



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F13-07

PROVINCIAL CAPITAL COMMISSION

Elizabeth Barker, Adjudicator

March 13, 2013

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Summary: A journalist requested records related to the Provincial Capital Commission's request for proposals to lease the CPR Steamship Terminal Building in Victoria's inner harbour. Information was withheld under ss. 13(1), 15(1)(l), 21(1) and 22(1) of FIPPA. The adjudicator found that the majority of the information withheld under s. 13(1) was not advice and recommendations, so it must be disclosed. Regarding s. 15(1)(l), the public body failed to establish the disclosure of architectural drawings could reasonably be expected to harm the building's security, so they must be disclosed. Regarding s. 21(1), there was no evidence of harm that would result from disclosure of the withheld financial information, and the adjudicator directed that it be provided to the applicant. Finally, the adjudicator ordered disclosure of some of the information that had been withheld under s. 22(1) because it was either not personal information or because disclosure would not be an unreasonable invasion of third-party personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 15(1)(l), 21(1) and 22(1).

Authorities Considered: B.C.: Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order 01-15, [2001] B.C.I.P.C.D. No. 16; Order 01-37, [2001] B.C.I.P.C.D. No. 38; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order 03-02, [2003] B.C.I.P.C.D. No. 2; Order 03-15, [2003] B.C.I.P.C.D. No. 15; Order F06-16, [2006] B.C.I.P.C.D. No. 23; Order F07-15, [2007] B.C.I.P.C.D. No. 21; Order F08-22, [2008] B.C.I.P.C.D. No. 40; Order F10-15, [2010] B.C.I.P.C.D. No. 24.

Cases Considered: *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, [2002] BCCA 665; *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)* 2012 BCSC 875; *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773.

INTRODUCTION

[1] This inquiry concerns a journalist's application for records related to the Provincial Capital Commission's ("PCC") request for proposals ("RFP") to lease the CPR Steamship Terminal Building in Victoria's inner harbour. The PCC provided some information to the applicant but withheld portions of the records pursuant to sections 13, 14, 15(1)(l), 17(1)(f), 21 and 22 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

[2] The applicant requested the Office of the Information and Privacy Commissioner ("OIPC") review the PCC's decision. Mediation did not resolve the matter and it proceeded to inquiry under Part 5 of FIPPA.

[3] **Preliminary Matters**—In his request for review, the applicant argued that s. 25 applied (disclosure in the public interest). However, in his submission, he withdrew this argument. The PCC also altered its position during the inquiry, and explained that it was no longer relying on ss. 14 and 17 to withhold information. Therefore, I have only considered the application of ss. 13, 15, 21 and 22 to the records.

ISSUES

[4] The questions that I must decide are:

1. Is the PCC authorized to refuse access to the records under ss. 13 and 15(1)(l) of FIPPA?
2. Is the PCC required to refuse access to the records under ss. 21(1) and 22 of FIPPA?

DISCUSSION

[5] **Background**—In December 2010, the PCC issued an RFP for the lease of its CPR Steamship Terminal Building located in Victoria's inner harbour. The following spring, the PCC cancelled the RFP upon the recommendation of its evaluation panel, and a new competitive process was initiated. By November 2011, a tenant had been chosen for the building.

[6] The applicant, a journalist, requested information about the cancelled RFP, specifically: "...records that assess the bids and contain the rationale for the final decision; and correspondence and notes that resulted from the announcement of the decision."¹

[7] **Records at issue**—There are 356 pages of records at issue consisting of:

1. Three proposals submitted in response to the RFP (pp. 1-274).
2. Email and correspondence (pp. 275-77, 314-24, 328, 333-339, 341-46, 351-56).
3. "CPR Steamship Terminal Leasing: Evaluation Panel Workshop Walkthrough Guide" (pp. 278-311).
4. Meeting minutes from the evaluation panel's *in camera* meetings (pp. 312-13, 329-31, 340, 347-50).
5. "Issues Summary" (pp. 325-27).
6. "Evaluation Panel Scorecard" (p. 332).

[8] **Advice or Recommendations**—The PCC has severed a portion of the records under s. 13(1) of FIPPA. That section reads as follows:

- 13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.
- (2) The head of a public body must not refuse to disclose under subsection (1)
 - (a) any factual material, ...

[9] This section has been the subject of many orders, for example Order 01-15 where former Commissioner Loukidelis said, "This exception is designed, in my view, to protect a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations."² These orders have also found that a public body is authorized to refuse access to information that would allow an individual to draw accurate inferences about advice or recommendations.³ I apply the same reasoning in these orders to the facts before me in this case.

[10] The PCC submits that many of its decisions to withhold information under s. 13 were predicated on the fact that, although the RFP was cancelled, it had begun a new process to secure a tenant for the building. Consequently, the

¹ Applicant's April 20, 2011 request for records.

² Order 01-15, [2001] B.C.I.P.C.D. No. 16, para. 22.

³ Order F10-15, [2010] B.C.I.P.C.D. No. 24; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F06-16, [2006] B.C.I.P.C.D. No. 23; *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, [2002] BCCA 665.

records that the applicant seeks contain advice about proposals the PCC expected would be resubmitted under the new process. However, now that the process of finding a tenant has concluded, the PCC has reassessed the application of s. 13 and no longer relies on it to withhold information from the *Issues Summary* (pp. 325-27)⁴ or the evaluation panel's April 7, 2011 *in camera* meeting minutes (p. 340). They continue to apply s. 13 to portions of several *in camera* meeting minutes (pp. 312, 329-331), the "Evaluation Panel Scorecard" (p. 332), an email (pp. 341-42), a letter (pp. 343-45), meeting minutes (pp. 348-50), and an April 14, 2011 letter to the Minister (pp. 354-56).

[11] The applicant submits that s. 13 "has been overapplied" and the PCC should have worked harder to separate "advice" from factual background information.⁵

[12] Having reviewed the parties' submissions and the disputed record, I find that with the exception of a few sentences on pp. 312, 340, 341 and 348, the information is not advice or recommendations.

[13] Large portions of the evaluation panel's March 29, 2011 *in camera* meeting minutes (pp. 329-31) have been withheld under s. 13(1). The minutes provide a summary of the presentations made by the proponents during the meeting, a description of the proposals' limitations and a record of the next steps that will be followed in the RFP process. In my opinion, this information is not advice or recommendations but is factual information covered by s. 13(2)(a), so it must be disclosed.

[14] Most of an "Evaluation Panel Scorecard" (p. 332), which provides the preliminary scoring of the three proposals, was withheld under s. 13(1). It is a chart recording the mark given in several categories to each proposal. It contains raw data but no advice, recommendation or opinion on any particular course of action. I find that this is factual information and s. 13(2)(a) applies, so it must be disclosed.

[15] The PCC withheld the majority of an email, from a member of the evaluation panel to the PCC's corporate secretary, which provides information about the cancelled RFP process (pp. 341-42). With the exception of three sentences on p. 341 where the writer obliquely provides his advice, s. 13(1) does not apply to the information in this email. I have highlighted the three sentences as they can easily be severed in order to disclose the remainder of the email.

[16] Pages 343-45 contain a letter from the evaluation panel chair to the PCC board and give an overview of the proposals, a summary of the methodology

⁴ However, they still apply ss. 17 and 21 to the information on pp. 325-27.

⁵ Applicant's initial submission, p. 1.

adopted and the results of the process.⁶ About a third of this document was withheld. I find that these pages contain only factual material that falls within s. 13(2)(a), not advice and recommendations, so it must be disclosed.

[17] Pages 347-50 are the minutes of an April 12, 2011 *in camera* meeting of the PCC board and the panel chair. The withheld information consists of a brief summary of the panel's thoughts regarding each proposal and what the next steps in the process will be. In my opinion, this information is not advice and recommendations, rather opinions mixed with factual background, and it may not be withheld under s. 13(1). There is, however, a partial sentence at the bottom of p. 348, which reveals the content of the advice provided on p. 341. I have highlighted this partial sentence for severing under s. 13(1).

[18] Pages 354-56 contain a letter from the chair of the PCC board to the Minister of Community, Sport and Cultural Development, almost all of which has been withheld under s. 13(1). The letter provides a summary of what took place during the RFP process, mixed with appraisals of the proposals and the proponents' ideas. The letter does not contain advice or recommendations, however, so s. 13(1) does not apply. I note that this letter contains personal information, which I address below when dealing with s. 22(1).

[19] In conclusion, I find that the PCC may continue to withhold, pursuant to s. 13(1), the information that I have highlighted on pp. 312, 340, 341 and 348. However, the balance of the information is not properly withheld under this section.

[20] **Harm to Security of Property**—The PCC relies on s. 15(1)(l) to withhold a series of ten architectural drawings of the CPR Steamship Terminal Building.⁷ The drawings were part of one of the proposals and they appear to have been annotated to illustrate the proponent's planned use of the building.

[21] The relevant portions of s. 15(1)(l) of FIPPA read as follows:

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

...

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

⁶ Notably, the PCC has already disclosed the portion of the letter under the heading "Recommendations/Next Steps". It explains that this information was not withheld because it has already been publicly reported.

⁷ Pages 13-22 of the records.

[22] The standard of proof applicable to harms-based exceptions like s. 15 is whether disclosure of the information could reasonably be expected to cause the specific harm. Although there is no need to establish certainty of harm, it is not sufficient to rely on speculation,⁸ and in Order F07-15, former Commissioner Loukidelis outlined the evidentiary requirements to establish a reasonable expectation of harm: "...there must be a confident and objective evidentiary basis for concluding that disclosure of the information could reasonably be expected to result in harm... Referring to language used by the Supreme Court of Canada in an access to information case, I have said 'there must be a clear and direct connection between disclosure of specific information and the harm that is alleged'".⁹ Further, in *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*,¹⁰ Bracken, J. confirms it is the release of the information itself that must give rise to a reasonable expectation of harm, and that the burden rests with the public body to establish that the disclosure of the information in question could result in the identified harm.

[23] I take the same approach in assessing the PCC's application of s. 15(1)(l) to the records.

[24] Given that the parties' submissions on this ground are short, I have included them here. The PCC argues as follows:

The drawings provide specific information regarding the structural components of each level of the building. Examples include the location of seismic braces and support columns which are critical to the structural integrity of the building. The PCC must assume that release of these drawings places them in the public domain. Knowledge of these structural elements could be utilized to harm the security of the property. This prominent building is located directly across from the Legislative Assembly of British Columbia. It will serve as a place of public assembly and its role as a focal point for ferry passengers is highly anticipated by the public. It should be noted that in 1999 the adjacent Coho ferry was used by convicted terrorist Ahmed Ressam to transport explosives planned for detonation in Los Angeles airport, also a place of public assembly and a transportation hub. While terrorist activity is always speculative, it is the view of the PCC that it would be imprudent to release detailed structural drawings for a prominent public building.¹¹

⁸ Order 00-10, [2000] B.C.I.P.C.D. No. 11, at p.10.

⁹ Order F07-15, [2007] B.C.I.P.C.D. No. 21, para. 17. Referring to *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773.

¹⁰ 2012 BCSC 875, at para. 43.

¹¹ PCC's initial submission, pp. 5-6.

[25] The applicant submits:

Section 15 has been over applied as well (as the BC Supreme Court found it was in the recent IBM contract FOI decision as well). On sweeping speculative arguments of terroristic attacks, the structural plans for any Canadian public building (including the B.C. legislature itself, including the 2006 report on its seismic readiness which I found by FOI) could be shielded from public scrutiny. Moreover, Canada is not such a terrorist target as the United States is.¹²

[26] Neither party provided information about how the proponent obtained copies of the architectural plans in order to incorporate them into its proposal. If they were provided by the PCC, any conditions as to their use and whether they were to remain confidential are not evident in the materials before me.

[27] The PCC argues that the drawings reveal information about the structural elements of the building and that this knowledge could be used to harm the security of the property. However, it does not explain the nature of the feared harm. Nor does it explain how release of the drawings may result in that harm. Given the reference to the Coho ferry incident and terrorism, I am left to guess that the harm the PCC fears relates to explosives. However, the connection between disclosure and this harm is not evident from my examination of the drawings. I can see nothing about the seismic braces or support columns in these drawings that would not be discernible to anyone standing in the building, even if they have only a basic understanding of building construction.

[28] I have considered the significance and magnitude of harm that could flow from a terrorist attack on a public building, assuming that is what is feared by the PCC. Nevertheless, I still must resolve the issue of whether there is a clear and direct connection between disclosure of the architectural drawings and the anticipated harm. As former Commissioner Loukidelis explained in Order F08-22:¹³

... Disclosure exceptions that are based on risk of future harm, therefore - as in other areas of the law dealing with the standard of proof for hypothetical or future events - are not assessed according to the balance of probabilities test or by speculation. Rather, the chance or risk is weighed according to real and substantial possibility. [Footnote omitted]

Real and substantial possibility is established by applying reason to evidence. This is distinct from mere speculation, which involves reaching a conclusion on the basis of insufficient evidence... Certainty of harm need

¹² Applicant initial submission, p. 1.

¹³ [2008] B.C.I.P.C.D. No. 40, at paras. 44-45.

not be established, but, again, “[e]vidence of speculative harm will not meet the test.” [Footnote omitted] A rational and objective basis for conclusion that fully considers the context of the particular disclosure exception lies at the heart of the concept of reasonable expectation of harm.

[29] The PCC’s argument with respect to s. 15(1)(l) requires that I speculate, not only about the nature of the anticipated harm, but also about the way in which disclosure is connected to that harm. In other words, the PCC has not adduced sufficient evidence to establish a clear and direct connection between disclosure of the drawings and an anticipated harm. This, in my view, fails to meet the evidentiary test established by previous orders and court decisions. Therefore, I find that s. 15(1)(l) does not apply to the drawings on pp. 13-22 of the records.

[30] **Harm to Third-Party Business Interests**—The PCC applied s. 21(1)(c)(i), (ii) and (iii) of FIPPA to withhold information from the three proposals, the email and correspondence, the “CPR Steamship Terminal Leasing: Evaluation Panel Workshop Walkthrough Guide”, the evaluation panel’s meeting minutes, and the “Issues Summary”. The relevant portions of s. 21 are as follows:

Disclosure harmful to business interests of a third party

- 21(1) The head of a public body must refuse to disclose to an applicant information
- (a) that would reveal
 - ...
 - (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
 - (b) that is supplied, implicitly or explicitly, in confidence, and
 - (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or ...

[31] The principles to be considered in applying s. 21(1) are well established.¹⁴ All three of the following elements must be met in order to properly withhold information under s. 21(1):

- The information is a trade secret of a third party, or the commercial, financial, labour relations, scientific or technical information of or about a third party.
- The information was supplied to the public body in confidence.
- Disclosure of the information could reasonably be expected to cause significant harm to the third party's competitive position or other types of harm as set out in s. 21(1)(c).

[32] The entirety of the PCC's submissions concerning the application of s. 21 is as follows:

Upon receipt of the applicant's request, the PCC initiated third party consultations with the RFP proponents (Maritime Museum of British Columbia, Oak Bay Marine Group and Steamship Marketplace Ltd. – Vic Pub Company). Respecting the written requirements of the proponents, the PCC applied section 21 to third party information contained in the RFP submissions as well as to extracts contained in assessment tools, minutes, emails and correspondence created during the evaluation process and as a consequence of the decision announcement. While the third parties will address the specific harms anticipated from release of this information, the PCC wishes to confirm that the RFP submissions were received in confidence: "All proposals submitted to the PCC become the property of the PCC. They will be received and held in confidence by the PCC, subject to the provisions of the Freedom of Information and Protection of Privacy Act and this Request for Proposal" [Footnote: Lease of Space CPR Steamship Terminal Building Request for Proposal #: 2010-01, section 8.5.]. Moreover, the information in the proposals was supplied to the PCC; no negotiations were undertaken during the evaluation process.¹⁵

[33] The third party proponents were notified and invited to participate in this inquiry as third parties. However, they did not provide submissions or evidence.

[34] The applicant submits the s. 21 exemption should not be applied because the losing bids are an "historical dead letter", and there is no longer any need to apply the exemption in order to prevent harm.

¹⁴ See for example, Order 03-02, [2003] B.C.I.P.C.D. No. 2 and Order 03-15, [2003] B.C.I.P.C.D. No. 15.

¹⁵ PCC's initial submission, p. 7.

Trade secrets, commercial or financial information

[35] The first part of the s. 21(1) test requires evidence that the disputed information would, if disclosed, reveal a third party's trade secrets, commercial information, financial information, or other information of the specified kinds. Neither party makes a submission regarding the nature of the information at issue.

[36] My review of the three proposals indicates that they provide information about each proponent's concept for the building, information about renovations and fixtures, proposed lease terms and shared costs, the proponent's financial and banking situation, and how the project will be managed and by whom. I find that the proposals contain the proponents' financial and commercial information. The other information withheld pursuant to s. 21(1) consists of summaries of, supplemental details about, and references to the information contained in the proposals, and I find that it is also financial and commercial information.

Supplied in confidence

[37] The next element of the s. 21(1) test is the requirement, found in s. 21(1)(b), that the information must be information "that is supplied, implicitly or explicitly, in confidence" to the public body. It is necessary to first determine whether the records were "supplied" to the PCC, and then to determine whether they were supplied "in confidence".

[38] I find that all of the information to which the PCC applied this exemption constitutes information that was "supplied" by the proponents. It consists of the financial and commercial information the proponents provided to the PCC in their proposals¹⁶ and follow-up email and correspondence.¹⁷ It also includes several instances where the evaluation panel has repeated or summarized the information supplied by the proponents.¹⁸ I find that this also meets the "supplied" element because such information is either the same as what was originally supplied by the proponents or is phrased in a way that would allow accurate inferences to be drawn about the originally supplied information.

[39] I accept that the information withheld under s. 21(1) was supplied in confidence. Although the records themselves are silent on this point, the PCC submits that the RFP stated that all proposals would be received and held in confidence. The applicant does not dispute this point.

¹⁶ Pages 1-274.

¹⁷ Pages 321-24, 333.

¹⁸ Pages 285-86, 300, 325-331, 338, 344-45.

Harm to third party interests

[40] The PCC relied on s. 21(1)(c)(i), (ii) and (iii) to withhold information, but it provided no evidence or submissions about the nature or extent of the harm that could be caused by disclosure. The PCC explained that it would leave it to the third party proponents to address the specific harms. However, the third party proponents sent no evidence or submissions, although they were informed of the inquiry and provided an opportunity to do so. The harms anticipated by the PCC are not evident on the face of the record, and I will not speculate about how disclosure of information could cause harm within the meaning of s. 21(1)(c).

[41] The onus is, of course, on the PCC to establish that disclosure of the information in question could reasonably be expected to result in the professed harm. In Order 03-02, a case involving the application of s. 17(1) and s. 21(1) to draft marketing agreements, a similar situation arose. Former Commissioner Loukidelis noted that the burden of proof was on UBC as the public body, yet it made no submission, and only one of the third parties made a brief submission. He found that no party had provided an evidentiary basis to support the application of s. 21(1) and, consequently, it did not apply. He affirmed that a public body's failure to provide evidence to establish the application of s. 21(1) could be fatal to its case.¹⁹

[42] All three parts of the s. 21(1) test must be established before the exception to disclosure applies. Although the first two elements of the test have been met in this inquiry, the last, regarding the harms anticipated, has not. Therefore, I find that the PCC is not required to refuse access to the records pursuant to s. 21(1).

[43] **Disclosure Harmful to Personal Privacy**—The PCC also withheld some information under s. 22, which states:

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

[44] Neither the PCC, nor the applicant provided submissions regarding the application of s. 22 to the records.

[45] Numerous decisions have considered the application of s. 22, and consistently applied the following principles:²⁰

[14] ... The goal of s. 22(1) is to prevent the unreasonable invasion of the personal privacy of individuals through the disclosure of personal

¹⁹ Order 03-02, para. 120.

²⁰ Order 01-37, [2001] B.C.I.P.C.D. No. 38.

information. As has been observed in other orders, s. 22 does not guard against all invasions of personal privacy. It is explicitly aimed at preventing only those invasions of personal privacy that would be “unreasonable” in the circumstances of a given case.

[15] It is worth repeating here the approach that should be used in assessing s. 22. In deciding whether it is required by s. 22(1) to refuse to disclose personal information to an applicant, a public body must first consider whether personal information is involved. The Act’s definition of personal information, found in Schedule 1 to the Act, provides that “personal information” means recorded information about an identifiable individual...

[16] The public body then must decide if the disclosure is deemed, by s. 22(4), not to be an unreasonable invasion of third-party personal privacy. If any of ss. 22(4)(a) through (j) applies, the information must be disclosed. If none of them applies, the public body then must consider whether any of the presumed unreasonable invasions of personal privacy created by s. 22(3) apply. If any one or more of those apply, the public body must consider all relevant circumstances – including those found in s. 22(2) – in deciding whether disclosure of the personal information would constitute an unreasonable invasion of a third-party’s personal privacy. Last, even if none of the s. 22(3) presumed unreasonable invasions of personal privacy applies, the public body must still, considering all relevant circumstances, decide under s. 22(1) whether disclosure would be an unreasonable invasion of a third-party’s personal privacy.

[46] I agree with this approach and have applied it to the facts before me.

[47] The definitions section found in Schedule 1 of FIPPA provides that “personal information” means “recorded information about an identifiable individual other than contact information”. “Contact information” is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”

[48] The PCC relied upon s. 22(1) to withhold the address, phone and email information contained in emails and other correspondence between the PCC, the evaluation panel and the proponents.²¹ In a few instances, the name of the recipient was withheld as well. With one exception, I find that this information is clearly “contact information,” thus excluded from the definition of “personal information”, and the PCC is not obliged to refuse disclosure under s. 22. The one exception is on p. 87 where the PCC has withheld what is evidently a third party’s home address and phone number. This is personal information, and I can see no circumstances weighing in favour of its disclosure. Therefore,

²¹ Pages 94, 275-77, 314-19, 323, 324, 328, 333, 338, 341, 342, 346.

disclosure of this information would be an unreasonable invasion of the third party's personal privacy, and the PCC must continue to withhold it.²²

[49] In the evaluation panel's "Walkthrough Guide", at p. 286 under the heading "key people", are listed the names of four individuals involved in one of the proponent corporations. The PCC has withheld two of those four names under s. 22(1) but has not explained why just two warrant such protection, when it is evident that all four are identified in their business capacity. There are no ss. 22(2) or (3) factors present, and taking into account the context in which the names appear, I find it would not be an unreasonable invasion of third-party personal privacy to disclose them.

[50] Also on p. 286, the PCC relied on s. 22(1) to withhold the name of a local business associated with one of the proponents. I disagree that this is "personal information" and find that s. 22(1) does not require the PCC refuse to disclose it.

[51] Pages 354-56 contain a letter from the PCC board chair to the Minister of Community, Sport and Cultural Development, which I have already determined above, cannot be withheld under s. 13. Although the PCC did not rely upon s. 22 to withhold information from this letter, it does contain some personal information. The letter summarizes the RFP process and responds to a letter sent to the Minister by one of the proponents. While the proponent is identified by name, the personal information contained in the letter pertains to his public or professional capacity and opinions, so it is not of a personal or sensitive nature. Moreover, I note that much of this personal information has already been disclosed to the applicant.²³ I have also reviewed the circumstances listed in ss. 22(2) and 22(3) and none of them play a role here. Therefore, I find that disclosure of the small amount of personal information in this letter would not be an unreasonable invasion of third-party personal privacy.

CONCLUSION

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

1. Subject to para. #2, the PCC is not authorized under s. 13(1) to withhold information from the records.
2. The PCC is authorized pursuant to s. 13(1) to withhold those sentences I have highlighted on pp. 312, 340, 341 and 348 of the records accompanying the PCC's copy of this decision.

²² For ease of reference, this personal information on p. 87 has been highlighted in the record accompanying the PCC's copy of this decision.

²³ At pp. 343-45, 351-53 and in the reference line on p. 354.

3. The PCC is not authorized by s. 15(1)(l) to refuse access to the records. Therefore, I direct the PCC give the applicant access to the information on pp. 13-22 that was withheld under s. 15(1).
4. Section 21(1) of FIPPA does not require that the PCC refuse access to the records. Therefore, I direct the PCC give the applicant access to the information withheld under s. 21(1).
5. Subject to para. #6 (below), the PCC is not required by s. 22(1) to refuse access to the records. Therefore, I direct the PCC give the applicant access to information withheld under s. 22(1).
6. The PCC is required by s. 22(1) to refuse access to the personal information I have highlighted on p. 87 of the records accompanying the PCC's copy of this decision.
7. Therefore, pursuant to s. 58 of FIPPA, I direct the PCC give the applicant access to this information within 30 days of the date of this order, as FIPPA defines "day," that is, on or before April 26, 2013. I also require the PCC to copy me on its cover letter to the applicant, together with a copy of the records.

March 13, 2013

ORIGINAL SIGNED BY

Elizabeth Barker, Adjudicator

OIPC File No.: F11-46497