position or interfere significantly with the negotiating position of the third party or result in undue financial loss or gain to any person or organization.

[81] The Supreme Court has recognized that the purpose of provisions like s. 21(1) is, in part, to protect third parties from disclosure of information that is valuable to competitors. As the Vancouver Canadians note, consistent with the Supreme Court's comments in *Merck Frosst*, in past orders the OIPC has relied on the fact that an applicant is the competitor of a third party in order to ground its finding that the public body and third party had provided sufficient evidence to establish harm. Thus, in Order F14-04, the finding that s. 21(1) applied was grounded in the fact that the applicant was a competitor of the third party and had significant resources which would allow it to use the information in dispute to emulate the third party's processes.²⁸ Similarly, in Order 03-22, the fact that the applicant was a competitor of the third party was specifically held to be a relevant factor in deciding that s. 21(1) applied to the information in dispute.²⁹

[82] The applicant is correct that the identity of an applicant and a connection between an applicant and the third party's business is not always essential for a public body or third party to establish that disclosure of the information in dispute could reasonably be expected to harm the third party's business interests under s. 21(1). However, where an applicant does have some connection to the third party's business or the information in dispute, that connection can assist the public body and the third party to explain why disclosing the information could result in the harms contemplated in s. 21(1) in their inquiry submissions. The public body and third party can only make that determination if they know the applicant's identity.

²⁷ I recognize that there is an outstanding request to add a new issue to the inquiry. Nothing in this decision is intended to determine or prejudice that request.

²⁸ 2014 BCIPC 4 at para 62 (citations removed). See also paras 63-65.

²⁹ 2003 CanLII 49212 (BC IPC) at para 48. See also paras 39-49.

[83] Turning to the specific facts of this case, first, I do not find the statements that their lawyer verified their identity and provided assurances that the applicant is not using the lawyer's services for any improper or illegal purpose to be helpful. Those statements do not relate to the key question I need to answer in this anonymity request, which is whether the applicant's identity could be relevant to the s. 21(1) issue in this inquiry.

[84] The Vancouver Canadians who know their own business are best situated to explain how the applicant's identity or relationship to its business might be relevant to the harms analysis under s. 21(1). The Vancouver Canadians can only make that assessment and provide inquiry submissions explaining if they know the applicant's identity. In any event, the applicant's lawyer is not the proper party to make this assessment for the City and the Vancouver Canadians.

[85] Finally, the applicant's statements about who they are (which they provided to the OIPC *in camera*) are vague and lacking in specifics. Even if I were to accept those statements, they do not provide a sufficient basis on which to find that the applicant's identity could not be relevant to the s. 21(1) harms analysis in this case.

[86] Ultimately, I do not have sufficient information about the applicant or the Vancouver Canadians' business to conclude that the applicant's identity is not relevant to the arguments the Vancouver Canadians and the City might make about harm under s. 21(1). To put it otherwise, I am not persuaded by the applicant's argument that their identity is not relevant to the s. 21(1) analysis in this inquiry. Accordingly, I find that denying the Vancouver Canadians and the City the opportunity to make submissions relating to the applicant's identity and any connection to the information in dispute would raise serious procedural fairness concerns. This consideration weighs heavily against permitting the applicant to participate anonymously in the inquiry.

[87] I am not persuaded by the applicant's arguments about the harm they say they will experience if their identity is revealed to the other parties to the inquiry.

[88] The applicant is concerned that the Vancouver Canadians' lawyer will use their name to research them in connection with representing the Vancouver Canadians in this inquiry. PIPA applies to private sector organizations like the Vancouver Canadians and private law firms. Like FIPPA, PIPA contains protections for how personal information may be collected, used, and disclosed. Thus, any of the applicant's personal information that may be collected by the Vancouver Canadians' law firm is subject to protection under PIPA.

[89] Section 12(1)(k) of PIPA expressly permits the collection of personal information "for the purposes of ... providing legal services to a third party [where] the collection is necessary for the purposes of providing those services."

The applicant is concerned that the Vancouver Canadians lawyer will use their name to conduct research to determine their connection to the information in dispute and the Vancouver Canadians' business in preparing for the inquiry. What the applicant describes is a practice that is expressly permitted under PIPA, and one that is an anticipated part of participating in a legal proceeding.

[90] The applicant has not provided any information to suggest that they might experience any adverse effects beyond those typically experienced by parties to legal proceedings. While I accept that it is likely that the Vancouver Canadians' law firm will use the applicant's name to conduct research related to its representation of the Vancouver Canadians in this inquiry, the applicant has not persuaded me that the impact on them would be different or greater than that experienced by any other party to an OIPC inquiry.

[91] I am also not persuaded by the applicant's *in camera* submissions about their personal reasons for seeking to remain anonymous. The *in camera* portion of their submissions concern what is beneficial or optimal for the applicant and others but do not describe actual harm. The information is vague and non-specific. Moreover, the applicant does not provide sufficient information to allow me to determine the likelihood that they would experience the impacts they describe if their name was disclosed. For these reasons, the information provided by the applicant *in camera* does not persuade me that the applicant's personal reasons for wanting to remain anonymous are sufficiently serious to justify permitting them to participate anonymously.

[92] I have also considered the applicant's statements about the OIPC audit that found the City had treated media applicants differently in the City's access request process. As the City notes, the audit relates to access requests not OIPC inquiries. The applicant has already made their access request to the City anonymously. Their identity did not affect the treatment they received from the City. To the extent that the applicant's concerns relate to future access requests, there is nothing to stop the applicant from making future access requests to the City anonymously. I am not persuaded by these arguments.

[93] I am also not persuaded that the applicant's name is not necessary to the inquiry because they were able to participate in past access to information and OIPC processes related to this inquiry anonymously. The fact that the applicant was able to participate anonymously in the City's access request process and the OIPC's mediation process is not relevant to the issue I must decide. Unlike these earlier processes, the OIPC inquiry process is adjudicative in nature, meaning it is more formal and more closely resembles judicial decision making. As a result, it attracts heightened procedural fairness considerations.³⁰ Thus, the fact that the applicant was able to make their access request and participate in the OIPC's

³⁰ For a discussion of this principle, see *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 23.

mediation and investigation processes does not mean that it is appropriate to permit them to participate in the inquiry anonymously.

[94] I am also not persuaded by the applicant's submissions that their name is not necessary to the inquiry because they were able to participate in a past inquiry anonymously. The question is not whether the applicant's name is necessary to this inquiry, in the sense that it is impossible to proceed with the inquiry without it, but rather, whether, in the circumstances of this case, their interests in participating anonymously outweigh those weighing against anonymity. Each anonymity request must be decided on its own merits, and therefore, the fact that the applicant participated in a previous inquiry anonymously does not dictate the appropriate approach in this inquiry.

[95] While there are some similarities between the circumstances of the current request and that in Order F24-69, the decision maker deciding that anonymity request did not have the benefit of submissions from the parties to this inquiry, that decision was not subject to a review, and it is not clear to me precisely what that decision maker considered in granting the previous anonymity request. The task before me is to consider whether it is appropriate to permit the applicant to participate anonymously in this inquiry based on the facts and arguments before me. For the reasons below, I conclude that it is not.

Conclusions – anonymity from the other parties

[96] The applicant seeks to participate in the inquiry while remaining anonymous from the City and the Vancouver Canadians. The question before me is whether the considerations favouring anonymity are sufficient to outweigh the serious procedural fairness concerns engaged by permitting the applicant to participate in the inquiry while concealing their identity from the City and the Vancouver Canadians. I have found that the applicant's identity may be relevant to the s. 21(1) harms analysis in this inquiry, and accordingly, that it would raise serious procedural fairness concerns to deny the Vancouver Canadians and the City the information they need to make submissions relating to the applicant's identity and any connection to the information in dispute. This consideration weighs heavily against permitting the applicant to participate while remaining anonymous to the other parties.

[97] Conversely, I found that the adverse impacts identified by the applicant as resulting from requiring them to disclose their name – the potential that the Vancouver Canadians' lawyer will conduct research into their identity in connection with the inquiry, their personal preference to remain anonymous, and their concerns about differential treatment are minor, speculative, or both. As a result, while I accept that the potential for adverse impact on the applicant favours anonymity, I assign limited weight to these considerations. Ultimately, I do not find these considerations to be sufficiently compelling to outweigh the

negative impacts on procedural fairness if the applicant is permitted to participate in the inquiry while remaining anonymous from the other parties.

[98] Accordingly, in the circumstances before me, I decline to grant the applicant's request to participate in the inquiry while remaining anonymous from the City and the Vancouver Canadians.

Conclusions - Anonymity from the OIPC only

[99] I do not understand the applicant to be asking to remain anonymous from the OIPC if they are required to provide their name to the other parties. Such a request would be highly unusual. However, in case I am mistaken and that is what the applicant is asking, I will briefly explain why I decline to grant such a request.

[100] As discussed in detail above, permitting the applicant to keep their identity from the OIPC would hamper the Commissioner's ability to properly fulfill their statutory duties and mandate under ss. 42(1) and 56(1).

[101] Conversely, I cannot envision a circumstance in which it would satisfy any of the applicant's objectives or constitute a remotely reasonable process to conduct an inquiry where the parties know the applicant's identity, but the OIPC does not, and I can see no relevant factors favouring anonymity from the OIPC in such a circumstance.

[102] I am also concerned about potential impacts on the OIPC's ability to conduct a sound analysis and give reasons. If information that may be relevant to assessing the parties' arguments under s. 21(1) is available to the parties but not the OIPC, the OIPC's ability to conduct a thorough analysis and explain its reasons intelligibly would be constrained.

[103] For the above reasons, the applicant is not permitted to participate in the inquiry while remaining anonymous from the OIPC.

DIRECTION

[104] If the applicant wishes for the inquiry to proceed, they must provide their first and last name to the OIPC's registrar of inquiries, the City, and the Vancouver Canadians by not later than August 25, 2025. I wish to make clear to the applicant that if they choose to not provide their name as directed, I will cancel the inquiry because, for the reasons given above, it would be unfair to the City and the Vancouver Canadians to proceed without the applicant's name.

July 11, 2025

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File No.: F23-92686